



Australian Capital Territory

Workers Compensation Act 1951

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Authorised by the ACT Parliamentary Counsel

About this republication

The republished law

This is a republication of the *Workers Compensation Act 1951* (including any amendment made under the *Legislation Act 2001*, part 11.3 (Editorial changes)) as in force on 4 June 2006. It also includes any amendment, repeal or expiry affecting the republished law to 4 June 2006.

The legislation history and amendment history of the republished law are set out in endnotes 3 and 4.

Kinds of republications

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- authorised republications to which the *Legislation Act 2001* applies
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Editorial changes

The *Legislation Act 2001*, part 11.3 authorises the Parliamentary Counsel to make editorial amendments and other changes of a formal nature when preparing a law for republication. Editorial changes do not change the effect of the law, but have effect as if they had been made by an Act commencing on the republication date (see *Legislation Act 2001*, s 115 and s 117). The changes are made if the Parliamentary Counsel considers they are desirable to bring the law into line, or more closely into line, with current legislative drafting practice.

This republication does not include amendments made under part 11.3 (see endnote 1).

Uncommenced provisions and amendments

If a provision of the republished law has not commenced or is affected by an uncommenced amendment, the symbol **U** appears immediately before the provision heading. The text of the uncommenced provision or amendment appears only in the last endnote.

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If a provision of the republished law is affected by a current modification, the symbol **M** appears immediately before the provision heading. The text of the modifying provision appears in the endnotes. For the legal status of modifications, see *Legislation Act 2001*, section 95.

Penalties

The value of a penalty unit for an offence against this republished law at the republication date is—

- (a) if the person charged is an individual—\$100; or
- (b) if the person charged is a corporation—\$500.



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Workers Compensation Act 1951

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Australian Capital Territory

Workers Compensation Act 1951

An Act relating to compensation to workers for injuries arising out of or in the course of their employment, and for other purposes

Chapter 1 Preliminary

1 Name of Act

This Act is the *Workers Compensation Act 1951*.

Chapter 2 Interpretation generally

2 Dictionary

The dictionary at the end of this Act is part of this Act.

Note 1 The dictionary at the end of this Act defines certain words and expressions used in this Act, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*injury*—see section 4 (Meaning of *injury*).' means that injury is defined in that section.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

3 Notes

A note included in this Act is explanatory and is not part of this Act.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

3A Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

Note 1 *Criminal Code*

The Criminal Code, ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

4 Meaning of *injury*

(1) In this Act:

injury means a physical or mental injury (including stress), and includes aggravation, acceleration or recurrence of a pre-existing injury.

(2) In this section:

mental injury (including stress) does not include a mental injury (including stress) completely or mostly caused by reasonable action taken, or proposed to be taken, by or on behalf of an employer in relation to the transfer, demotion, promotion, performance appraisal, discipline, retrenchment or dismissal of a worker or the provision of an employment benefit to a worker.

5 Meaning of *employer*

In this Act:

employer includes—

- (a) an entity; and
- (b) the legal personal representative of a dead employer; and
- (c) if the services of the worker are temporarily lent or let on hire to someone else (the *temporary employer*) by the person (the *original employer*) with whom the worker has entered into a contract of service or apprenticeship—the original employer is, for this Act, taken to continue to be the employer of the worker while the worker is working for the temporary employer.

6 Meaning of *totally incapacitated*

For this Act, the injured worker is *totally incapacitated* for work if—

- (a) there is no suitable paid employment reasonably available to the worker that the worker can do because of a functional impairment caused by the injury; or
- (b) the worker is taken, or declared, to be totally incapacitated under section 35 (When is a worker taken to be totally incapacitated?).

7 Meaning of *partially incapacitated*

For this Act, the injured worker is *partially incapacitated* for work if, because of a functional impairment caused by the injury, the worker—

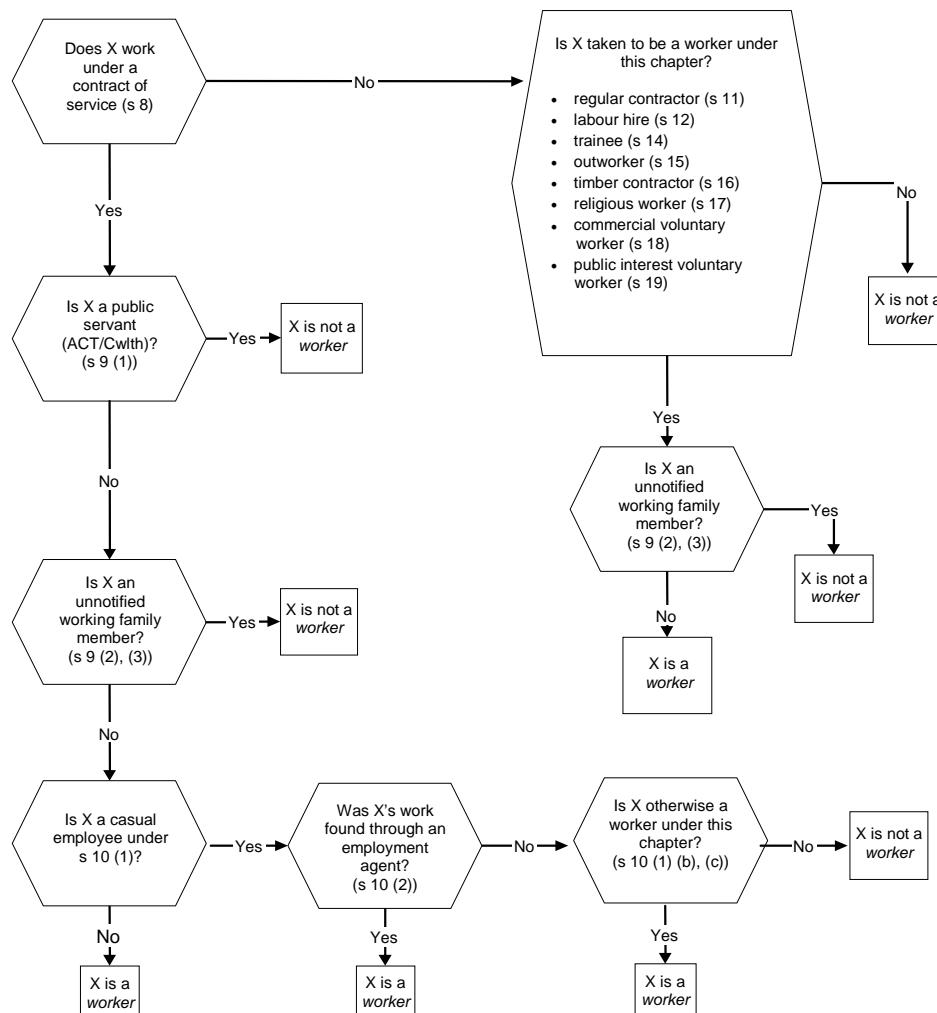
- (a) cannot do all the work the worker could do before the injury;
and
- (b) is not totally incapacitated.

U Chapter 3 Meaning of worker

Notes about ch 3

Note 1 Working out who is a worker

The following chart is a guide for working out if a person (*X*) is a *worker* for this Act.



Note 2 Payment for work

Most people who are **workers** under this chapter are employed or engaged under a contract with someone else. At common law, a contract cannot exist unless there is a valuable exchange between the people on both sides of the contract, by which—

- the employee (or contractor) provides his or her labour to the employer (or principal); and
- the employer (or principal), in exchange, provides payment to the employee (or contractor), including non-monetary rewards (eg payment in kind).

The exceptions under this chapter are those who are taken to be **workers** under s 14 (Trainees), s 17 (Religious workers), s 18 (Commercial voluntary workers) and s 19 (Public interest voluntary workers). Trainees and religious workers may or may not be paid for their labour. Voluntary workers (under s 18 and s 19) are those that are paid only for expenses (if that).

Note 3 Subcontracting and labour hire (effect of s 13)

The Act applies in a special way to subcontracting arrangements, by which—

- a **worker** is engaged to work for a person who is the **employer** of the worker (under this chapter); and
- the employer has engaged the worker to fulfil a contract the employer has with someone else (in this note, a **principal**) to do work for the principal's trade or business.

Under s 13, the principal is liable to pay compensation to the worker if the worker is injured. The principal may, however, recover the compensation paid from the employer.

These situations may be complicated by the involvement of labour hirers, who may in some circumstances be taken to be the employer of workers engaged to do work for a principal (see s 12). Here are 3 illustrations of different subcontracting arrangements:

Arrangement 1 No labour hirer

A bricklayer's labourer (the **worker**) is employed by a bricklayer (the **employer**) to assist the bricklayer to fulfil a contract between the bricklayer and a builder (the **principal**).

The bricklayer is the labourer's employer.

Arrangement 2 Labour hirer as employer

A cleaner (the **worker**) is engaged by a labour hirer (the **employer**) to fulfil a contract between the labour hirer and the owner of a retail store (the **principal**) for the cleaning of the store. The labour hirer is taken (under s 12) to be the employer of the cleaner, because the cleaner has no contractual relationship with the owner of the store.

The labour hirer is the cleaner's employer.

Arrangement 3 Labour hirer as employment agent

A keyboard operator (the **worker**) is employed by an information technology consultant (the **employer**) to fulfil a contract between the consultant and a government department (the **principal**). The consultant recruits the operator through a labour hirer acting as an employment agent.

The consultant is the operator's employer.

Under all of these arrangements, the worker may claim compensation from either the employer or the principal (see s 13 (2) and (4)). If the principal pays compensation to the worker, the principal may claim repayment from the employer (see s 13 (3)). But in the 3rd arrangement (*Labour hirer as employment agent*), the worker may not claim compensation from the labour hirer, and the principal may not seek repayment of compensation from the labour hirer.

U 8

Who is a worker?

- (1) In this Act (subject to this chapter):
worker means an individual who has entered into or works under a contract of service with an employer, whether the contract is express or implied, oral or written.
- (2) A reference in this Act to a *worker* after the date of an injury includes a reference to a former worker.
- (3) The Minister may, in writing, determine categories of workers for the following provisions:
 - (a) section 156 (6), definition of *employer's estimate*, paragraphs (a) and (b) (Information for insurers on application for issue or renewal of policies);
 - (b) section 160 (1) (a) and (b) (Six-monthly information for insurers);
 - (c) section 190 (1) (b) (Provision of information to inspectors).
- (4) A determination is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

9

Who is not a worker?

- (1) In this Act (despite anything else in this chapter), *worker* does not include—
 - (a) a public servant; or
 - (b) an employee within the meaning of the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth).
- (2) In this Act (despite anything else in this chapter), *worker* does not include an individual who would, apart from this section, be a worker employed by an employer, if the individual is a member of the employer's family and lives in the employer's home.
- (3) However, subsection (2) does not apply to an individual if the employer tells the insurer who insures the employer against liability

under this Act the name, nature of employment and estimated wages of the individual—

- (a) when the employment begins; and
- (b) whenever the insurance is renewed.

10 Casuals not employed for trade or business

- (1) In this Act, *worker* does not include an individual (the *casual employee*) employed by someone (the *principal*) on a casual basis to perform work for the principal other than work that is for (or incidental to) the principal's trade or business unless the casual employee is taken to be a worker under any of the following provisions:
- (a) subsection (2) (which deals with casual employment found through employment agencies);
 - (b) section 11 (Regular contractors and casuals);
 - (c) section 17 (Religious workers).
- (2) If the casual employee's employment was found for the employee by a person who carries on the business of an employment agent, for this Act the casual employee is taken to be a *worker* employed by the employment agent.

Examples of casual employees who are not workers

- 1 A gardener irregularly employed by the occupier of residential premises to work in the garden of the premises (unless engaged through an employment agent—see example 4).
- 2 A babysitter irregularly employed by the parents of young children (unless engaged through an employment agent—see example 4).

Examples of casual employees who are workers

- 3 A gardener regularly employed by the owner of a business to work on the grounds of the premises where the employer's business is carried on. The gardener is taken to be a *worker* employed to perform work incidental to the principal's business (see s (1)).

- 4 A babysitter irregularly employed by the parents of young children who is engaged through an employment agent. The babysitter is taken to be a **worker** employed by the agent rather than the parents (see s (1) (a) and s (2)).
- 5 A babysitter regularly and systematically employed (for example, once a week over a 6 month period) by the parents of young children. The babysitter is taken to be a **worker** employed by the parents under s 11 (Regular contractors and casuals)—see s (1) (b).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

11 Regular contractors and casuals

- (1) This section applies to the engagement of an individual by a person (the **principal**) if—
- (a) the individual has been engaged by the principal—
 - (i) under a contract for services to work for the principal (whether or not on a casual basis); or
 - (ii) on a casual basis under a contract of service to perform work for the principal other than work that is for (or incidental to) the principal's trade or business (unless section 10 (2) applies, which deals with casual employment found through employment agencies); and
 - (b) the individual personally does part or all of the work; and
 - (c) if the principal is a corporation—the individual is not an executive officer of the corporation.

Note for par (a) (ii) Section 10 (2) provides that if a casual worker employed other than for the employer's trade or business is engaged through an employment agent, the casual worker is a **worker** employed by the agent.

- (2) For this Act, the individual is taken to be a **worker** employed by the principal if—

- (a) the engagement, under the contract or similar contracts, has been on a regular and systematic basis; or
 - (b) the individual has (or, apart from any injury, would have had) a reasonable expectation of the engagement continuing on a regular and systematic basis (under the contract or similar contracts), even if the engagement has not been on a regular or systematic basis.
- (3) To work out whether an engagement has been on a regular and systematic basis, or whether there is (or would have been) a reasonable expectation of an engagement continuing on that basis, relevant matters include (but are not limited to) the following:
- (a) the terms of all relevant contracts;
 - (b) the working relationship between the principal and the individual and all associated circumstances;
 - (c) the period of the engagement, or the periods of the engagement if it has not been continuous;
 - (d) the frequency of work under the contract or similar contracts;
 - (e) the number of hours worked under the contract or similar contracts;
 - (f) the type of work;
 - (g) normal arrangements for someone engaged to perform that type of work.

Examples of individuals who are workers

1 Payment by commission

A sales representative engaged under a 3 month contract for payment by commission that forms part of a regular and systematic pattern of similar contracts to work for a real estate agency, canvasser or retailer, even if there is no express or implied guarantee of continuing work.

2 IT consultant—engagement under indefinite retainer

An information technology consultant engaged on a retainer under which it is agreed that the consultant will be regularly and systematically available, on call by the principal, to offer advice or attend at short notice, even if the consultant was only recently engaged.

3 Owner-driver of a truck—regular engagement

An owner-driver of a truck engaged by a local ACT carrier for an overnight trip (leaving regularly on the same day each week), even if any (or all) of the following apply:

- there is occasionally no work for the driver;
- the driver also works (or is free to work) for other carriers;
- the driver was only recently engaged by the carrier.

4 Taxidriver (non-owner)—regular engagement

A taxidriver engaged by the owner of the taxi under a contract (or contracts) for services for a certain number of shifts each week on a regular basis even if any (or all) of the following apply:

- the driver works (or is free to work) different shifts from week to week;
- the driver also works (or is free to work) for other taxi owners;
- the driver was only recently engaged by the taxi owner.

5 Building contractor—exclusive engagement

A bricklayer engaged under contracts for services by a particular builder for some years, who has worked for almost no-one else over that time, even if there is no express or implied guarantee of continuing work.

6 Regular casual worker

A gardener engaged by a householder (under contracts of service or for services) on a regular and systematic basis over a number of years to work in the grounds of the house. The gardener's engagement may be found to be 'regular and systematic' even if any (or all) of the following apply:

- there is no express or implied guarantee of continuing work;
- the gardener also works (or is free to work) for other households;
- there have been occasional periods during which the gardener has not worked for the householder.

Examples of individuals who are not workers

7 Payment by commission—no guarantee of future work

A sales representative engaged under a 3 month contract for services with a real estate agency, canvasser or retailer, and who is paid by commission, if—

- the contract does not form part of a regular and systematic pattern of similar contracts; and
- there is no express or implied guarantee that any further similar contract will be offered, whether in a document or by inference from the working relationship between the principal and the individual.

8 IT consultant—occasional engagement

An information technology consultant who is occasionally engaged by a small business for a week or more at a time under a contract for services, but not on a regular basis.

9 Owner-driver of a truck—irregular engagement

An owner-driver of a truck engaged under contracts for services with a furniture retailer whenever available, who has made deliveries every day of the week at times (for example, just before Christmas), but at other times may go for months without working for the retailer.

10 Taxidriver (non-owner)—irregular engagement

A taxi driver engaged by the owner of the taxi occasionally, but not regularly or systematically, under contracts for services to fill in for absent drivers.

11 Building contractor—irregular engagement

A bricklayer engaged under contracts for services by a particular builder several times a year, but who is not regularly engaged by the builder.

12 Irregular casual worker

A tree surgeon engaged by a householder on an irregular basis (under contracts of service or for services) to prune the trees around a house. The engagement may be found not to be 'regular and systematic' even if the tree surgeon has been occasionally engaged by the householder for many years. (However, if the tree surgeon is engaged through an employment agent, the tree surgeon is a *worker* employed by the agent (see s 10 (2).)

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

12 Labour hire arrangements

For this Act, an individual is taken to be a *worker* employed by a person (the *labour hirer*) if—

- (a) the individual has been engaged by the labour hirer under a contract for services to work for someone other than the labour hirer; and
- (b) there is no contract to perform the work between the individual and the person for whom the work is to be performed; and
- (c) the individual personally does part or all of the work; and
- (d) if the labour hirer is a corporation—the individual is not an executive officer of the corporation.

Note 1 This section does not make an employment agent the employer of those for whom the agency finds work if the workers are engaged directly by the person for whom the work is to be performed. It makes the labour hirer the employer only if there is no contractual relationship between the worker and the person for whom the work is to be performed (see par (b)).

Note 2 Under s 13 (Subcontracting), the person for whom the work is to be performed may be liable as ‘principal’ to pay compensation to the worker, as well as the labour hirer under this section. The ‘principal’ may then recover compensation from the labour hirer (see s 13 (3)). See also note 3 at the beginning of this chapter.

13 Subcontracting

- (1) If any person (the *principal*), in the course of or for the purpose of the principal’s trade or business, contracts with anyone else (the *contractor*) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal, the principal is liable to pay to any worker employed in the execution of the work any compensation that the principal would have been liable to pay if that worker had been immediately employed by the principal.
- (2) If compensation is claimed from, or a proceeding is taken against, the principal, then, in the application of this Act, references to the principal must be substituted for reference to the employer, except that the amount of compensation must be calculated with reference

to the earnings of the worker under the employer by whom the worker is immediately employed.

- (3) If the principal is liable to pay compensation under this section, the principal is entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this section.
- (4) This section does not prevent a worker recovering compensation from the contractor instead of the principal.

14 Trainees

- (1) For this Act, an individual is taken to be a *worker* employed by a person (the *principal*) if—
 - (a) the individual is engaged under an arrangement (whether or not under contract) by which training or on-the-job experience is provided to the individual; and
 - (b) the training or experience is in relation to work that is for (or incidental to) the principal's trade or business; and
 - (c) the individual performs work that is for (or incidental to) the principal's trade or business while so engaged; and
 - (d) if the principal is a corporation—the individual is not an executive officer of the corporation.
- (2) An individual may be taken to be a worker under subsection (1) even if the individual receives no payment for the engagement.
- (3) However, an individual is taken not to be a *worker* employed by the principal if—
 - (a) the engagement of the individual by the principal is arranged by an educational institution where the individual is enrolled; and

- (b) the engagement is part of a work experience program (however described) run by the educational institution.

Example of work experience program

work placement program

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) An individual is also taken not to be a *worker* employed by the principal if—
- (a) the individual is an adult with a disability; and
 - (b) the engagement of the individual by the principal is arranged by a specialist disability employment service provider; and
 - (c) the engagement is part of a work experience program (however described) organised by the provider to help adults with disabilities to work.

Example of work experience program

work placement program

- (5) In this section:

adult with a disability means a person who—

- (a) is 16 years old or older; and
- (b) has a physical, intellectual or psychiatric disability; and
- (c) is likely to suffer from the disability permanently or for an extended period.

educational institution means—

- (a) a school, college or other educational institution established or maintained on behalf of the Territory; or
- (b) a non-government school under the *Education Act 2004*; or

- (c) an educational institution established under a territory law or a law of the Commonwealth or a State.

specialist disability employment service provider means an organisation (whether or not the organisation is incorporated) that—

- (a) provides employment services for people with disabilities; and
- (b) is not carried on for the financial benefit of the organisation's members.

15 Outworkers

- (1) This section applies to an individual (the *outworker*) who is engaged by a person (the *principal*) under a contract for services to treat or manufacture articles or materials, or to perform other services—
 - (a) in the outworker's own home; or
 - (b) on other premises not under the control or management of the principal.
- (2) To remove doubt, the outworker is taken to be a *worker* employed by the principal if—
 - (a) the outworker is taken to be a worker employed by the principal under section 11 (Regular contractors and casuals); or
 - (b) the outworker is taken to be a worker employed by the principal under section 12 (Labour hire arrangements).

Example of an outworker

A keyboard operator engaged under a contract for services by an information technology firm to undertake data conversion for the firm (or for another firm) in the operator's home.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

16 Timber contractors

- (1) This section applies to an individual (the *timber contractor*) who is engaged by a person (the *principal*) under a contract for services to do any of the following work:
 - (a) logging (including, for example, felling, crosscutting, snigging, loading, carting, bundling and debarking);
 - (b) felling or cutting trees for firewood;
 - (c) delivering timber or firewood;
 - (d) clearing timber, cutting scrub, preparing land for tree planting, planting trees, pruning trees or coppice cleaning.
- (2) The timber contractor is taken to be a *worker* employed by the principal if—
 - (a) the work is for (or incidental to) the principal's trade or business; and
 - (b) the timber contractor personally does part or all of the work; and
 - (c) if the principal is a corporation—the timber contractor is not an executive officer of the corporation.
- (3) This section applies whether the work is to be performed by the timber contractor—
 - (a) for the principal; or
 - (b) for someone (other than the principal) with whom the timber contractor has no contract to perform the work.

U 16A Family day care carers

U 17 Religious workers

- (1) The Minister may make a declaration, in writing, for this section in accordance with a request by—
 - (a) a religious organisation; or
 - (b) a person acting on behalf of a religious organisation.
- (2) For this Act—
 - (a) an individual included in a class of individuals declared by the Minister is taken to be a *worker* employed by the person stated in the declaration to be the employer of individuals in that class; and
 - (b) the individual's employment is taken to be as stated in the declaration for individuals in the class.
- (3) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

17A Volunteers

To remove any doubt, an individual who is engaged to perform work for someone else, and who receives no payment for the work (apart from any payment for expenses), is taken not to be a *worker* unless the individual is taken to be a worker under any of the following sections:

- section 14 (Trainees)
- section 17 (Religious workers)
- section 18 (Commercial voluntary workers)
- section 19 (Public interest voluntary workers).

18 Commercial voluntary workers

- (1) This section applies if—
- (a) an individual (a *commercial volunteer*) is engaged under an arrangement by which the commercial volunteer performs work that is for (or incidental to) an enterprise, trade or business carried on by someone else (the *principal*); and
 - (b) the principal carries on the enterprise, trade or business for—
 - (i) if the principal is an individual—the financial benefit of the principal; or
 - (ii) if the principal is a corporation—the financial benefit of the corporation’s members; and
 - (c) the commercial volunteer receives no payment for the work (apart from any payment for expenses).

Examples

- 1 The Very Big Motocross Event Company (a corporation incorporated under the Corporations Act) promotes an event known as the ‘Mega Motocross’. The corporation engages a number of motocross enthusiasts as marshals for the event, but the marshals are volunteers (they are not paid). The Mega Motocross is an ‘enterprise, trade or business’ carried on for the financial benefit of the corporation’s members. The marshals are therefore commercial volunteers to whom this section applies.
- 2 The Motorboat and Jet-ski Club of Canberra Inc. (a not-for-profit body incorporated under the *Associations Incorporation Act 1991*) promotes an annual event known as the ‘Big Splash’. The club engages a number of enthusiasts as marshals for the event, but the marshals are volunteers (they are not paid). The Big Splash is not an ‘enterprise, trade or business’ carried on for the financial benefit of the club’s members. The marshals are therefore not commercial volunteers to whom this section applies.
- 3 The Homeless Trust is an organisation incorporated under statute whose only object is to assist the homeless in Canberra. The trust runs an opportunity shop in Tuggeranong, which earns a small profit. The shop is staffed by unpaid volunteers. The shop’s profits are used to assist the homeless. The shop is an ‘enterprise, trade or business’, but it is not carried on for the

financial benefit of the trust's members. The volunteer staff of the shop are therefore not commercial volunteers to whom this section applies.

- 4 If the Homeless Trust described in example 3 were an unincorporated group of individuals (or a single individual), but carried on the same activities for the same single purpose, the shop concerned would be an 'enterprise, trade or business', but would not be carried on for the financial benefit of the individuals (or individual) by whom the trust is constituted (who would be the *principals*, or *principal*). The volunteer staff of the shop would therefore also not be commercial volunteers to whom this section applies.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) A commercial volunteer is taken to be a *worker* employed by the principal, unless the principal is exempt from the application of this subsection in relation to the volunteer under a certificate given under subsection (3).
- (3) On application by the principal, the Minister may give the principal a certificate (a *volunteer exemption certificate*) exempting the principal from the application of subsection (2) in relation to the commercial volunteers mentioned in the certificate if the Minister considers it appropriate, having regard to the interests of the principal and the commercial volunteers mentioned.
- (4) A volunteer exemption certificate must state—
- (a) which commercial volunteers (or class of commercial volunteers) it applies to; and
 - (b) the work it applies to; and
 - (c) the period, or the event, it applies to.
- (5) A volunteer exemption certificate is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

19 Public interest voluntary workers

- (1) The Minister may make a declaration for this section in relation to work (*public interest voluntary work*) undertaken for a stated entity if the Minister considers that making the declaration is necessary or desirable in the public interest.

Example

As noted in section 18 (1), example 2, the volunteer marshals for the annual Big Splash event described in that example would not be ‘commercial volunteers’ to whom section 18 applies. Therefore, apart from section 19, they would not be taken to be workers for this Act (see s 17A (Volunteers)). The club promoting the event would therefore not normally be required to take out compulsory workers compensation insurance under this Act to cover the work of the marshals.

However, the Big Splash is potentially very dangerous for the volunteer marshals, as they must be present in their own boats on Lake Burley Griffin while the participants perform difficult stunts in motorboats and jet skis at high speed nearby. In previous years, volunteer marshals have been seriously injured at the event, and the Minister considers that the club did not take out adequate insurance cover for the work of the marshals.

Taking these matters into account, the Minister may consider that it is necessary or desirable in the public interest that the work of the volunteer marshals be declared to be public interest voluntary work for this section.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) For this Act, an individual is taken to be a *worker* employed by the entity stated in the declaration, or a person (the *principal*) named in the declaration on behalf of the entity, if the individual—
- (a) performs public interest voluntary work for the entity or the principal; and
 - (b) receives no payment for the work (apart from any payment for expenses).

- (3) A declaration under this section is a disallowable instrument.

Note A disallowable instrument must be notified and presented to the Legislative Assembly, under the Legislation Act.

Chapter 4 Entitlement to compensation

Part 4.1 Important concepts

20 Meaning of *cpi indexed* and *awe indexed*

- (1) In this chapter:

awe indexed, for an amount, means the amount as adjusted in line with any adjustment in the AWE after the commencement of the provision in which the amount appears.

CPI means the All Groups Consumer Price Index (Canberra) issued by the Australian Statistician.

Note In June 2001, this was series 6401.0.

cpi indexed, for an amount, means the amount as adjusted in line with any adjustment in the CPI since the commencement of the provision in which the amount appears.

Note *AWE* is defined in the dict.

- (2) However, if an amount to be awe indexed or cpi indexed would, if adjusted in line with the adjustment (the *negative adjustment*) to the AWE or CPI, become smaller, the amount is not reduced in line with the negative adjustment.
- (3) An amount that, in accordance with subsection (2), is not reduced may be increased in line with an adjustment in the AWE or CPI that would increase the amount only to the extent that the increase, or part of the increase, is not one that would cancel out the effect of the negative adjustment.

- (4) Subsection (3) does not apply to a negative adjustment once the effect of the negative adjustment has been offset against an increase in line with an adjustment in the AWE or CPI.

Example of adjustments

An amount in a section is \$100 cpi indexed.

There is a 20% increase in the CPI after the section commences. The amount in the section becomes \$120 (100 + 20%).

There is then a 10% drop in the CPI. The amount does not change from \$120 (although if it had changed it would be \$108).

There is a 20% increase in the CPI. The 20% increase is not to the \$120, but to the \$108. $108 + 20\% = 129.60$. So the \$120 becomes \$129.60. This is the amount (\$120) increased by so much of the 20% increase that did not cancel out the effect of the adjustment down to \$108.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

21 Working out average pre-incapacity weekly earnings for non-contractor

- (1) In working out average pre-incapacity weekly earnings for a worker who is not a contractor—
- (a) if the worker was, immediately before the injury, employed by 2 or more employers—the worker’s earnings from all employment must be taken into account; and
 - (b) the actual weekly earnings of the worker may be taken into account over—
 - (i) a period of 1 year before the injury; or
 - (ii) if the worker has not been employed for 1 year—the period of employment.
- (2) However, if it is not possible to work out fair average pre-incapacity weekly earnings for the worker under subsection (1) because the worker has only been employed for a short time, because of the

terms of the worker's employment or for some other reason, the worker's average pre-incapacity weekly earnings may be worked out by reference to the average weekly amount being earned by—

- (a) others in the same employment who perform similar work at the same grade as the worker; or
- (b) if there is no-one mentioned in paragraph (a) in the same employment—others in the same class of employment as the worker, who perform similar work at the same grade as the worker.

22 Working out average pre-incapacity weekly earnings for contractor

In working out average pre-incapacity weekly earnings for a worker who is a contractor, the worker's average pre-incapacity weekly earnings are to be worked out—

- (a) as if the worker were an employee; and
- (b) if there is an award or industrial agreement applying to the class and grade of work in which the worker was engaged—by reference to the award or industrial agreement.

23 Working out average pre-incapacity weekly hours for non-contractor

- (1) In working out average pre-incapacity weekly hours for a worker who is not a contractor—
 - (a) if the worker was, immediately before the injury, employed by 2 or more employers—the worker's work hours from all employment must be taken into account; and
 - (b) the actual weekly work hours of the worker over a period of up to 1 year before the injury may be taken into account.

- (2) However, if it is not possible to work out fair average pre-incapacity weekly hours for the worker under subsection (1) because the worker has only been employed for a short time, because of the terms of the worker's employment or for some other reason, the worker's average pre-incapacity weekly hours may be worked out by reference to the average weekly hours being worked by—
- (a) others in the same employment who perform similar work at the same grade as the worker; or
 - (b) if there is no-one mentioned in paragraph (a) in the same employment—others in the same class of employment as the worker, who perform similar work at the same grade as the worker.

24 Working out average pre-incapacity weekly hours for contractor

In working out average pre-incapacity weekly hours for a worker who is a contractor, the worker's average pre-incapacity weekly hours are to be worked out as if the worker were an employee.

25 Overtime—hours and wages

- (1) This section applies to a component of the worker's earnings or hours attributable to overtime.
- (2) The overtime is to be taken into account in working out average pre-incapacity weekly earnings or average pre-incapacity weekly hours only if—
 - (a) the worker worked overtime in accordance with a regular and established pattern; and
 - (b) the pattern was substantially uniform as to the number of hours of overtime worked; and

- (c) the worker would have continued to work overtime in accordance with the established pattern if the worker had not been injured.

26 Gradual onset of incapacity

- (1) This section applies if, because of the gradual onset of a worker's injury, it appears that the level of the worker's average pre-incapacity weekly earnings, or average pre-incapacity weekly hours, have been affected.
- (2) The worker's average pre-incapacity weekly earnings, or average pre-incapacity weekly hours, must be set at an amount that fairly represents the weekly amount that the worker would have been earning or working if the level had not been affected.

U 27 Compensation for death or incapacity through disease

- (1) If—
 - (a) a worker contracts a disease or suffers an aggravation, acceleration or recurrence of a disease; and
 - (b) any employment of the worker by his or her employer was a substantial contributing factor to the contraction of the disease or the aggravation, acceleration or recurrence whether or not the disease was contracted or the aggravation, acceleration or recurrence was suffered in the course of that employment;

subsections (2) to (5) have effect.

- (2) If—
 - (a) the death of the worker; or
 - (b) the total or partial incapacity for work of the worker;results from the disease, or the worker obtained medical treatment in relation to the disease, then, for this Act, unless the contrary intention appears—

- (c) the contraction of the disease, or the aggravation, acceleration or recurrence is taken to be a personal injury to the worker arising out of the employment of the worker by the workers employer; and
 - (d) the date of the death, the date of the beginning of the incapacity or the date when the medical treatment was first obtained, whichever is the earlier, is taken to be the date of the injury.
- (3) If a liability of an employer in relation to a disease of a worker arises under this section, any other employer who, before that liability so arising, employed the worker in any employment that caused or contributed to the disease is, subject to subsection (4), liable to pay to the employer from whom compensation is recoverable the contribution that is, in default of agreement, settled by arbitration.
- (4) An employer is not liable under subsection (2) or (3) in relation to a disease if the worker, at the time of entering the employment of that employer, made a wilful and false representation that the worker did not suffer, or had not previously suffered, from that disease.
- (5) A claimant for compensation under this section in relation to a worker's disease must, if so required, give the employer who is liable to pay compensation to the claimant with the information about the names and addresses of the worker's other employers that the claimant possesses.

28 Employment-related diseases

Without limiting by implication the operation of section 27, if—

- (a) a worker has suffered, or is suffering from a disease, or the death of a worker results from a disease; and

(b) the disease is a disease of a kind specified by regulation as a disease that is related to employment of a kind so specified; and

(c) the worker was, at any time before symptoms of the disease first became apparent, engaged in employment of that kind;

then, for this Act, unless the contrary is established, the employment in which the worker was so engaged is taken to have been a contributing factor to the disease.

29 Compensation for disease

- (1) Any employment in which a worker who has contracted a disease was engaged at any time before symptoms of the disease first became apparent is, unless the contrary is established, taken for this Act to have been a substantial contributing factor to the worker's contracting the disease if the incidence of the disease among people who have engaged in that kind of employment is significantly greater than the incidence of the disease among people who have engaged in employment generally in the place where the worker was ordinarily employed.
- (2) Any employment in which a worker who has suffered an aggravation, acceleration or recurrence of a disease was engaged at any time before symptoms of the aggravation, acceleration or recurrence first became apparent is, unless the contrary is established, taken for this Act to have been a substantial contributing factor to the aggravation, acceleration or recurrence if the incidence of the aggravation, acceleration or recurrence of the disease among people suffering from the disease who have engaged in that kind of employment is significantly greater than the incidence of the aggravation, acceleration or recurrence of the disease among people suffering from the disease who have engaged in employment generally in the place where the worker was ordinarily employed.

- (3) The death of a worker is taken for this Act to have been substantially contributed to by a disease if, apart from that disease, the death of the worker would have happened at a significantly later time.
- (4) An incapacity for work or facial disfigurement of a worker is taken for this Act to have been substantially contributed to by a disease if, apart from the disease—
 - (a) the incapacity or disfigurement would not have happened; or
 - (b) the incapacity would have begun, or the disfigurement would have happened, at a significantly later time; or
 - (c) the extent of the incapacity or disfigurement would have been significantly less.
- (5) This section does not limit the operation of section 27.

Part 4.2 Compensation for personal injury

U 30 General entitlement to compensation for personal injury

- (1) An employer is liable to pay compensation under this Act if a worker of the employer suffers personal injury arising out of, or in the course of, the worker's employment.
- (2) However, if the injury is caused by a disease, the injury is taken to have arisen out of, or in the course of, the worker's employment only if the employment substantially contributes to the injury.
- (3) Also, an injury suffered by a worker partly or completely because the worker had any of the following pre-existing conditions is taken to have arisen out of, or in the course of, the worker's employment only if the employment substantially contributes to the injury:
 - (a) diseased heart valve;
 - (b) coronary artery disease;
 - (c) aortic aneurism;
 - (d) cerebral aneurism;
 - (e) any other condition prescribed by regulation for this section.
- (4) Further, this section is subject to the following provisions:
 - (a) part 4.2A (Employment connection with ACT or State);
 - (b) section 34 (Injury outside Australia);
 - (c) part 4.8 (Exceptions to entitlements to compensation);
 - (d) in relation to the entitlement to weekly compensation—
 - (i) section 37 (What if the worker is dead?);

(ii) section 113 (Compliance by workers).

U 31 Amounts of compensation under Act cumulative

An amount of compensation payable under a provision of this Act in relation to an injury is, unless otherwise expressly stated, in addition to any amount of compensation paid or payable under any other provision of this Act.

U 32 Payments to people with legal disabilities

- (1) If compensation under this Act is payable to someone with a legal disability, the Magistrates Court may make any order about the payment of the compensation that it considers appropriate to protect the person or the person's interests.
- (2) In this section:

person with a mental disability means a person who is not legally competent to conduct the person's legal affairs because of a mental disability whether or not a guardian has not been appointed for the person under the *Guardianship and Management of Property Act 1991*.

someone with a legal disability means someone who is—

- (a) a child; or
- (b) a person with a mental disability.

34 Injury outside Australia

Compensation is payable in relation to an injury to a territory worker suffered while the worker is outside Australia only if compensation would be payable in relation to the injury if the worker suffered the injury in Australia.

35 When is a worker taken to be totally incapacitated?

- (1) In this Act, a worker is taken to be totally incapacitated for work if—
 - (a) a doctor certifies that the worker is partially incapacitated for work; and
 - (b) the partial incapacity prevents the worker from performing the duties the worker performed before becoming incapacitated; and
 - (c) the employer cannot provide appropriate alternative employment; and
 - (d) the worker cannot find appropriate alternative employment.
- (2) For subsection (1), the worker is taken to be totally incapacitated from the time when the worker became partially incapacitated until 1 of the following happens:
 - (a) the worker becomes totally incapacitated;
 - (b) the employer provides the worker with appropriate alternative employment;
 - (c) the worker finds appropriate alternative employment.

U 36 Journey claims

- (1) A personal injury received by a worker on an employment-related journey is, for this Act, an injury arising out of, or in the course of, the worker's employment.

Note Compensation may be payable for an injury arising out of, or in the course of, employment under s 30 (General entitlements to compensation for personal injury).

- (2) The following are *employment-related journeys* for the worker:
 - (a) a journey between the worker's home and workplace;

- (b) a journey between the worker's home and an educational institution that the worker is attending for an employment-related purpose;
- (c) a journey between the worker's home or workplace and another place if the purpose of the journey is to obtain 1 or more of the following in relation to a previous injury for which the worker is entitled to compensation under this Act:
 - (i) a medical certificate;
 - (ii) medical advice, attention or treatment;
 - (iii) compensation.
- (3) However, subsection (1) applies to an injury received during or after a non employment-related interruption of, or deviation from, an otherwise employment-related journey only if the risk of injury was not materially increased because of the interruption or deviation.
- (4) For this section—
 - (a) an employment-related journey to the worker's home is taken to end at the boundary of the premises where the worker's home is located; and
 - (b) an employment-related journey from the worker's home is taken to begin at the boundary of the premises where the worker's home is located.
- (5) In this section:
 - home**, for a worker, means the place where the worker usually lives.
 - workplace**, for a worker, means the worker's place of employment.

Part 4.2A Employment connection with ACT or State

36A Meaning of *Territory or State of connection* etc

(1) In this Act:

Territory or State of connection, in relation to the employment of a worker, means—

- (a) the Territory or State with which the employment of the worker is connected, as determined under this part; and
- (b) if this Act mentions the *Territory or State of connection* determined under the law of a State for that employment—the State of connection for that employment, or the Territory or State of connection for that employment, within the meaning of the law of the State.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

(2) In this part:

employer, in relation to a Territory or State, includes an employer within the meaning of the workers compensation law of the Territory or State.

employment, in relation to a Territory or State, includes employment within the meaning of the workers compensation law of the Territory or State.

worker, in relation to a Territory or State, includes a worker within the meaning of the workers compensation law of the Territory or State.

36B Employment connection test

- (1) Compensation under this Act is only payable if the ACT is the Territory or State of connection.
- (2) The fact that a worker is outside the ACT when injured does not prevent compensation being payable under this Act if the ACT is the Territory or State of connection.
- (3) A worker's employment is connected with—
 - (a) the Territory or State where the worker usually works in the employment; or
 - (b) if no Territory or State, or no single Territory or State, is identified by paragraph (a)—the Territory or State where the worker is usually based for the purposes of the employment; or
 - (c) if no Territory or State, or no single Territory or State, is identified by paragraph (a) or (b)—the Territory or State where the employer's principal place of business in Australia is located.
- (4) For a worker working on a ship, if no Territory or State, or no single Territory or State, is identified by subsection (3), the worker's employment is, while working on the ship, connected with—
 - (a) the Territory or State where the ship is registered; or
 - (b) if the ship is registered in more than 1 Territory or State—the Territory or State where the ship most recently became registered.
- (5) If no Territory or State is identified for a worker by subsection (3) or (4), the worker's employment is connected with the ACT if—
 - (a) the worker is in the ACT when injured; and

- (b) the worker is not entitled to compensation in relation to the injury under the workers compensation law of an external Territory, or a place outside Australia.
- (6) In deciding whether a worker usually works in a Territory or State—
- (a) regard must be had to the following:
- (i) the worker's work history with the employer over the previous 12 months;
 - (ii) the worker's proposed future working arrangements;
 - (iii) the intentions of the worker and employer;
 - (iv) any period during which the worker worked in a Territory or State (a *relevant place*) or was in a relevant place for the purposes of employment, whether or not the worker is regarded as working or employed in the relevant place under the workers compensation law of the relevant place; but
- (b) regard must not be had to any temporary arrangement under which the worker works in a Territory or State for a period of not longer than 6 months.
- (7) Compensation under this Act is not payable in relation to the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* (Cwlth) applies to the worker's employment.
- (8) In this section:
- ship* means any kind of vessel used in navigation by water, however propelled or moved, and includes all of the following if used wholly or primarily in navigation by water:
- (a) a barge, lighter or other floating vessel;
 - (b) an air-cushioned vehicle, or other similar craft.

Territory or State, in a geographical sense, includes a Territory's or State's relevant adjacent area as described in schedule 2.

36C Determination of Territory or State of connection in workers compensation proceedings

- (1) If the question of whether the ACT is the Territory or State of connection arises in a proceeding in a court in relation to a claim for compensation under this Act, the court must determine the Territory or State of connection in accordance with section 36B (Employment connection test).
- (2) Subsection (1) does not apply if there is a determination of the Territory or State of connection that is to be recognised under section 36E (Recognition of previous determinations of Territory or State of connection).

36D Determination of Territory or State of connection by Magistrates Court

- (1) If a claim for compensation under this Act has been made, a party to the claim may apply to the Magistrates Court for a determination of the question of which Territory or State is the Territory or State of connection.
- (2) The Magistrates Court must determine the Territory or State of connection in accordance with section 36B (Employment connection test).
- (3) However, an application may not be made or heard if there is a determination of the Territory or State of connection that is to be recognised under section 36E.

36E Recognition of previous determinations of Territory or State of connection

- (1) This section applies if a determination of the Territory or State of connection has been made by any of the following courts or tribunals:
 - (a) an ACT court under section 36C or 36D;
 - (b) a court or tribunal of a State under a provision of a law of the State corresponding to section 36C or 36D;
 - (c) an ACT court or a court of a State in a proceeding on a damages claim to which part 9.2 (Choice of law) applies, or to which provisions of a law of a State corresponding to part 9.2 apply.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

- (2) The Territory or State determined as mentioned in subsection (1) is to be recognised for this Act as the Territory or State of connection.
- (3) This section does not prevent any appeal relating to a determination of a court.
- (4) If a determination is changed on appeal to a court, the changed determination is to be recognised under this section.

36F No ACT compensation if external compensation received

- (1) Compensation under this Act (*ACT compensation*) is not payable in relation to a worker's injury to the extent that compensation (*external compensation*) under the workers compensation law of an external Territory or a place outside Australia has been received in relation to the same injury.
- (2) If a person receives ACT compensation from an employer in relation to a worker's injury and later receives external compensation in relation to the same injury, the employer is entitled to recover from the person the recoverable amount.

- (3) For subsection (2), the lesser of the following amounts is the recoverable amount:
 - (a) the amount of ACT compensation;
 - (b) the amount of external compensation.
- (4) If an amount of ACT compensation is paid in relation to a lump sum claim, subsection (3) (a) applies as if the reference to the *amount of ACT compensation* paid by the employer included a reference to any legal costs as between party and party that the employer is liable to pay in relation to the claim.
- (5) An employer cannot recover an amount under this section in relation to an injury if the employer has recovered an amount under section 184 (No compensation if damages received) in relation to the same injury.

Part 4.3 Weekly compensation

U 36G Definitions—pt 4.3

37 What if the worker is dead?

- (1) A worker is not entitled to weekly compensation if the worker is dead.
- (2) However, this section does not affect an entitlement to weekly compensation that accrued before the worker's death.

U 38 When do weekly compensation payments begin?

If the worker is or may be entitled to compensation for a compensable injury—

- (a) the payment of weekly compensation must begin when the worker gives notice of the injury to the employer; and
- (b) the worker is or may be entitled to weekly compensation from the date of the injury.

U 39 Totally incapacitated workers

- (1) This section applies if a worker is totally incapacitated because of a compensable injury.
- (2) For 26 weeks after the incapacity date, the worker is entitled to receive weekly compensation equal to the worker's average pre-incapacity weekly earnings.

Note **Incapacity date** is defined in the dict.

- (3) After the 26 weeks, the worker is entitled to receive weekly compensation equal to—

- (a) if 100% of the worker's average pre-incapacity weekly earnings is less than the pre-incapacity floor for the worker—100% of the worker's average pre-incapacity weekly earnings; or
- (b) if 100% of the worker's average pre-incapacity weekly earnings is more, but 65% of those earnings is less, than the pre-incapacity floor for the worker—the statutory floor; or

Note **Statutory floor** is defined in the dict.

- (c) if 65% of the worker's average pre-incapacity weekly earnings is more than the pre-incapacity floor for the worker—whichever of following is (at the time of payment) more:
 - (i) 65% of the worker's average pre-incapacity weekly earnings;
 - (ii) the statutory floor.
- (4) A worker stops being entitled to compensation under this section at the earliest of the following times:
 - (a) when the worker stops being totally incapacitated;
 - (b) when the worker returns to work;
 - (c) for a worker who, at the time of the injury being compensated, was more than 2 years younger than pension age—when the worker reaches pension age;
 - (d) for a worker who, at the time of the injury being compensated, was 2 years younger than pension age, or older—2 years after the worker first became entitled to compensation under this section;
 - (e) when the worker dies.
- (5) In this section:

pre-incapacity floor, for a worker, means the statutory floor that applied immediately before the worker's incapacity date.

U 40 **Partially incapacitated workers up to 26 weeks after incapacity date**

- (1) This section applies if the worker is partially incapacitated because of a compensable injury.
- (2) For 26 weeks after the incapacity date, the worker is entitled to receive weekly compensation equal to the difference between—
 - (a) the worker's average pre-incapacity weekly earnings; and
 - (b) the average weekly amount that the worker is being paid for working or could earn in reasonably available suitable employment.
- (3) In working out the average weekly amount the worker could earn, consideration may be given to the following:
 - (a) suitable employment that the worker unreasonably rejects;
 - (b) suitable employment that the worker obtains but unreasonably discontinues.

U 41 **Partially incapacitated workers after 26 weeks after incapacity date**

- (1) This section applies if—
 - (a) the worker is partially incapacitated because of a compensable injury; and
 - (b) 26 weeks have passed since the incapacity date.
- (2) The worker is entitled to receive weekly compensation equal to the difference between the weekly amount the worker is being paid for working and—

- (a) if 100% of the worker's average pre-incapacity weekly earnings is less than the statutory floor—100% of the worker's average pre-incapacity weekly earnings; or
 - (b) if the relevant percentage of the worker's average pre-incapacity weekly earnings is less than the statutory floor—the statutory floor; or
 - (c) if the relevant percentage of the worker's average pre-incapacity weekly earnings is more than the statutory ceiling—the statutory ceiling; or
 - (d) in any other case—the relevant percentage of the worker's average pre-incapacity weekly earnings.
- (3) For subsection (2), the *relevant percentage* is—
- (a) if the worker is not working or works 25% of the worker's average pre-incapacity weekly hours or less—65%; or
 - (b) if the worker is working more than 25% of the worker's average pre-incapacity weekly hours but not more than 50%—75%; or
 - (c) if the worker is working more than 50% of the worker's average pre-incapacity weekly hours but not more than 75%—85%; or
 - (d) if the worker is working more than 75% of the worker's average pre-incapacity weekly hours but not more than 85%—95%; or
 - (e) if the worker is working more than 85% of the worker's average pre-incapacity weekly hours—100%.
- (4) In this section:
- statutory ceiling***, in relation to an amount, means 150% of AWE at the time the amount is to be paid.

U 42 Stopping of payments for partial incapacity

A worker stops being entitled to payments under section 40 (Partially incapacitated workers up to 26 weeks after incapacity date) or section 41 (Partially incapacitated workers after 26 weeks after incapacity date) at the earliest of the following times:

- (a) when the worker stops being partially incapacitated;
- (b) for a worker who, at the time of the injury being compensated, was more than 2 years younger than pension age—when the worker reaches pension age;
- (c) for a worker who, at the time of the injury being compensated, was 2 years younger than pension age, or older—2 years after the worker first became entitled to compensation under section 39 (Totally incapacitated workers), section 40 or section 41, whichever is earliest;
- (d) when the worker dies.

U 43 Effect on payment period of loss of entitlement to weekly compensation

- (1) This section applies if a worker would be entitled to weekly compensation under section 39 (Totally incapacitated workers), section 40 (Partially incapacitated workers up to 26 weeks after incapacity date) or section 41 (Partially incapacitated workers after 26 weeks after incapacity date) but the payment of the compensation has been stopped under section 83 (No compensation while imprisoned) or section 113 (Compliance by workers).
- (2) The period when the worker's entitlement to payment has stopped is counted as part of the period for payment under section 39, section 40 and section 41.

U 43A Stopping payments for partial incapacity

U 43B Effect on payment period of loss of entitlement to weekly compensation

44 Living outside Australia

- (1) A worker who is otherwise entitled to receive weekly compensation is not entitled to the compensation if the worker stops living in Australia.
- (2) Subsection (1) does not apply to the worker if a medical referee certifies that—
 - (a) the incapacity resulting from the injury is likely to be permanent; or
 - (b) the worker's absence from Australia is likely to help the worker recuperate.

U 45 Effect of living outside Australia if compensation still payable

- (1) This section applies if the worker lives outside Australia but is, apart from this section, still entitled to weekly compensation.

Note A worker living outside Australia is still entitled to compensation if s 44 (2) applies to the worker.
- (2) The worker is not entitled to weekly compensation, but is entitled to receive quarterly the amount of the weekly compensation payable during the previous quarter.
- (3) However, the worker is entitled to receive quarterly payment of compensation only if the worker proves the worker's identity and that the worker continues to be incapacitated by the incapacity in relation to which the weekly compensation is payable.

46 Effect of payment of weekly compensation on other benefits etc

This part is not intended to affect an entitlement that, apart from this Act, the worker has to a benefit or payment except so far as a law in force in the ACT otherwise applies.

Examples of benefits not affected

- 1 accrual of long service leave
- 2 accrual of annual leave

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

47 No assignment etc of weekly compensation

Weekly compensation (including compensation payable under section 45 (Effect of living outside Australia if compensation still payable)) may not—

- (a) be assigned, charged or attached; and
- (b) pass to anyone else by operation of law; and
- (c) have a claim set off against it.

Part 4.4 Compensation for permanent injuries

48 Meaning of *loss*

In this chapter:

loss, in relation to a thing—

- (a) means—
 - (i) the loss of the thing; or
 - (ii) the permanent loss of the use, or efficient use, of the thing; and
- (b) includes the following:
 - (i) permanent musculoskeletal impairment, or another permanent impairment;
 - (ii) a loss, damage, impairment, disfigurement or disease mentioned in schedule 1 (Compensation for permanent injuries).

49 Meaning of *single loss amount*

In this part:

single loss amount means \$100 000 cpi indexed.

50 Meaning of *maximum loss amount*

In this part:

maximum loss amount means \$150 000 cpi indexed.

51 Compensation for permanent injuries generally

- (1) A worker who has suffered a loss mentioned in an item of schedule 1 as the result of a compensable injury is entitled to receive from the worker's employer, as compensation for the loss, the percentage of the single loss amount mentioned in that item.
- (2) For this section, the loss is to be worked out when the last of the following happens:
 - (a) the worker's employer became liable to pay compensation;
 - (b) it is unlikely that there will be an improvement or further improvement in the use, or efficient use, of the injured part of the body.
- (3) If a payment of compensation under this part has been made in relation to an injury, nothing prevents a further payment of compensation under this part from being made in relation to the same injury if there is an increase in the loss of the efficient use of the injured part of the body.

Example of loss of efficient use of injured part of body

a loss, or further loss, of sight in an injured eye

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

53 Compensation for 2 or more losses

A worker who has suffered 2 or more losses mentioned in schedule 1 (Compensation for permanent injuries) because of an injury is not entitled to receive as compensation under this part more than the maximum loss amount for the losses.

54 Compensation and left-handedness

If a worker's left arm or hand is the worker's dominant limb, in working out the loss for the worker—

- (a) the loss of the worker's left arm, left hand or fingers of left hand is to be compensated as if it is the loss of the worker's right arm, right hand or fingers of right hand; and
- (b) the loss of the worker's right arm, right hand or fingers of right hand is to be compensated as if it is the loss of the worker's left arm, left hand or fingers of left hand.

55 Compensation for combination of items

If a loss (other than the impairment of the back, neck or pelvis) may be compensated by a combination of items in schedule 1 (Compensation for permanent injuries) or by a proportionate loss of a single item, the loss is to be compensated by a proportionate loss of the single item.

Examples

- 1 Loss of 2 or more fingers is to be compensated as a proportionate loss of the hand.
- 2 Loss of a hand includes the loss of the thumb and other fingers of the hand and is to be compensated as a loss, or proportionate loss, of the hand.
- 3 Loss of an arm at or above the elbow includes the loss of the arm below the elbow and loss of the hand and is to be compensated as a loss, or a proportionate loss, of the arm at or above the elbow.
- 4 Loss of a leg at or above the knee includes the loss of the leg below the knee and loss of the foot and is to be compensated as a loss, or a proportionate loss, of the leg at or above the knee.
- 5 Loss of a leg below the knee includes the loss of the foot and is to be compensated as a loss, or a proportionate loss, of the leg below the knee.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

56 Compensation for only arm, leg, hand or foot

Loss of an only arm, leg, hand or foot is treated under schedule 1 as the loss of both arms, legs, hands or feet.

57 Compensation for loss of sexual organs

The following percentages of the single loss amount are payable for the loss of sexual organs (subject to the maximum percentage of 47% and without limiting compensation for the loss of another sexual organ):

- (a) the percentage payable for loss of the penis is 47%;
- (b) the percentage payable for loss of 1 testicle is 10%;
- (c) the percentage payable for loss of 2 testicles or an only testicle is 47%.

58 Loss of bowel function

To work out whether and to what extent a worker has suffered permanent loss of bowel function—

- (a) the bowel is taken to include the anal sphincter; and
- (b) permanent ileostomy and permanent colostomy are each taken to constitute permanent loss of bowel function for which the maximum percentage is payable.

59 Proportionate loss of use

- (1) If a loss suffered by a worker consists of the loss of a proportion, but not all, of a thing mentioned in schedule 1 (Compensation for permanent injuries), a percentage of the compensation payable for the total loss of the thing equal to the percentage lost by the worker is payable as compensation under section 51 (Compensation for permanent injuries generally).

- (2) In working out the extent of the loss of the thing, the extent to which the loss, or the effect of the loss, may be reduced or limited by an external removable aid or appliance is not to be taken into account.
- (3) The amount of compensation payable for a particular case must, unless decided by agreement, be worked out by conciliation or arbitration under this Act.

60 Special provisions for HIV/AIDS

- (1) Compensation is not payable under section 51 (Compensation for permanent injuries generally) for a loss that is related to HIV infection or AIDS if the HIV or AIDS was contracted during voluntary sexual activity or illicit drug use.
- (2) Section 59 does not apply to a loss that is HIV infection or AIDS.
- (3) In this section:

AIDS means Acquired Immune Deficiency Syndrome.

HIV infection means an infection by the Human Immunodeficiency Virus.

61 Deduction for previous injury or pre-existing condition

- (1) In working out the compensation payable under this part for a loss (the *initial loss*), an amount must be deducted from the compensation (the *deductible proportion*) for any proportion of the loss attributable to—
 - (a) a previous injury (whether or not it is an injury for which compensation has been paid, or is payable, under this part); or
 - (b) a pre-existing condition or abnormality.
- (2) In subsection (1), it does not matter whether the initial loss is a total or partial loss.

- (3) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to work out, it is to be assumed that the deductible proportion for the loss (or the relevant part of the loss) is 10% of the loss, unless this assumption is contrary to the available evidence.

Example

If this subsection requires it to be assumed that the deductible proportion in relation to a particular loss is 10% and the loss is 30% of the loss of the use of the right arm, the deductible proportion for the loss is 3% (that is, 10% of 30%).

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) However, section 63 must be used to work out how much (if any) of a worker's hearing loss is caused by age.

62 Further loss and deductible proportions

- (1) This section applies in working out the compensation payable for a further loss (the *further loss*) resulting from an initial loss.
- (2) An amount proportionate to the deductible proportion of the initial loss must be deducted from the compensation payable for the further loss.
- (3) A deduction under subsection (2) in relation to a further loss is in addition to, not in substitution for, any deductible proportion for the further loss.

63 Loss of hearing because of age

- (1) This section applies in working out the percentage of the decrease of hearing in relation to boilermakers deafness of a worker who is the prescribed age or older, but does not apply to total hearing loss in either of the worker's ears.
- (2) For this part, it is to be conclusively presumed that the worker's loss of hearing to be attributed to loss of hearing because of age is 0.5

decibels for each complete year of the worker's age over the prescribed age.

- (3) In this section:

prescribed age means—

- (a) for a male—55 years old; or
- (b) for a female—65 years old.

64 No compensation for less than 6% hearing loss

- (1) A worker is not entitled to compensation under section 51 (Compensation for permanent injuries generally) for a loss of hearing because of boilermakers deafness (the *hearing loss*) if the worker's total hearing loss is less than 6%.
- (2) However, the worker is entitled to compensation for the hearing loss if the total hearing loss reaches 6% or more.

Example

Assume all hearing losses mentioned in this example are because of boilermakers deafness.

A worker suffers a hearing loss of 3% (the first hearing loss that the worker has suffered). No compensation is payable under section 51 for the loss because it is less than 6%, although notice of injury may be given or a claim may be made for the hearing loss.

The worker suffers a further hearing loss of 6%, bringing the total loss to 9%. The total loss has now passed the 6% threshold and compensation is payable for the full 9%. Compensation for the initial 3% hearing loss will be payable by the earlier employer if the worker made a claim or gave notice of injury for the initial hearing loss.

The worker suffers a further hearing loss of 6%. The worker is entitled in the usual way to compensation for the 6% further loss because the 6% threshold has already been passed (the total loss is now 15%).

Note 1 Pt 5.3 (Obligations on injury) and ch 6 (Claims) apply to a hearing loss even if it is not immediately compensable because of this section.

Note 2 An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) In working out the percentage hearing loss because of boilermakers deafness, the loss of hearing is to be worked out as a proportionate loss of hearing of both ears, even if the loss is in 1 ear only.
- (4) A lawyer or agent who acts for a worker on a claim for compensation for loss of hearing because of boilermakers deafness is not entitled to recover costs from the worker or the employer in relation to the claim if no compensation is payable on the claim because the worker's total hearing loss is less than 6%.
- (5) In this section:

total hearing loss means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

65 Presumption to be drawn from refusal to submit to hearing examination

- (1) This section applies to a worker with a claim for which no compensation is payable because of section 64.
- (2) If the worker fails to allow himself or herself to be examined as required under the worker's personal injury plan, or obstructs the examination, it is presumed in the absence of evidence to the contrary that the worker has no hearing loss because of boilermakers deafness.

66 Employer's responsibility to pay for hearing loss tests

- (1) If an employer would, apart from section 64 (No compensation for less than 6% hearing loss), be liable to pay compensation under section 51 (Compensation for permanent injuries generally) for a worker's hearing, the employer is liable under this chapter to pay the cost of only the following hearing tests for the loss:

- (a) a test carried out at least 3 years after any previous test that the employer has paid for;
 - (b) a test that finds that the worker has suffered a total hearing loss because of boilermakers deafness of 6% or more;
 - (c) a test carried out after the worker has left the worker's employment with the employer if the hearing loss is attributable to the employment;
 - (d) a test carried out by a doctor, or audiologist, using an audiogram to work out the level of hearing loss.
- (2) The cost of a hearing test for the worker is the cost of obtaining a medical certificate, and any examination required for the certificate, about the extent of the worker's hearing loss.
 - (3) This section does not require payment by an employer for the cost of obtaining a hearing test that the employer would not otherwise be liable to pay for under this chapter.
 - (4) In this section:

total hearing loss means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

67 Reimbursement for costs of medical certificate and examination

- (1) Obtaining a medical certificate, and any examination required for the certificate, is taken to be medical or related treatment for this chapter if the worker gives the employer a copy of the certificate.
- (2) In this section:

medical certificate means a report or certificate, from a doctor, that complies with the requirements for medical assessments prescribed by regulation and that certifies—

- (a) that a worker has suffered a loss mentioned in schedule 1 (Compensation for permanent injuries); or
- (b) the extent of the loss to allow the amount of compensation payable for the loss to be worked out.

68 Limited entitlement if death happens within 3 months

- (1) This section applies if—
 - (a) a worker has received a compensable injury; and
 - (b) the worker dies within 3 months after receiving the compensable injury because of the compensable injury or another injury received at the same time.
- (2) The worker is not entitled to receive compensation for the compensable injury under the following items of schedule 1 (Compensation for permanent injuries):
 - (a) item 2 (loss of sense of taste or smell);
 - (b) item 3 (loss of senses of taste and smell);
 - (c) item 41 (loss of sexual organs);
 - (d) item 42 (loss of both breasts);
 - (e) item 43 (loss of 1 breast);
 - (f) item 44 (permanent and total loss of capacity to engage in sexual intercourse);
 - (g) item 49 (severe facial disfigurement);
 - (h) item 50 (severe bodily disfigurement).

Part 4.5 Compensation for medical treatment, damage and other costs

69 Application—pt 4.5

This part applies if—

- (a) compensation under this Act is payable by an employer to, or in relation to, a worker in relation to an injury; or
- (b) the operation of section 64 (No compensation for less than 6% hearing loss) means no compensation is payable by an employer to, or in relation to, a worker in relation to an injury; or
- (c) compensation would be payable by an employer to, or in relation to, a worker in relation to an injury except that—
 - (i) the worker is not incapacitated for work; or
 - (ii) the worker is imprisoned (see section 83); or
 - (iii) weekly compensation has been suspended under section 113 (Compliance by workers); or
 - (iv) the worker has contravened this Act.

Note A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

U 70 Employer liability for medical treatment and damage

- (1) The employer is liable to pay—
 - (a) for the cost of medical treatment reasonably obtained in relation to the injury—an amount of compensation appropriate

for the provision of the medical treatment, having regard to the charges customarily made for similar medical treatment in the place where the treatment is obtained; and

- (b) in relation to any damage to, or loss of, the worker's clothing sustained in association with the injury—compensation of a reasonable amount for the repair or replacement of the damaged or lost clothing.
- (2) However, the total amount payable under subsection (1) for each of the following must not be more than the maximum amount:
- (a) for the cost of medical treatment consisting of the repair or replacement of a worker's contact lenses, crutches, prosthesis, spectacles or other artificial aid;
 - (b) for damage to or loss of a worker's clothing.
- (3) In subsection (2):
- maximum amount**, in relation to a treatment, damage or loss, means—
- (a) if an amount has been agreed between the worker and employer—that amount; or
 - (b) in any other case—\$500 cpi indexed.
- (4) For this section, the cost of medical treatment is taken to include—
- (a) the amount of wages lost by the worker because of the worker's attendance at a place (the **treatment place**) to undergo the treatment; and
 - (b) the cost of taking the worker (whether the worker or someone else does the taking) to and from the treatment place worked out under section 74 (Transport costs other than private car) or section 75 (Working out transport costs for private cars); and

- (c) the cost of any accommodation (including the cost of meals) required by the worker because of the worker's attendance at the treatment place worked out under section 76 (Costs of accommodation and meals).

U 71 Claim for compensation for pt 4.5

- (1) A worker may make a claim for compensation under this part for the cost of medical treatment or in relation to damage to, or loss of, the worker's clothing only if the worker has given the employer written notice stating—
 - (a) the amount of compensation sought; and
 - (b) reasonable details of the expenses for which compensation is sought.
- (2) However, a failure to give notice, or a defect or inaccuracy in the notice, does not affect a claim for compensation under this part if it is found in the proceeding on the claim that—
 - (a) if a notice or amended notice were then given and the hearing postponed, the employer's defence is not, or would not be, prejudiced by the failure, defect or inaccuracy; or
 - (b) the failure, defect or inaccuracy was caused by mistake or other reasonable cause.

72 Second assessments

- (1) This section applies if the worker receives medical treatment and claims the cost of it from the employer under this part.
- (2) The employer may, in consultation with the doctor or other person providing the treatment, and before making a payment under this part, require the worker to be assessed by a doctor, or other person, chosen by the employer.

U 73 Payments for treatment received from hospital

- (1) This section applies if the employer is liable under this part to pay an amount in relation to medical treatment received by the worker from a hospital.
- (2) The employer must pay the amount, less any amount previously paid by the worker in relation to the treatment, on demand—
 - (a) for a private hospital—to the proprietor of the hospital; or
 - (b) for any other hospital—to the person authorised in writing by the governing entity in charge of the hospital to receive payments payable to the hospital.

U 74 Transport costs other than private car

- (1) This section sets out how the costs of taking an injured worker to and from a place (other than by private motor vehicle) to undergo medical treatment must be worked out.
- (2) If the worker cannot be taken in a motor vehicle (other than an ambulance) because of the worker's injury, the transport cost is the actual cost of the transport by ambulance.
- (3) The transport cost is the actual cost of the public transport if the worker is taken by public transport because, although the worker can be taken in a private motor vehicle—
 - (a) the worker is prohibited by law from taking himself or herself in a private motor vehicle and no-one else is available to take the worker in a private motor vehicle; or
 - (b) no private motor vehicle is available.
- (4) The transport cost is the reasonable cost of transport if a private motor vehicle or public transport is not reasonably available, or reasonably appropriate, to transport the worker in the circumstances.
- (5) In this section:

public transport means a public bus or taxi within the meaning of the *Road Transport (Public Passenger Services) Act 2001*.

U 75 Working out transport costs for private cars

- (1) The costs of taking an injured worker by private motor vehicle (the *car*) to and from a place to undergo medical treatment must be worked out in accordance with this section.
- (2) The transport cost is the cost worked out by multiplying the number of kilometres travelled to and from the place by the per kilometre cost for the car.
- (3) The per kilometre cost for the car is the amount mentioned in the *Income Tax Assessment Regulations 1997* (Cwlth), schedule 1, part 2 in relation to the size of the car for the financial year in which the cost was incurred.

U 76 Costs of accommodation and meals

- (1) The cost of accommodation for the worker is the relevant amount set out in a public ruling by the Commonwealth Commissioner of Taxation in relation to reasonable allowance amounts for the year in which the costs were incurred.

Note For the financial year 2000-2001, the ruling in relation to reasonable allowance amounts is TR2000/13. It is available on the website of the Australian Taxation Office (www.ato.gov.au).

- (2) The relevant amount, for accommodation, is the amount that would be allowed for an employee on the lowest salary for which allowances are given for the place where the employee was accommodated.
- (3) The worker is not entitled to payment for a meal unless the meal is eaten while the worker—
 - (a) is travelling to or from medical treatment (the *treatment*) for which compensation is payable under this part; or

(b) is at a place to receive the treatment; or

(c) is staying at accommodation for which compensation is payable under this part.

(4) In this section:

accommodation, for a worker, includes meals for the worker, other than a meal to which the worker is not entitled to payment because of subsection (3).

public ruling—see the *Taxation Administration Act 1953* (Cwlth), section 14ZAAA (Interpretation).

Part 4.6 Compensation for death

77 Death benefits

- (1) This section applies to the death of a worker for which compensation is payable under this Act.
- (2) The dependants of the worker are entitled to the following:
 - (a) a single lump sum payment of \$150 000 cpi indexed to be divided between the dependants;
 - (b) for each dependant who is a child—weekly compensation of \$50 cpi indexed;
 - (c) the funeral expenses of the worker to a maximum of \$4 000 cpi indexed.
- (3) In working out for this Act whether or not a child is, or was, dependent on the earnings of the worker, any family tax benefit within the meaning of the *A New Tax System (Family Assistance) Act 1999* (Cwlth), section 3 (definitions) in relation to the child must be disregarded.
- (4) To remove any doubt, the payment under subsection (2) (a) need not be divided equally between the dependants, but may be divided between them as the Magistrates Court considers appropriate.
- (5) Compensation under subsection (2) (b) is payable only while the person receiving it is a child.
- (6) If the worker did not have dependants, the personal representative of the worker is entitled to a maximum of \$4 000 cpi indexed for the funeral expenses of the worker.

78 Payment into court of lump sum death benefits

- (1) A payment mentioned in section 77 (2) (a) (the *lump sum*) must be paid into the Magistrates Court, unless the court otherwise orders.
- (2) The Magistrates Court must, until the lump sum is paid to the person entitled to it—
 - (a) invest, apply or otherwise deal with the lump sum payment in the way the court considers appropriate for the benefit of the person entitled to it under this Act; or
 - (b) deal with it under the *Public Trustee Act 1985*, section 25 (Payment of money etc to public trustee on behalf of a person under disability).
- (3) The receipt of the registrar of the Magistrates Court is a sufficient discharge for the amount paid in.

Part 4.7 **Registration of agreements for compensation**

79 **Registration of agreements for compensation**

- (1) If the worker agrees to receive an amount of compensation under section 51 (Compensation for permanent injuries generally) for a loss or under section 137 (How worker may commute rights) for the commutation of a right, a party to the agreement may apply to the Magistrates Court for registration of the agreement.
- (2) The Magistrates Court may refuse to register the agreement if the court considers that the agreement is inaccurate or that the agreed amount of compensation is manifestly inadequate.
- (3) The Magistrates Court must refuse to register the agreement unless satisfied that the worker received independent legal advice about the agreement before entering into it.
- (4) An agreement may deal with the payment of costs.

80 **Effect of registration of agreements**

- (1) A worker with a registered agreement in relation to a loss or the commutation of a right is not entitled to receive any additional compensation for the loss or commutation of the right under an award of the Magistrates Court.
- (2) However, the Magistrates Court may award additional compensation if satisfied that—
 - (a) the agreement was obtained by fraud or undue influence; or
 - (b) the agreed amount of compensation was manifestly inadequate.
- (3) This section does not limit an award of additional compensation for a further loss suffered after the loss to which the agreement relates.

81 Cancellation or amendment of registered agreements

- (1) On application by a party to a registered agreement, the Magistrates Court may amend the registered agreement or cancel the registration of the agreement.
- (2) The Magistrates Court may act under subsection (1) only if—
 - (a) a party becomes aware of evidence that was not available to the party when the agreement was made; and
 - (b) the court considers that, if the party had been aware of the evidence, the agreement would not have been made, or would not have been made as registered.

Part 4.8 Exceptions to entitlements to compensation

82 When is compensation under Act generally not payable?

- (1) This section applies if, apart from this section, compensation in relation to an injury to a worker is payable under this Act.
- (2) Compensation is not payable if the injury to, or death of, the worker is caused by an intentionally self-inflicted injury.
- (3) Compensation is not payable if it is proved that the injury to the worker is attributable to the worker's serious and wilful misconduct, unless the injury results in death or serious and permanent disablement.
- (4) In subsection (3), the personal injury received by the worker is attributable to the serious and wilful misconduct of the worker if—
 - (a) at the time of the injury, the worker was under the influence of alcohol or another drug, unless the alcohol or other drug did not contribute to the injury or was not consumed or taken voluntarily; or
 - (b) the injury was otherwise attributable to the serious and wilful misconduct of the worker.
- (5) In this section:
drug—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

83 No compensation while imprisoned

A worker who is otherwise entitled to compensation under this Act is not entitled to compensation for a period when the worker is imprisoned because the worker has been convicted of an offence

against a law of the Territory, a State, the Commonwealth or another Territory.

84 Compensation for sporting injuries

A person is not entitled to receive compensation for an injury sustained as a result of the person's engagement in professional sporting activity.

Chapter 5 Injury management process

Part 5.1 Object and definitions for ch 5

85 Object—ch 5

The object of this chapter is to establish a system the aim of which is to achieve the best results for the timely, safe and durable return to work of workers following workplace injuries.

U 86 Definitions—ch 5

In this chapter:

injured worker means a worker who has received a workplace injury.

injury management means the process that consists of activities and procedures that are carried out or established to achieve a timely, safe and durable return to work for injured workers.

injury management program means a coordinated and managed program that integrates all aspects of injury management (including treatment, rehabilitation, retraining, claims management and employment management practices) to achieve the best results for a timely, safe and durable return to work of injured workers.

injury notice—see section 93 (2) (Early notification of workplace injury).

insurer means an approved insurer or self-insurer.

nominated treating doctor, for an injured worker, means the doctor or medical practice nominated under section 102 (Nomination of doctor for personal injury plan).

personal injury plan, for an injured worker, means a plan for coordinating and managing the aspects of injury management, that relate to the treatment, rehabilitation and retraining of the worker, to achieve a timely, safe and durable return to work for the worker.

workplace injury means an injury in relation to which compensation is or may be payable under this Act.

U 86A **Meaning of *insurer* for ch 5**

87 Meaning of *employer* and *insurer* if more than 1

- (1) This section applies if 2 or more employers are or may be liable to pay compensation to an injured worker but the employers do not all still employ the worker.
- (2) In this chapter:

employer, of the injured worker, means the employer that last employed the worker.

insurer means the employer's insurer.

Part 5.2 General obligations

U 88 Insurer to establish etc injury management program

- (1) An insurer must establish and maintain an injury management program.
- (2) An insurer must review the effectiveness of its injury management program at least once every 2 years and revise the program in accordance with the results of the review.
- (3) An insurer must give a copy of its injury management program, and any revised injury management program, to the Minister.

U 89 Insurer to give effect to injury management program

- (1) An insurer must give effect to its injury management program, in particular by complying with the obligations imposed on the insurer under the program.
- (2) An insurer must take appropriate steps to ensure that each employer who is insured by the insurer is aware of the employer's obligations under this chapter and is aware of the requirements of the insurer's injury management program.

Note An employer may have obligations under the following provisions of this part:

- under s 91 to comply with the obligations imposed on the employer under the injury management program
- under s 93 (2) to give notice of injury to the insurer
- under s 100 to take part and cooperate in establishing a personal injury plan for a worker, and to comply with the plan
- under s 105 and s 106 to provide suitable work for an injured worker
- under s 109 to establish a return-to-work program.

- (3) Subsection (2) does not apply to a self-insurer.

U 90 Insurer's obligation of prompt payment

- (1) An insurer commits an offence if—
 - (a) the insurer is required under this Act to pay an amount for a service; and
 - (b) the insurer does not pay the amount to the person who provided the service (the *service provider*) within 30 days after the day the service is provided.

Maximum penalty: 10 penalty units.

- (2) Subsection (1) does not apply if—
 - (a) the insurer does not pay for the service because the insurer has reasonable grounds to believe that the service has not been provided, or has not been properly provided; and
 - (b) the insurer has told the service provider, in writing, why the insurer has not paid for the service.
- (3) An offence against this section is a strict liability offence.

91 Employer's obligations for injury management programs

- (1) An employer must comply with the reasonable obligations imposed on the employer by the employer's insurer under the insurer's injury management program.

Maximum penalty: 10 penalty units.

- (2) This section does not apply to a non-business employer.
- (3) An offence against this section is a strict liability offence.

92 Register of injuries

- (1) This section applies to a mine, quarry, factory, workshop, office or shop (the *workplace*).

- (2) A register of injuries (the *register*) is to be kept at the workplace in a place that is readily accessible to workers at the workplace.
- (3) The manager of the mine or quarry, or the occupier of the factory, workshop, office or shop, must ensure the register is kept in accordance with subsection (2).
Maximum penalty: 50 penalty units.
- (4) A person must not change, damage, deface, remove or otherwise interfere with the register.
Maximum penalty: 20 penalty units.
- (5) A worker employed at the workplace, or a person acting on the worker's behalf, may enter in the register details of an injury received by the worker.
- (6) If details of the injury are entered in the register as soon as possible after the injury happens, the entry is taken to be notice of the injury given to the employer by the injured worker for this Act.
- (7) An offence against this section is a strict liability offence.
- (8) This section does not prevent the alteration of the register to correct an error of fact.

Part 5.3 Obligations on injury

93 Early notification of workplace injury

- (1) The injured worker must tell the employer that the worker has received a workplace injury as soon as possible after being injured.

Note An injured worker may give notice of an injury by making an entry in a register of injuries (see s 92).

- (2) The employer must give the insurer notice of the injury (an *injury notice*) under section 94 within 48 hours after becoming aware that the worker has received a workplace injury.
- (3) Subsection (2) does not apply if the insurer is a self-insurer.

94 Injury notice

- (1) An injury notice must state—
 - (a) the name and address of the injured worker; and
 - (b) the cause of the injury (in ordinary language); and
 - (c) the date and time the injury happened; and
 - (d) the name and address of the employer; and
 - (e) the name and address of the nominated treating doctor or, if there is no treating doctor, a doctor who has treated the worker for the injury.
- (2) The employer may give the notice orally, in writing or in electronic form.
- (3) However, if the employer gives the notice orally, the employer must give the notice in writing or in electronic form within 3 days after giving the notice orally.

- (4) If the worker has more than 1 employer, the notice must be given to the employer responsible for the workplace where the injury happened.
- (5) The notice of injury is taken to have been given to an employer—
 - (a) if it is given to a person designated for the purpose by the employer; or
 - (b) if it is given to a person under whose supervision the worker is employed.

U 94A Uninsured employer to give DI fund manager injury notice etc

U 94B Liquidator to give DI fund manager injury notice etc

U 94C Injured workers of uninsured employers may give DI fund manager injury notice

U 95 What if employer does not give notice of injury within time?

- (1) This section applies if an employer (other than a self-insurer) is given an injury notice for an injured worker, but does not give the insurer the injury notice within the time (the *notification time*) mentioned in section 93 (2) (Early notification of workplace injury).
- (2) The employer is liable to pay the worker weekly compensation from the end of the notification time until the employer gives the insurer the injury notice.
- (3) The employer must not be indemnified by the insurer for a payment mentioned in subsection (2).

96 Obligations of insurer on being notified of injury

- (1) Within 3 business days after the day an insurer receives an injury notice, the insurer must take action under the insurer's injury management program.

Maximum penalty: 10 penalty units.

- (2) Within 3 business days after the day an insurer receives an injury notice, if there are reasonable grounds for the insurer to believe that the injury is a significant injury, the insurer must make contact under the insurer's injury management program with each of the following people:

- (a) the injured worker;
- (b) the employer (unless the employer is a self-insurer);
- (c) the worker's nominated treating doctor (if appropriate and practical).

Maximum penalty: 30 penalty units.

- (3) If a workplace injury results in the worker being incapacitated for work for a continuous period of longer than 7 days, within 3 business days after the day the 1st continuous period of 7 days incapacity ends, the insurer must make contact under the insurer's injury management program with each of the following people:

- (a) the injured worker;
- (b) the employer (unless the employer is a self-insurer);
- (c) the worker's nominated treating doctor (if appropriate and practical).

Maximum penalty: 30 penalty units.

- (4) An offence against this section is a strict liability offence.
- (5) In this section:

continuous period, in relation to a worker's incapacity—a period is a ***continuous period***—

- (a) whether or not any of the days in the period are business days; and
- (b) whether or not the incapacity is total or partial or a combination of both.

significant injury means a workplace injury that is likely to result in the worker being incapacitated for work for a continuous period of longer than 7 days.

Part 5.4 Obligations in relation to personal injury plans

97 Personal injury plan for worker with significant injury

- (1) If it appears to an insurer who is, or may be, liable to pay compensation to an injured worker on behalf of the worker's employer that the workplace injury is a significant injury, the insurer must establish a personal injury plan for the worker.
- (2) The personal injury plan must be established—
 - (a) in agreement with the employer (unless the employer is a self-insurer or a non-business employer) and the injured worker, to the maximum extent that their cooperation and participation allow; and
 - (b) with the assistance of an approved rehabilitation provider.
- (3) The insurer must give effect to the personal injury plan established for the injured worker and, for that purpose, must comply with the obligations imposed on the insurer under the plan.
- (4) In this section:

significant injury means a workplace injury that is likely to result in the worker being incapacitated for work for a continuous period of longer than 7 days, whether or not any of those days are business days and whether or not the incapacity is total or partial or a combination of both.

98 Provision of information about personal injury plan

- (1) The insurer must give both the employer and the injured worker information about the personal injury plan.

- (2) The information must include a statement to the effect that the worker's entitlement to weekly compensation may stop if the worker unreasonably fails to comply with the requirements of this chapter after being asked to do so by the insurer.
- (3) The insurer must keep the employer informed of significant steps taken, or proposed to be taken, under the personal injury plan for the worker, unless the employer is a self-insurer.

99 Vocational rehabilitation

The insurer must ensure, as far as possible, that vocational rehabilitation provided or arranged for the injured worker under the personal injury plan is of a kind that may reasonably be thought likely to lead to a real prospect of employment or a real increase in earnings for the injured worker.

100 Employer's personal injury plan obligations

- (1) The employer must take part and cooperate in the establishment of a personal injury plan for the injured worker.
Maximum penalty: 10 penalty units.
- (2) The employer must comply with the reasonable obligations imposed on the employer under the personal injury plan.
Maximum penalty: 10 penalty units.
- (3) This section does not apply if the employer is a self-insurer.
- (4) An offence against this section is a strict liability offence.

U 101 Worker's personal injury plan obligations

- (1) The injured worker must take part and cooperate in the establishment of a personal injury plan for the worker.

Note If the injured worker does not take part and cooperate in the establishment of the worker's personal injury plan, the worker's weekly

compensation may be stopped while time for payment of weekly compensation continues to run against the worker (see s 113).

- (2) The injured worker must comply with reasonable obligations imposed on the worker under the worker's personal injury plan, including any obligation to receive medical or surgical treatment or take part in rehabilitation or retraining.

102 Nomination of doctor for personal injury plan

- (1) The worker must nominate a doctor, or medical practice, as the worker's treating doctor for the worker's personal injury plan.
- (2) The worker may only nominate a doctor, or medical practice, that is prepared to take part in the development of, and in the arrangements under, the worker's personal injury plan.
- (3) The nomination of a medical practice as treating doctor for the worker's personal injury plan is the nomination of the members of the practice who treat the worker from time to time.
- (4) The worker must authorise the worker's nominated treating doctor to provide relevant information to the insurer or the employer for the worker's personal injury plan.
- (5) The worker's personal injury plan must provide a way for the worker to change the worker's nominated treating doctor.

103 Subsequent medical certificates under personal injury plan

A medical certificate required under a personal injury plan in relation to a claim for ongoing compensation under this Act must be from a doctor.

Part 5.5 Other obligations

104 Injured worker's obligation to return to work

The injured worker must make all reasonable efforts to return to work with the worker's pre-incapacity employer (that is, the employer liable to pay compensation to the worker) as soon as possible, considering the nature of the injury.

105 Employer must provide suitable work for full-time, part-time and casual workers

- (1) This section applies if—
 - (a) a full-time, part-time or casual worker has been totally or partially incapacitated for work because of an injury; and
 - (b) the worker can return to work, whether on a full-time or part-time basis, and whether or not to the worker's previous employment; and
 - (c) within 6 months after the day the worker became entitled to weekly compensation, the worker asks the employer liable to pay the compensation to provide employment for the worker.
- (2) The employer must provide employment to the worker that is—
 - (a) so far as reasonably practical, the same as, or equivalent to, the employment in which the worker was employed at the time of the injury; and
 - (b) otherwise suitable employment for the worker.

Maximum penalty: 10 penalty units.

- (3) An offence against this section is a strict liability offence.
- (4) This section does not apply if—

- (a) the worker voluntarily left the employment of the employer after the injury happened (whether before or after the beginning of the incapacity for work); or
- (b) the employer ended the worker's employment after the injury happened, for a reason other than because the worker was not fit for employment because of the injury; or
- (c) the employer is a non-business employer; or
- (d) the employer cannot provide suitable employment.

106 Employer must provide suitable work for contract workers

- (1) This section applies if—
 - (a) a contract worker has been totally or partially incapacitated for work because of an injury; and
 - (b) the worker can return to work, whether on a full-time or part-time basis, and whether or not to the worker's previous employment; and
 - (c) within the defined period, the worker asks the employer liable to pay the compensation to provide employment for the worker.
- (2) The employer must provide employment to the worker that is—
 - (a) so far as reasonably practical, the same as, or equivalent to, the employment in which the worker was employed at the time of the injury; and
 - (b) otherwise suitable employment for the worker.

Maximum penalty: 10 penalty units.
- (3) An offence against this section is a strict liability offence.

- (4) This section does not apply if—
- (a) the worker voluntarily left the employment of the employer after the injury happened (whether before or after the beginning of the incapacity for work); or
 - (b) the employer ended the worker's employment after the injury happened for a reason other than because the worker was not fit for employment because of the injury; or
 - (c) the employer is a non-business employer; or
 - (d) the employer cannot provide suitable employment.

- (5) In this section:

contract period includes the period of any reasonably expected extension or renewal of the contract.

defined period, for a contract worker who is entitled to weekly compensation, means the period beginning on the day the worker becomes entitled to weekly compensation and ending—

- (a) if the contract period ends, or would end, before the end of 6 months after the day the worker becomes entitled to weekly compensation—at the end of the contract period; or
- (b) in any other case—6 months after the day the worker becomes entitled to weekly compensation.

U 107 Payment of cost of treatment of injured worker

- (1) The worker's personal injury plan may provide for the insurer to pay the following costs:
- (a) the cost of any treatment for the workplace injury provided to the worker by the nominated treating doctor if the nominated treating doctor is prepared to take part in the arrangements under the plan;

- (b) the cost of other treatment described in the plan that is provided to the worker for the workplace injury.

Examples of other treatment

Treatment may be identified by reference to factors like the kind of treatment, the identity of the health care professional who provides the treatment, and the circumstances in which the treatment is provided.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) For a payment under subsection (1), it does not matter that the worker has not made a claim for compensation, that the insurer has not accepted liability for the injury or if the insurer disputes liability for the injury.
- (3) If the insurer makes the payments in relation to the injury and another insurer (the *other insurer*) or another employer (the *other employer*) accepts liability to pay compensation to the worker in relation to the injury, the insurer is entitled to recover the costs (to the extent that compensation is payable under this Act in relation to the costs) as a debt from the other insurer or other employer.
- (4) An amount recoverable under subsection (3) is taken to be payable by the other insurer or other employer as compensation to the injured worker.

108 Second injury arrangements

- (1) Arrangements may be entered into under this section to encourage the employment of injured workers by providing financial incentives to their employers in relation to insurance liabilities arising from further injuries to the workers.
- (2) An insurer who is liable to pay compensation to an injured worker may enter into an arrangement with a new employer (the *new employer*) of the injured worker providing for either or both of the following:

- (a) for the insurer to indemnify the new employer in relation to the employer's liability to pay compensation to the injured worker under this Act;
 - (b) for the insurer to pay a wage subsidy to the new employer in relation to the worker's employment.
- (3) An arrangement under this section—
- (a) applies for 6 months or, if a period is stated in the arrangement, that period; and
 - (b) if it provides for an indemnity—applies to all injuries or only to the injuries stated in the indemnity arrangement; and
 - (c) is subject to the conditions the insurer decides and the new employer agrees to.
- (4) A claim for compensation for an injury to the worker to which an indemnity under this section applies is excluded from the claims experience of the new employer in working out the premium payable by the new employer for an insurance policy.
- (5) This section applies only in relation to approved insurers.

U 109 Workplace rehabilitation

- (1) An employer must establish and maintain a return-to-work program that complies with subsection (3).
- Maximum penalty: 10 penalty units.
- (2) An employer must display or notify a return-to-work program that complies with subsection (3) at each place of work of the workers to whom the program relates or may relate.
- Maximum penalty: 10 penalty units.
- (3) A return-to-work program must—

- (a) provide policies and procedures for the rehabilitation (including, if necessary, vocational rehabilitation) of injured workers of the employer; and
 - (b) be consistent with the injury management program of the employer's insurer; and
 - (c) be established in accordance with any guidelines issued by the Minister under section 110; and
 - (d) be developed in consultation with—
 - (i) the workers to whom it relates, or may relate; and
 - (ii) any industrial union of workers representing the workers; and
 - (iii) an approved rehabilitation provider.
- (4) Subsection (1) does not apply if—
- (a) the employer is part of a group of employers that has jointly established a single return-to-work program for each member of the group; and
 - (c) the employers are authorised in writing to do this by the Minister; and
 - (b) the return-to-work program complies with subsection (3).
- (5) This section does not apply to a non-business employer.
- (6) An offence against this section is a strict liability offence.

110 Return-to-work guidelines

- (1) The Minister may, in writing, issue guidelines for the establishment of return-to-work programs.

- (2) Guidelines are a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (3) In deciding guidelines for this section, the Minister may consult with the entities the Minister considers appropriate.

Part 5.6 Compliance with ch 5

111 Obligation of Minister

The Minister must monitor compliance by insurers with the requirements of this chapter.

U 112 Compliance by insurers

It is a condition of an insurer's approval that the insurer must comply with the requirements of this chapter.

U 113 Compliance by workers

- (1) A worker is not entitled to weekly compensation for a period when the worker unreasonably—
 - (a) contravenes a requirement under this chapter (including under the worker's personal injury plan) after being asked in writing by the insurer to comply with the requirement; or
 - (b) fails to take part in or make a reasonable effort to take part in vocational rehabilitation or a return-to-work program; or
 - (c) fails to attend an assessment of the worker's employment prospects; or
 - (d) fails to undertake suitable alternative duties (if any) provided by the employer; or
 - (e) fails to take up an offer of suitable work for which the worker is qualified and that the worker can perform.
- (2) A worker's entitlement to weekly compensation does not stop under this section until 2 weeks after the day, or latest day, the insurer gives written notice to the worker and to the Minister that the compensation will stop.

- (3) The notice must be accompanied by a statement of the reasons for the entitlement stopping and the action that the insurer considers the worker must take to be entitled to the continuation, or resumption, of weekly compensation.
- (4) The resumption of weekly compensation does not entitle the worker to weekly compensation for the period when the worker had no entitlement to weekly compensation.

114 Unreasonableness in stopping payment

- (1) This section applies if an insurer gives the worker and Minister notice under section 113 and stops the worker's weekly compensation.
- (2) If the Minister considers that stopping the weekly compensation may have been unreasonable, the Minister may do either or both of the following:
 - (a) ask the insurer, in writing, for further information about the stoppage;
 - (b) direct the insurer, in writing, not to stop paying the weekly compensation, or to continue to pay the weekly compensation, for a stated time that is not longer than 1 month.
- (3) If the Minister considers that stopping payment of the weekly compensation is unreasonable, the Minister may—
 - (a) tell the insurer so in writing; and
 - (b) direct the insurer, in writing, not to stop paying the weekly compensation, or to continue to pay the weekly compensation until the Minister otherwise directs or the claim is settled or decided.
- (4) The insurer must not contravene a direction under this section.

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.

U 115 Liability not affected

None of the following things done by an insurer or employer is an admission of liability by the insurer or employer under this Act or independently of this Act:

- (a) anything done under or for an injury management program or personal injury plan;
- (b) anything done in relation to the assessment of an injured worker for rehabilitation, retraining or employment or the provision or arrangement of services or other measures for the rehabilitation or suitable employment of injured workers (whether done under a return-to-work program or otherwise).

Chapter 6 Claims

Part 6.1 Making claims

116 Making claim for compensation

- (1) A worker may claim compensation under this Act.
- (2) A claim for weekly compensation must be accompanied by a medical certificate from a doctor.
- (3) Failure to make a claim under this Act does not prevent the recovery of compensation if it is found that the failure was caused by ignorance, mistake or other reasonable cause.

117 Claim for property loss or damage

- (1) This section applies to the loss of, or damage to, property because of a compensable injury.
- (2) The details required to be given in the claim in relation to the loss or damage are details that adequately identify the property and how it was lost or damaged.

118 Medical certificates and claims for compensation

- (1) To the extent that information or material has been given in the course of the making of a claim for compensation for an injury, it is not necessary to give the information or material when making any further claim for compensation in relation to the same injury.
- (2) A medical certificate required to accompany a claim for weekly compensation must—
 - (a) comply with the requirements for medical assessments prescribed by regulation; and

- (b) include a statement of the doctor's assessment of whether the worker's condition is consistent with the worker's employment being a substantial contributing factor to the injury.

119 No compliant certificate with claim

- (1) This section applies if a claim is deficient because section 118 (2) has not been complied with.
- (2) If the insurer (or self-insurer) tells the worker in writing about the deficiency (including details of what is required to comply with section 118 (2)) as soon as possible (but in any case within 72 hours) after receiving the claim, the claim is not considered to have been made until section 118 (2) is complied with.
- (3) However, if the insurer (or self-insurer) does not tell the worker in writing about the deficiency (including details of what is required to comply with section 118 (2)) within 72 hours after receiving the claim, the claim is taken to comply with section 118 (2).
- (4) Subsection (2) does not apply if the insurer (or self-insurer) waives the requirement for the claim to comply with section 118 (2).

120 Time for taking proceedings generally

- (1) A proceeding for the recovery of compensation for an injury may continue only if—
 - (a) notice of the injury (an *injury notice*) was given as soon as practicable after the injury happened, and before the worker voluntarily left the employment in which the worker was injured; and
 - (b) the claim for compensation was made—
 - (i) within 3 years after the injury happened; or

- (ii) if the worker was not aware of the injury when it happened—within 3 years after the worker became aware of the injury; or
 - (iii) if the worker dies—within 3 years after the claimant became aware of the death.
- (2) However, a proceeding for the recovery of compensation for an injury may also continue if—
- (a) the Magistrates Court allows the proceeding to be maintained under section 120A (Proceedings on late claims); or
 - (b) the proceeding may be maintained under section 124 (No notice or defective or inaccurate notice).

Note An injured worker may give notice of an injury by making an entry in a register of injuries (see s 92).

120A Proceedings on late claims

- (1) A person may apply to the Magistrates Court to allow a proceeding for the recovery of compensation to be maintained.

Note Section 120 (2) allows the proceeding to be continued even if the claim was made after the end of the time periods set out in s 120 (1), if the Magistrates Court allows it to be maintained under this section.

- (2) The Magistrates Court may allow the application if the court considers that it is just and reasonable to allow the proceeding to be maintained.
- (3) Before making a decision about whether to allow the application, the Magistrates Court may hear anyone likely to be affected by the proceeding if the court considers it appropriate.
- (4) In considering whether to allow the application, the Magistrates Court must have regard to all the circumstances of the case, including the following:
- (a) the length of and reasons for the delay in making the claim;

- (b) the extent to which, having regard to the delay, there is or is likely to be prejudice to the employer;
 - (c) the conduct of the employer and the employer's insurer after the cause of action accrued to the claimant, including any steps taken by the employer or the employer's insurer to make available to the claimant ways of working out facts that were or might have been relevant to the cause of action;
 - (d) the duration of any disability of the worker arising at the time of or after the injury giving rise to the claim;
 - (e) the extent to which the claimant acted promptly and reasonably once the claimant knew that the injury to, or death of, the worker could be capable at that time of giving rise to a claim for compensation;
 - (f) any steps taken by the claimant to obtain medical, legal or other expert advice and the nature of any advice received.
- (5) In this section:
- claimant*, if the claim is made by a person other than the worker, includes the worker.

121 Time for making claim under pt 4.4

- (1) A claim for compensation payable under part 4.4 (Compensation for permanent injuries) in relation to an injury may not be made earlier than 2 years after the injury.
- (2) However, the claim may be made earlier than 2 years after the injury if—
 - (a) the Magistrates Court allows the claim to be made; or
 - (b) the injury has stabilised.
- (3) The Magistrates Court may allow the claim to be made earlier than 2 years after the injury only if satisfied that an early application is

justified by the severity of the injury or the prospect of the worker's imminent death.

- (4) The worker's injury is taken to have stabilised if—
 - (a) the worker has returned to work for the worker's pre-incapacity weekly hours (the *previous work hours*) or longer; and
 - (b) the worker has been working at least the previous work hours for at least 3 months.
- (5) However, the worker's injury may have stabilised even if the worker has not returned to work.

U **122** **When is a claim made?**

- (1) A claim is made on the day the claim is given to the employer or insurer.
- (2) If the claim is given to the employer and insurer on different days, the claim is made on the day the claim is given to the first of them.

123 **The notice for an injury**

- (1) An injury notice must contain—
 - (a) the name and address of the injured worker; and
 - (b) the cause of the injury (in ordinary language); and
 - (c) the date and time the injury happened.
- (2) The notice must be served on the employer or, if the worker has more than 1 employer, on the employer responsible for the workplace where the injury happened.

124 **No notice or defective or inaccurate notice**

- (1) This section applies to a claim in relation to which—

- (a) an injury notice has not been given; or
 - (b) the injury notice given was defective or inaccurate.
- (2) A proceeding may be maintained in relation to the claim if the Magistrates Court or arbitrator finds, in the proceeding for the claim, that—
- (a) the employer's defence is not, or would not be, prejudiced by the lack of notice, or defect or inaccuracy in the notice, if a notice or amended notice were given and the hearing postponed; or
 - (b) the lack of notice, or defect or inaccuracy in the notice, was caused by ignorance, mistake or another reasonable cause.

U 125 **Admissibility of statements by injured workers**

- (1) A written statement in relation to a worker's injury given by the worker to the employer is admissible in evidence on behalf of the employer in a proceeding under this Act only if the employer gives the worker a copy of the statement at least 14 days before the proceeding is heard.
- (2) In this section:
- employer* includes the employer's insurer.
- insurer* means—
- (a) an approved insurer; or
 - (b) the nominal insurer.

126 Action by employer in relation to claims

- (1) If an employer receives a claim for compensation or another document in relation to a claim, the employer must, within 7 days after the day the employer receives the claim or document, forward

it to the insurer liable to indemnify the employer for the claim (the *liable insurer*).

Maximum penalty: 50 penalty units.

- (2) If the employer receives a written request from the liable insurer for further stated information in relation to the claim or document, the employer must, within 7 days after the day the employer receives the request—
 - (a) give the insurer the requested information; or
 - (b) if the information is not in the employer's possession and is not reasonably obtainable by the employer—tell the insurer that in writing.

Maximum penalty: 50 penalty units.

- (3) If an employer has received an amount of compensation under this Act from an insurer, the employer must immediately pay the amount to the person entitled to the compensation.

Maximum penalty: 50 penalty units.

- (4) This section does not apply to an employer who is a self-insurer.
- (5) An offence against this section is a strict liability offence.

126A Lump sum claims—notice by insurers about double compensation etc

- (1) This section applies if an insurer is given notice by an employer of a lump sum claim, and the insurer is liable to indemnify the employer for the claim.
- (2) After the insurer is given notice of the claim, the insurer must give the claimant information explaining the requirements of the following sections for the repayment of compensation together with the employer's legal costs as between party and party:

- section 36F (No ACT compensation if external compensation received)
- section 183 (Remedies against employer and stranger)
- section 184 (No compensation if damages received)
- section 185 (Dependants recovering damages and not claiming compensation).

Maximum penalty: 50 penalty units.

Note If a form is approved under s 222 for information to be given by an insurer under this provision, the form must be used.

- (3) An offence against this section is a strict liability offence.

Part 6.2 Time for accepting or rejecting claims

U 127 Meaning of *insurer* and *given* to insurer for pt 6.2

(1) In this part:

insurer, in relation to a claim against an employer, means—

- (a) the approved insurer with whom the employer has or had a compulsory insurance policy that applies to the claim; or
- (b) if the employer was a self-insurer when the injury happened—the employer; or
- (c) if, when the injury happened, the employer was not a self-insurer and the employer has or had no compulsory insurance policy that applies to the claim—the nominal insurer.

(2) For this part, a claim is *given* to the insurer if the claim is given to the insurer or the insurer is given notice of the claim by the employer or worker.

U 128 Claim accepted if not rejected within 28 days

If the insurer does not reject a worker's claim for compensation under this Act within 28 days after the claim is given to the insurer—

- (a) the insurer is taken to have accepted the claim; and
- (b) any payment made by the insurer in relation to the claim is not recoverable.

129 Rejecting claims generally

- (1) An insurer rejects a claim for compensation under this Act by written notice given to the worker and, unless the insurer is a self-insurer, the employer.
- (2) The claim is taken to be rejected when the notice is received by the worker and, unless the insurer is a self-insurer, the employer.
- (3) If the worker and employer do not receive the notice on the same day, the notice is taken to have been given on the day the notice is received by the last of them.
- (4) The notice must include the reason the insurer is rejecting the claim.
- (5) If the insurer rejects the claim 28 days or later after the claim is given to the insurer, the notice must include a statutory declaration explaining why the insurer is rejecting the claim.

Note The *Statutory Declarations Act 1959* (Cwlth) applies to the making of statutory declarations under ACT laws (see that Act, s 5).

- (6) For this section, a notice is taken not to contain the reason the insurer is rejecting the claim if it simply says the claim is being rejected for medical reasons without including the medical reasons.

130 Rejecting claim within 28 days

- (1) If the insurer rejects the worker's claim within 28 days after the claim is given to the insurer, the insurer may—
 - (a) stop weekly compensation to the worker 2 weeks after the insurer rejects the claim; and
 - (b) stop payment of compensation mentioned under part 4.5 (Compensation for medical treatment, damage and other costs) for costs incurred 2 weeks or later after the insurer rejects the claim.

Note For how a claim is rejected, see s 129.

- (2) However, the insurer is not entitled to reject the worker's claim within 28 days after the claim is given to the insurer only on the ground that the insurer has not had time to adequately assess the claim.

131 Rejecting claims after 28 days but within 1 year

If the insurer rejects the worker's claim 28 days or later, but not later than 1 year, after the claim is given to the insurer, the insurer may—

- (a) stop weekly compensation to the worker 8 weeks after the insurer rejects the claim; and
- (b) stop payment of compensation mentioned under part 4.5 (Compensation for medical treatment, damage and other costs) for costs incurred 8 weeks or later after the claim is rejected.

Note For how a claim is rejected, see s 129.

132 Rejecting claims from 1 year

- (1) An insurer may reject a worker's claim for compensation 1 year or later after the claim is given to the insurer only with the leave of the Magistrates Court.
- (2) If the Magistrates Court gives leave to the insurer to reject the worker's claim for compensation—
- (a) the insurer need not give the worker notice of the rejection if the worker, or the worker's lawyer, is present when the court gives leave for the insurer to reject the claim; and
- (b) the insurer may stop paying weekly compensation—
- (i) on the day stated by the court in the order giving leave to the insurer to reject the claim; or
- (ii) 8 weeks after the worker gets notice of the rejection if no day is stated in the order.

- (3) For this section, the worker gets notice of the rejection—
- (a) if the worker is present when the court gives leave to the insurer to reject the claim—on the day the court gives leave; or
 - (b) when the worker receives notice of the rejection from the insurer.

Note Court approved termination is dealt with under the regulations.

Part 6.3 Liability on claims

133 Without prejudice payments

An insurer may, when making a payment in relation to a claim, state that the payment is not an admission of liability for the injury in relation to which it is made.

U 134 Liability on claim not accepted or rejected

- (1) If a worker makes a claim in relation to an injury, the insurer is liable to pay weekly compensation and compensation for costs in relation to the injury until the insurer rejects or settles the claim.
- (2) A payment under this section may not be recovered by the insurer.
- (3) However, the insurer is not liable to pay, and may recover from the employer, an amount that the employer is liable to pay under section 95 (What if employer does not give notice of injury within time?).
- (4) Subsection (3) does not affect a self-insurer's liability in relation to the claim.

U 135 Order for refund of overpayments of compensation

- (1) This section applies to a payment to a person (an *overpayment*), purportedly made because of an obligation arising under this Act, to which the person is not entitled under this Act.
- (2) However, this section only applies if the court before which a proceeding for an offence against section 213 (False claims etc) is taken against the person is satisfied on the balance of probabilities that the person has received an overpayment as a result or partly as a result of the act or omission that is alleged to constitute the offence.
- (3) The court may, on the application of the employer or insurer (whether or not the person is convicted of the offence), order the

person to refund the amount of the overpayment to the person who made the payment.

- (4) Unless the compensation is payable under an award of a court, the refund may be deducted from future payments of compensation in accordance with the terms of the court's order.
- (5) Subsection (3) applies even if the compensation is weekly compensation that is payable under a direction of a conciliator.
- (6) This section does not limit any other right of recovery that a person may have against someone else in relation to an overpayment to the other person.

Part 6.4 Settlement of claims

136 Contracting out

- (1) A provision of an agreement or other document is void if it purports to exclude, or limit in any way—
 - (a) a right given to a worker under this Act; or
 - (b) a liability imposed on an employer under this Act.
- (2) However, this section does not apply to an agreement by a worker to commute an existing right to compensation for a compensable injury under this part.

137 How worker may commute rights

- (1) A worker may commute, in writing, an existing right to compensation for a compensable injury on payment of an amount by the insurer (the *settlement*).
- (2) The settlement may include a payout of 1 or more of the following:
 - (a) the worker's entitlement to weekly compensation under part 4.3;
 - (b) the worker's entitlement to compensation for permanent injuries under part 4.4;
 - (c) the worker's entitlement to compensation for medical treatment, damage and other costs under part 4.5;
 - (d) an entitlement of the worker to compensation apart from this Act;
 - (e) any other amount.

138 No assignment etc of payout of weekly compensation

A payout of weekly compensation may not—

- (a) be assigned, charged or attached; and
- (b) pass to anyone else by operation of law; and
- (c) have a claim set off against it.

Chapter 7 Vocational rehabilitation

139 Meaning of *approved rehabilitation provider* etc

- (1) In this Act:

approved rehabilitation provider means a person approved by the Minister to provide vocational rehabilitation for this Act.

- (2) A regulation may make provision about the approval of rehabilitation providers, including—
- (a) the criteria for approving rehabilitation providers; and
 - (b) the conditions that may be imposed on the approval of rehabilitation providers; and
 - (c) how and why the approval of an approved rehabilitation provider may be revoked or suspended.
- (3) The regulations may also make provision about the role of approved rehabilitation providers under this Act.

140 Meaning of *vocational rehabilitation*

- (1) In this chapter:

vocational rehabilitation, for the injured worker, means—

- (a) the assessment of the needs of the worker for paragraph (b); and
 - (b) the provision of appropriate, adequate and timely services for the worker aimed at maintaining the worker in suitable employment or returning the worker to suitable employment.
- (2) For the definition of *vocational rehabilitation*, services are taken to be appropriate, adequate and timely if they are in accordance with a relevant protocol.

141 Meaning of *protocol* in ch 7 etc

- (1) In this chapter:

protocol means a protocol about vocational rehabilitation approved under a regulation.

- (2) A regulation may allow the Minister to approve a protocol about vocational rehabilitation.

142 Vocational rehabilitation

- (1) If the worker has a compensable injury, the employer must provide the worker with vocational rehabilitation in accordance with this Act.

Maximum penalty: 50 penalty units.

- (2) The provision of vocational rehabilitation to the worker is not taken to be an admission of liability for the worker's claim for compensation.
- (3) This section does not apply to a non-business employer.
- (4) A regulation may exempt employers from subsection (1), either completely or in prescribed circumstances.
- (5) An offence against this section is a strict liability offence.

143 False representation of approval

A person must not pretend to be an approved rehabilitation provider.

Maximum penalty: 30 penalty units.

Chapter 8 Insurance

U Part 8.1 General

U 144 Meaning of *compulsory insurance policy*

(1) In this Act:

compulsory insurance policy, for the employer, means an insurance policy—

- (a) for an unlimited amount for any liability of the employer under this Act, or independently of this Act, for an injury to, or the death of, each territory worker employed by the employer; and
- (b) that complies with this Act.

Note If a form is approved under s 222 (Approved forms) for a compulsory insurance policy, the form must be used.

(2) Subject to section 147 (7) (Compulsory insurance—employers) and section 155 (Cover notes), a cover note may be a compulsory insurance policy.

145 Approved insurers

- (1) The Minister may, in accordance with the regulations, approve an insurer for this Act.
- (2) A regulation may prescribe the following:
 - (a) the criteria for approving insurers;
 - (b) the conditions that may be imposed on the approval of insurers;
 - (c) the records to be kept by approved insurers, who the records are to be provided to and how they are to be provided;

- (d) how insurance premium calculations by approved insurers may be reviewed;
- (e) how approved insurers' performance may be monitored and reviewed;
- (f) what and when approved insurers must report to the Minister;
- (g) how and why the approval of an insurer may be revoked or suspended.

U 146 **Effect of revocation or suspension of approval**

- (1) If the approval of the insurer for this Act is revoked or suspended, section 147 (1) (which requires an employer to have a compulsory insurance policy) applies in relation to an insurance policy (a *pre-revocation policy*) issued by the insurer when the insurer was approved, or the approval was not suspended, as if the insurer were still approved or the approval not suspended.
- (2) The revocation or suspension of the approval of an insurer does not—
 - (a) annul a pre-revocation policy; or
 - (b) affect the liability of the insurer under a pre-revocation policy; or
 - (c) affect the liability of the insurer under section 173 (Funds for payments by nominal insurer).
- (3) However, a regulation may prescribe circumstances in which (and when) a pre-revocation policy issued by an insurer whose approval has been revoked stops being a compulsory insurance policy.

147 Compulsory insurance—employers

- (1) An employer commits an offence if the employer fails to maintain a compulsory insurance policy with an approved insurer.

Maximum penalty: 250 penalty units, imprisonment for 2 years or both.

Note One or more fault elements apply to this offence (see Criminal Code, s 22).

- (2) Subsection (1) does not apply to a non-business employer.
- (3) An employer commits an offence if the employer fails to maintain a compulsory insurance policy with an approved insurer.

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.
- (5) This section does not apply to an employer if—
- (a) the employer is a self-insurer; or
 - (b) the employer and another employer or other employers could become liable to pay compensation for the same worker, and any of the other employers maintains a joint compulsory insurance policy for the joint liability of all the employers.
- (6) It is a defence to a prosecution for an offence against this section in relation to an employer's liability in relation to a worker if the employer proves that at the time of the offence—
- (a) the employer believed on reasonable grounds that a State was the Territory or State of connection for the employment under the law of a State corresponding to part 4.2A (Employment connection with ACT or State); and

- (b) the employer had insurance, or was registered, as required under the law of the State in relation to liability for workers compensation under the law of the State.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

- (7) A cover note may be a compulsory insurance policy only if it is in force for not longer than 30 days and—
 - (a) the employer maintained a compulsory insurance policy (other than a cover note) immediately before maintaining the cover note; or
 - (b) the employer was not an employer immediately before beginning to maintain the cover note; or
 - (c) the employer was a self-insurer immediately before beginning to maintain the cover note.

U 149 **Effect of failure to maintain compulsory insurance on other insurance etc for this Act**

- (1) This section applies if—
 - (a) an employer, other than a self-insurer, fails to maintain a compulsory insurance policy; but
 - (b) the employer maintains an insurance policy (the *other policy*) for a liability under this Act.
- (2) The failure to maintain a compulsory insurance policy does not—
 - (a) annul the other policy; or
 - (b) affect the liability of the insurer under the other policy; or
 - (c) affect the liability of the insurer under section 173 (Funds for payment by nominal insurer).

U 150 **Nominal insurer entitled to triple premiums**

- (1) If an employer, other than a self-insurer or non-business employer, fails to maintain a compulsory insurance policy, the nominal insurer may recover as a debt from the employer an amount equal to triple the amount of the premiums that would have been payable to an approved insurer if the employer had maintained a compulsory insurance policy.
- (2) However, the employer is not liable under subsection (1) for a failure to maintain a compulsory insurance policy in relation to a worker if—
 - (a) the employer believed on reasonable grounds that a State was the Territory or State of connection for the employment under the law of a State corresponding to part 4.2A (Employment connection with ACT or State); and
 - (b) the employer had insurance, or was registered, as required under a law of the State in relation to liability for workers compensation under the law of the State.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

U 151 **Evidence of maintenance of compulsory insurance policy**

A statement in an information against an employer that there was no compulsory insurance policy issued by an approved insurer in favour of the employer in force on a stated date, or during a stated period, is evidence of the matter.

U 152 **Self-insurers**

- (1) The Minister may, by written notice given to an employer, exempt the employer from complying with section 147 (1) (Compulsory insurance—employers) for a stated period.
- (2) A regulation may make provision for or in relation to the following:

- (a) how an employer may apply for an exemption;
- (b) the criteria to be considered by the Minister when deciding whether to exempt an employer;
- (c) conditions on exemptions;
- (d) renewals of exemptions;
- (e) revocation and suspension of exemptions.

U 153 Compulsory insurance—insurers

- (1) An approved insurer must not refuse to issue a compulsory insurance policy required by an employer for section 147 (1) (Compulsory insurance—employers).

Maximum penalty: 100 penalty units.

- (2) An approved insurer must not issue an insurance policy required by an employer for section 147 (1) that is not a compulsory insurance policy.

Maximum penalty: 100 penalty units.

- (3) Subsection (1) does not apply in relation to a compulsory insurance policy if—

- (a) the employer has not paid for the policy; or
- (b) the employer has not given the insurer information reasonably requested by the insurer in relation to the policy.

- (4) An offence against this section is a strict liability offence.

U 154 Cancellation

- (1) An approved insurer must not cancel a compulsory insurance policy otherwise than in accordance with a protocol about cancellation.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

U 155 Cover notes

- (1) An insurer must not issue a cover note that is a compulsory insurance policy for longer than 30 days.

Maximum penalty: 10 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) An insurer may recover a premium from an employer for a period for which a cover note from the insurer was in force in relation to the employer if, at the end of the cover note, the employer does not obtain a policy of insurance from the insurer.

U 156 Information for insurers on application for issue or renewal of policies

- (1) This section applies if an employer applies to an insurer for the issue or renewal of a compulsory insurance policy for a particular period (the *proposed insurance period*).

- (2) The employer must give the insurer, with the application, a statutory declaration in relation to the proposed insurance period stating the employer's estimate for the period.

Maximum penalty: 250 penalty units, imprisonment for 2 years or both.

Note One or more fault elements apply to this offence (see Criminal Code, s 22).

- (3) The employer must give the insurer, with the application, a statutory declaration in relation to the proposed insurance period stating the employer's estimate for the period.

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.

- (5) This section does not apply to a non-business employer.
- (6) In this section:

employer's estimate, for a proposed insurance period, means the employer's estimate of the following:

- (a) the number of territory workers in each determined category to be employed by the employer in the period;
- (b) the total wages to be paid to territory workers in each determined category in the period;
- (c) the number of paid and unpaid workers who will work for the employer in the period;
- (d) the approximate amount of time each paid and unpaid worker will work for the employer in the period.

Note An employer who makes a statement in a statutory declaration that is false, misleading or incomplete may commit an offence (see s 161 and s 213).

U 157 Information for insurers after renewal of policies

- (1) This section applies if an insurance policy taken out by an employer is renewed.
- (2) Within 30 days after the day the policy is renewed, the employer must give the insurer a certificate from a recognised auditor stating the total wages paid by the employer to territory workers in the period from the day the policy was issued or (if it had already been renewed) last renewed to the day before the latest renewal.

Maximum penalty: 250 penalty units, imprisonment for 2 years or both.

Note One or more fault elements apply to this offence (see Criminal Code, s 22).

- (3) Within 30 days after the day the policy is renewed, the employer must give the insurer a certificate from a recognised auditor stating the total wages paid by the employer to territory workers in the period from the day the policy was issued or (if it had already been renewed) last renewed to the day before the latest renewal.

Maximum penalty: 50 penalty units.

Note A recognised auditor who makes a statement in an auditor's certificate that is false, misleading or incomplete may commit an offence (see s 213).

- (4) An offence against subsection (3) is a strict liability offence.
(5) This section does not apply to a non-business employer.

U 158 Information for insurers after end or cancellation of policies

- (1) This section applies if a compulsory insurance policy taken out by an employer ends or is cancelled, and the policy is not renewed.
(2) Within 30 days after the day the policy ends or is cancelled, the employer must give the insurer a certificate from a recognised auditor stating the total wages paid by the employer to territory workers in the period during which the policy was in force from the day it was issued or (if it had been renewed) last renewed.

Maximum penalty: 50 penalty units.

Note A recognised auditor who makes a statement in an auditor's certificate that is false, misleading or incomplete may commit an offence (see s 213).

- (3) An offence against this section is a strict liability offence.
(4) This section does not apply to a non-business employer.

U 159 Information for new insurers after change of insurers

- (1) This section applies if—

- (a) an insurer (the *current insurer*) issues a compulsory insurance policy (the *current policy*) to an employer; and
 - (b) immediately before the issue of the current policy, the employer was covered by a compulsory insurance policy (the *previous policy*) issued by a different insurer.
- (2) Within 30 days after the day the current policy is issued, the employer must give the current insurer a copy of the certificate mentioned in section 158 (2) in relation to the period from the day the previous policy was issued or (if it had been renewed) last renewed to the day before the current policy was issued.

Maximum penalty: 250 penalty units, imprisonment for 2 years or both.

Note One or more fault elements apply to this offence (see Criminal Code, s 22).

- (3) Within 30 days after the day the current policy is issued, the employer must give the current insurer a copy of the certificate mentioned in section 158 (2) in relation to the period from the day the previous policy was issued or (if it had been renewed) last renewed, to the day before the current policy was issued.

Maximum penalty: 50 penalty units.

- (4) An offence against subsection (3) is a strict liability offence.
- (5) This section does not apply to a non-business employer.

U 160 **Six-monthly information for insurers**

- (1) If an employer has a compulsory insurance policy for a period of longer than 6 months, the employer must, within 30 days after the end of each reporting period, give the insurer a statutory declaration setting out—
- (a) the number of territory workers in each determined category employed by the employer in the reporting period;

- (b) the total wages paid to territory workers in each determined category in the reporting period; and
- (c) the number of paid and unpaid workers working for the employer in the reporting period; and
- (d) the approximate amount of time each paid and unpaid worker worked for the employer in the reporting period.

Maximum penalty: 50 penalty units.

Note An employer who makes a statement in a statutory declaration that is false, misleading or incomplete may commit an offence (see s 161 and s 213).

- (2) An offence against this section is a strict liability offence.
- (3) This section does not apply to a non-business employer.
- (4) In this section:

reporting period, in relation to a compulsory insurance policy, means each of the following:

- (a) the period (the *1st period*) of 6 months beginning on the 1st day of the policy;
- (b) each successive period (a *successive period*) of 6 months following the 1st period during which the policy is in force, other than a successive period that ends when the policy ends.

U 161 Statutory declarations—false information etc

- (1) A person commits an offence if—
 - (a) the person makes a statement in a relevant statutory declaration; and
 - (b) the person does so knowing that the statement—
 - (i) is false or misleading; or

(ii) omits anything without which the statement is misleading.

Maximum penalty:

- (a) for a 1st offence—1 250 penalty units; or
- (b) for a 2nd or subsequent offence—10 000 penalty units, imprisonment for 10 years or both.

(2) A person commits an offence if—

- (a) the person makes a statement in a relevant statutory declaration; and
- (b) the person does so reckless of whether the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is misleading.

Maximum penalty: 50 penalty units, 6 months imprisonment or both.

- (3) Subsections (1) (b) (i) and (2) (b) (i) do not apply if the statement is not false or misleading in a material particular.
- (4) Subsections (1) (b) (ii) and (2) (b) (ii) do not apply if the omission does not make the statement misleading in a material particular.
- (5) In this section:

relevant statutory declaration means a statutory declaration provided by an employer for either of the following provisions:

- section 156 (2) (Information for insurers on application for issue or renewal of policies)
- section 160 (1) (Six-monthly information for insurers).

U 162 Employment after 2nd offence

- (1) For this section, an employer has been *convicted of an offence* if the employer has been convicted of a 2nd or subsequent offence against any of the following sections:
 - section 147 (Compulsory insurance—employers)
 - section 156 (Information for insurers on application for issue or renewal of policies)
 - section 157 (Information for insurers after renewal of policies)
 - section 158 (Information for insurers after end or cancellation of policies)
 - section 159 (Information for new insurers after change of insurers)
 - section 160 (Six-monthly information for insurers)
 - section 214 (Criminal liability of executive officers).
- (2) Subsection (1) only applies to an offence against section 214 if the offence relates to the contravention by a corporation of another section mentioned in subsection (1).
- (3) An employer who has been convicted of an offence within the last 5 years must not employ a territory worker.

Maximum penalty: imprisonment for 5 years.

U 163 Provision of information to Minister

- (1) This section applies to the following:
 - (a) an approved insurer;
 - (b) a self-insurer;
 - (c) if an approved insurer or a self-insurer is a corporation—an executive officer of the corporation.

- (2) The Minister may, by written notice given to a person to whom this section applies, require the person to give to the Minister, within the reasonable time stated in the notice—
- (a) details of the number of injuries for which compensation has been paid during the period stated in the notice and the total compensation paid during that period; and
 - (b) any other details relating to the operation of this Act stated in the notice.
- (3) The notice must set out details of the applicable offences and penalties for the offences.
- (4) A person is not excused from giving particulars in accordance with a requirement under subsection (2) on the ground that giving those particulars would incriminate, or would tend to incriminate, the person or would tend to expose that person to a proceeding for an offence against a law in force in Australia or elsewhere.
- (5) If a person is required to give details under subsection (2), the details given, or any information, document or thing obtained as a direct or indirect consequence of giving those details, shall not be admissible in evidence against the person in any civil or criminal proceedings in any court other than a proceeding for perjury or for an applicable offence.
- (6) A person to whom a notice is given must comply with the notice.
Maximum penalty: 50 penalty units.
- (7) An offence against this section is a strict liability offence.
- (8) In this section:
applicable offence means—
- (a) an offence against this section; or

(b) an offence against section 213 (False information etc) in relation to a notice.

U 164 **Nominal insurer**

- (1) The Minister may, in writing, appoint a person to be the nominal insurer for this Act.
- (2) The appointment shall be made on the nomination of the approved insurers or a majority of them or, in default of such a nomination, directly by the Minister.
- (3) An appointment is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

U Part 8.2 Default insurance fund

U Division 8.2.1 Definitions for pt 8.2

U 165 Claims for payment by nominal insurer

(1) If—

- (a) a claim has been made against an employer that the employer is liable to pay compensation in relation to an injury caused to, or sustained by, a worker, being an injury arising out of or in the course of the worker's employment by the employer or for which the employer is liable as if the injury arose out of or in the course of the worker's employment; and
- (b) in relation to the claim, the employer has agreed to pay any compensation or the liability of the employer to pay any compensation has been established; and
- (c) the liability of the employer to pay the compensation is not covered in full by a policy or policies of insurance obtained in accordance with this Act; and
- (d) the employer defaults in payment of any amount of the compensation for a period longer than 1 month;

the person entitled to the compensation may make a claim against the nominal insurer for payment of the amounts of compensation payable and to become payable.

(2) If—

- (a) a final judgment has been obtained against an employer in relation to the employer's liability independently of this Act for an injury to, or the death of, a territory worker employed by the employer, being an injury or death that happened on or after 1 September 1969; and

- (b) execution of the judgment is not stayed; and
- (c) the liability of the employer under the judgment is not covered, or is not covered in full, by a policy or policies of insurance obtained in accordance with this Act; and
- (d) the judgment has, for not less than 1 month, remained unsatisfied in whole or in part;

the person in whose favour the judgment was given may make a claim against the nominal insurer for payment of the amount by which the judgment remains unsatisfied.

- (3) If—
 - (a) an employer has entered into an agreement to pay a sum of money in discharge of the employer's liability independently of this Act in relation to an injury to, or the death of, a territory worker employed by the employer, being an injury or death that happened on or after 1 September 1969; and
 - (b) the liability of the employer is not covered, or is not covered in full, by a policy or policies of insurance obtained in accordance with this Act; and
 - (c) the employer has, for not less than 1 month, failed to pay the whole or a part of the sum of money payable by the employer under the agreement;

the person to whom that sum of money is payable under the agreement may make a claim against the nominal insurer for payment of the amount that the employer has failed to pay.

- (4) A claim under this section shall be made within 1 month after the right to make the claim arose or within any further time that the Minister, on an application made before or after the end of that period of 1 month, allows.
- (5) In subsection (1):

compensation includes—

- (a) an amount in settlement of a claim for compensation; and
- (b) costs payable to a worker by an employer in relation to a claim for compensation.

U **Division 8.2.2** **Establishment, staff and consultants
of DI fund**

U **166** **Payments by nominal insurer**

Subject to this Act, if a person makes a claim against the nominal insurer in accordance with section 165, the nominal insurer shall pay to that person—

- (a) if the claim is made under section 165 (1)—the compensation payable at the date of the claim or becoming payable afterwards; or
- (b) if the claim is made under section 165 (2)—the amount payable for damages and costs under the judgment to which the claim relates; or
- (c) if the claim is made under section 165 (3)—the amount payable by the employer under the agreement.

- U 166A Purpose of DI fund**
- U 166B Payments out of DI fund**
- U 166C Appointment of DI fund manager**
- U 166D DI fund manager’s functions etc**
- U 166E DI fund staff**
- U 166F DI fund manager may engage consultants including claims manager**
- U 166G Claims manager’s functions**
- U 166H Engagement of DI fund actuary**
- U 166I Delegation by DI fund manager**
- U Division 8.2.3 Administration of DI fund**
- U 167 Reopening of agreements and awards**
 - (1) This section applies if a claim is made against the nominal insurer under section 165 (1).
 - (2) The nominal insurer may apply to the Magistrates Court for an order directing that the agreement or award under which the compensation is payable be reopened on the ground that there is reason to believe that the employer has not honestly endeavoured to protect the employer’s own interests, and taken all reasonable steps to protect the employer’s own interests, in relation to the agreement, the appointment of a committee or the arbitration.
 - (3) On the application, the Magistrates Court may order that the agreement or award be reopened.

U 167A Investments of amounts of DI fund

U 167B Borrowing for DI fund

U 167C Audit of DI fund

U 167D Information and assistance by employer to DI fund manager

U Division 8.2.4 Contributions to DI fund

U 168 Deciding or redeciding claim

- (1) If the Magistrates Court makes an order under section 167, the court must decide or redecide the claim for compensation by arbitration.
- (2) The nominal insurer must be a party to the arbitration.
- (3) In an award made by the Magistrates Court under this section, the court may set aside a previous agreement or award.
- (4) If an award of compensation is made against the employer by the Magistrates Court, the nominal insurer must pay to the person entitled the amounts payable under the award.
- (5) An agreement by a person to accept, in settlement of a claim against the nominal insurer, an amount less than the amount payable according to the relevant agreement or award has no effect unless approved by the Magistrates Court.

- U 168A Contributions to DI fund by approved insurers and self-insurers**
- U 168B Refunds of excess DI fund amounts**
- U Division 8.2.5 DI fund's relationship with liquidators of approved insurers**
- U 169 Power of Supreme Court to set aside certain agreements**
- (1) If a claim is made against the nominal insurer under section 165 (3), the nominal insurer may apply to the Supreme Court for an order setting aside the agreement to which the claim relates.
 - (2) If, on an application under subsection (1), the Supreme Court is satisfied there are reasonable grounds for believing that, in relation to the agreement the subject of the application, the employer has not in good faith endeavoured to protect the employer's own interests and taken all reasonable steps to that end, the court may, by order, set aside the agreement.
 - (3) If an agreement is set aside under this section—
 - (a) the agreement is taken, for any proceeding in a court, never to have had effect; and
 - (b) evidence of a statement or communication, or a part of a statement or communication tending to establish the existence of the agreement is not, unless the Supreme Court directs otherwise, admissible in any proceeding in a court.
 - (4) The Supreme Court must not give a direction for subsection (3) (b) unless it is satisfied that the admission of the evidence is necessary to avoid injustice to a party to the proceeding.
 - (5) If the Supreme Court sets an agreement aside under subsection (2), the costs of the respondent of, and incidental to, the application

must, unless the Supreme Court directs that this subsection does not apply in relation to the application, be paid by the nominal insurer.

- (6) The Supreme Court must not give a direction under subsection (5) in relation to an application under this section unless it is satisfied that, having regard to the special circumstances surrounding the making of the agreement to which the application relates, it is desirable that a direction under that subsection be given.
- (7) If—
- (a) an agreement is set aside under subsection (2); and
 - (b) apart from this subsection, an action by a party to the agreement to recover damages in relation to a liability to which the agreement related would, at the time the agreement is set aside, be barred or would, within 3 months after the agreement is set aside, become barred, by a law in force in the ACT relating to the limitation of the time within which a proceeding in a court may be started;

the action may, despite any such law, be started at any time within 3 months after the date the agreement was set aside.

- (8) If—
- (a) an agreement is set aside under subsection (2); and
 - (b) an action by a party to the agreement (the *plaintiff*) to recover damages in relation to a liability to which the agreement related is begun in a territory court;

the plaintiff must, within 7 days after the day when the action was begun, give the nominal insurer written notice of the action.

Maximum penalty: 5 penalty units.

- (9) An offence against this section is a strict liability offence.

- (10) If notice is given to the nominal insurer under subsection (8), the nominal insurer—
- (a) may, on behalf of the employer sued in the action, conduct the defence of the action in the name of the employer and in the way the nominal insurer considers appropriate; and
 - (b) shall indemnify the employer against all costs and expenses of and incidental to the action.
- (11) Nothing in this Act authorises the nominal insurer—
- (a) to consent to the entry of judgment in an action against a defendant in the action; or
 - (b) to compromise the action;
- except with the consent of that defendant.

U 169A **Payment to DI fund of amounts recovered by liquidator from reinsurer**

U 169B **Payment to DI fund of amounts recovered by liquidator using fund amounts**

U 169C **Rights of DI fund manager against approved insurer**

U 169D **Liquidator to notify DI fund manager of dissolution**

U **Division 8.2.6 Making claims for payment**

U 170 **Intervention by nominal insurer**

- (1) This section applies to a person (the *alleged employer*)—
- (a) against whom a claim (the *claim*) for compensation has been made; and
 - (b) who is not a self-insurer; and

- (c) who is not a party to a compulsory insurance policy that applies to the claim.
- (2) The alleged employer must, not later than 48 hours after the claim is made, give the nominal insurer a copy of the claim.
- Maximum penalty: 10 penalty units.
- (3) The alleged employer must not make an agreement or admission in relation to the claim.
- Maximum penalty: 20 penalty units.
- (4) Subsection (3) does not apply to an admission or agreement if the nominal insurer consents to the admission or agreement.
- (5) An offence against this section is a strict liability offence.
- (6) The nominal insurer is entitled to intervene in any arbitration proceeding on the claim as a party.
- (7) The nominal insurer has the same right of objection to arbitration by a committee as the employer has under the regulations.

- U** 170A **When must claim for payment be made**
- U** 170B **How claim for payment made if no insurer**
- U** 170C **How claim for payment made if insurer not wound up**
- U** 170D **How claim for payment made if insurer wound up**
- U** 170E **Claim for payment if employer to pay and liability not covered by compulsory insurance policy etc**

- U 170F** Claim for payment if final judgment etc and liability not covered by compulsory insurance policy
- U 170G** Claim for payment if agreement to discharge liability at common law and liability not covered by compulsory insurance policy
- U 170H** Claim for payment if final judgment etc and liability covered by compulsory insurance policy
- U 170I** Claim for payment if entitlement to claim compensation and liability covered by compulsory insurance policy
- U 170J** Liquidator to forward claims to DI fund manager
- U 170K** Power of Supreme Court to set aside agreements
- U 170L** Treatment of set aside agreement
- U 170M** Time-barred rights after agreement set aside
- U 170N** Proceeding after agreement set aside
- U 170O** DI fund manager not to consent to judgment etc unless defendant agrees

- U Division 8.2.7** **Payment of claims**
- U 171** **Nominal insurer may act**

The nominal insurer may treat a claim for compensation as having been made against the nominal insurer under section 165 (Claims for payment by nominal insurer) if the nominal insurer—

- (a) receives a copy of the claim under section 170; or

(b) is otherwise satisfied that it is reasonably likely that there is no compulsory insurance policy in force that applies to the claim.

U 171A Reopening of agreements and awards

U 171B Deciding or re-deciding claim

U 171C Approval of terms of settlement by court

U 171D DI fund paying claims for payment if liability not completely covered by a compulsory insurance policy and settlement approved

U 171E DI fund paying claims for payment against approved insurers settlement approved

U 171F Liquidators to account to DI fund manager

U 171G Intervention by DI fund manager

U 171H DI fund manager may act

U 171I Effect of payment of claims

U Division 8.2.8 Miscellaneous

U 172 Effects of payment by nominal insurer

- (1) If the nominal insurer pays an amount under this Act in relation to a liability of an employer—
 - (a) the payment operates, to the extent of the payment, to discharge the liability of the employer; and
 - (b) an amount equal to 3 times the amount of the payment is a debt payable by the employer to the nominal insurer, and may be sued for and recovered in a court of competent jurisdiction; and

- (c) the nominal insurer has the right of subrogation in relation to any right that the employer has against anyone in relation to the occurrence that caused the liability of the employer.
- (2) Subsection (1) (b) does not apply in relation to a non-business employer.

U 173 Funds for payments by nominal insurer

- (1) An amount payable to a person by the nominal insurer may be sued for and recovered by that person by action in a court of competent jurisdiction, but the nominal insurer is not liable to satisfy a judgment in such an action except out of money mentioned in subsection (2).
- (2) The nominal insurer must pay amounts payable under this Act out of money provided in accordance with this section by approved insurers and self-insurers and any other money received under this Act.
- (3) For subsection (2), amounts payable under this Act include the following:
 - (a) the amount of any costs and expenses incurred;
 - (b) administrative costs of the nominal insurer.
- (4) Liability to provide an amount referred to in subsection (2) must be apportioned by the nominal insurer among those who were approved insurers or self-insurers at the time of the occurrence that gave rise to the right to compensation in relation to which the amount is payable.
- (5) In making an apportionment under subsection (4), the nominal insurer must have regard as far as practicable to—
 - (a) the premium income received by each approved insurer in relation to compulsory insurance policies in the financial year before the occurrence; and

- (b) the premium that would have been payable by each self-insurer if the self-insurer had obtained a compulsory insurance policy for that financial year (or the part of that financial year for which the self-insurer was a self-insurer).
- (6) When the nominal insurer makes an apportionment under this section, the nominal insurer must notify, in writing, each approved insurer and self-insurer concerned of particulars of the apportionment and require the insurer or self-insurer to pay to the nominal insurer the apportioned amount, within the time specified in the notice.
- (7) An amount specified in a notice to a person under subsection (6) and unpaid at the end of the time specified in the notice is a debt due and owing to the nominal insurer by the approved insurer or self-insurer and may be sued for and recovered by the nominal insurer in a court of competent jurisdiction.
- (8) If an amount has been provided by approved insurers and self-insurers under this section in relation to a payment by the nominal insurer, the nominal insurer must apply any amounts received in relation to the payment from the defaulting employer in reimbursing proportionately the approved insurers and self-insurers.

U 174 Information and assistance by employer to nominal insurer

- (1) For the exercise of his or her functions under this Act, the nominal insurer may, by written notice, require an employer—
 - (a) to give the information and assistance that the nominal insurer considers necessary; and
 - (b) to give the documents in the employer's possession that the nominal insurer considers necessary; and

- (c) to execute the documents that are necessary for the employer to execute to enable the nominal insurer to exercise the nominal insurer's functions; and
 - (d) to allow the nominal insurer at all reasonable times to inspect the plant, works, machinery and appliances used in the employer's business.
- (2) An employer must comply with a requirement of the nominal insurer under subsection (1).
- Maximum penalty: 50 penalty units.
- (3) An offence against this section is a strict liability offence.

U 175 Proceedings to be in the name of 'The Nominal Insurer'

For this Act—

- (a) any proceeding by or against the nominal insurer may be taken in the name of 'The Nominal Insurer'; and
- (b) the death or resignation of, or the revocation of the appointment of, the person holding office as the nominal insurer at the time any proceeding were begun and the appointment of another person in his or her place does not abate the proceeding and the proceeding may be continued and concluded as if the person had not died or resigned or as if the appointment had not been revoked.

176 Premiums—maximum rates

- (1) An insurer must not charge, or accept, a premium for a compulsory insurance policy that is greater than the premium worked out in accordance with the maximum rate of premium prescribed by regulation.
- Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

177 Premiums—remuneration for professional sporting activity

An employer is not liable to pay any part of a premium for a compulsory insurance policy calculated by reference to the remuneration payable to an employee for engaging in professional sporting activity.

178 Workers' rights to information

- (1) If a territory worker who is or has been employed by an employer asks the employer for the name and address of the person who was the employer's approved insurer on a stated date, the employer must—
- (a) if the employer was not a self-insurer on that date—tell the worker the name and address of the approved insurer, or each approved insurer, who issued a compulsory insurance policy to the employer that was current on that date; or
 - (b) if the employer was a self-insurer on that date—tell the worker that fact.

Maximum penalty: 20 penalty units.

- (2) An employer must keep displayed, in accordance with subsection (3), a notice containing a summary of the requirements of this Act for making compensation claims, in the form approved by the Minister under section 222 (Approved forms) for the notice, and stating—
- (a) that claim forms for compensation are available from the employer on request and free of charge; and
 - (b) if the employer is a party to a compulsory insurance policy—the approved insurer's name and address; and

- (c) if the employer is a self-insurer—that the employer is exempt from the requirement to obtain insurance under this Act.

Maximum penalty: 10 penalty units.

- (3) The employer must display the notice in a conspicuous place so that it can be conveniently read by each territory worker employed by the employer.
- (4) An employer must ensure that claim forms approved by the Minister under section 222 (Approved forms) are available during business hours to each territory worker who is or has been employed by the worker on request and free of charge.

Maximum penalty: 10 penalty units.

- (5) An offence against this section is a strict liability offence.

179 Regulations to allow Minister to authorise people

A regulation may—

- (a) allow the Minister to authorise people with accounting or auditing skills to examine records of wage estimates, evidence supporting wage estimates and records of wages paid; and
- (b) prescribe the circumstances in which the people authorised may enter premises to examine the records.

Chapter 9 Common law damages

Part 9.1 Interpretation and application— ch 9

180 Definitions—ch 9

In this chapter:

damages includes an amount paid under a compromise or settlement of a claim for damages, whether or not a legal proceeding had been started, but does not include an amount paid for costs incurred in relation to a proceeding in a court.

injury, in relation to a worker, includes damage to the worker's contact lenses, crutches, prosthesis, spectacles or other artificial aid.

181 References to person who recovers damage etc

- (1) If damages are recovered by a person on someone else's behalf, a reference in this chapter to a person who recovers damages is a reference to the person on whose behalf damages are recovered.
- (2) If compensation is paid or payable to a person for the benefit of someone else, a reference in this part to a person to whom compensation is paid or payable is a reference to the person for whose benefit the compensation is paid or payable.

U 182 Payments by nominal insurer

- (1) If the nominal insurer pays compensation in relation to an injury to a worker, this chapter applies as if a reference to the worker's employer were a reference to the nominal insurer.

- (2) If the nominal insurer and an employer both pay compensation in relation to an injury suffered by a worker, the rights of the nominal insurer under this chapter in relation to that payment have priority over the rights of the employer.

Part 9.2 Choice of law

182A Definitions—pt 9.2

- (1) In this part:

damages claim—see section 182C.

employer, in relation to a Territory or State, includes an employer within the meaning of the workers compensation law of the Territory or State.

substantive law—see section 182B.

worker, in relation to a Territory or State, includes a worker within the meaning of the workers compensation law of the Territory or State.

- (2) For this part, a *work-related injury* is an injury to a worker for which compensation is payable (whether or not it has been paid) under the workers compensation law of a Territory or State.
- (3) Also, a *work-related injury* includes an injury to a worker for which compensation under a workers compensation law of a Territory or State—
- (a) would have been payable apart from a provision of the law that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker stated in the provision; or
 - (b) would have been payable if a claim for the compensation had been properly made, and (if applicable) an election to claim compensation (instead of damages) had been properly made.

182B Meaning of *substantive law*

- (1) For this part, *substantive law* includes each of the following, whether or not it would otherwise be regarded as procedural in nature:
- (a) a law that establishes, modifies or extinguishes a cause of action or a defence to a cause of action;
 - (b) a law prescribing the time within which an action must be brought (including a law providing for the extension or shortening of that time);
 - (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not begun within a stated time;
 - (d) a law that limits the kinds of injury, loss or damage for which damages or workers compensation may be recovered;
 - (e) a law that prevents the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered;
 - (f) a law expressed as a presumption, or rule of evidence, that affects substantive rights;
 - (g) a provision of this chapter, and any other provision of this Act for the interpretation of this chapter;
 - (h) a provision of the law of another Territory or a State about damages for work-related injuries that is prescribed for this section by regulation.
- Note* *State* includes the Northern Territory (see Legislation Act, dict, pt 1).
- (2) However, *substantive law* does not include a law prescribing rules for choice of law.

182C Meaning of *damages claim*

- (1) For this part, *damages claim* means a claim for damages in relation to a work-related injury to a worker caused, or claimed to have been caused by—
 - (a) the negligence or other tort of the employer or a person for whose acts the employer is vicariously liable; or
 - (b) a breach of contract by the employer.
- (2) Also, *damages claim* includes a claim for damages in relation to an injury caused, or claimed to have been caused, by negligence or another tort even if the damages are claimed in an action for breach of contract or other action.

182D Applicable substantive law for damages claims

The substantive law of the Territory or State of connection governs—

- (a) whether or not a damages claim can be made in relation to a work-related injury to a worker; and
- (b) if a damages claim can be made—the determination of the damages claim.

182E Claims to which pt 9.2 applies

This part applies only to a damages claim against 1 or more of the following people:

- (a) the employer;
- (b) a person who is vicariously liable for the acts of the employer;
- (c) a person for whose acts the employer is vicariously liable.

Part 9.3 Compensation and common law damages

182F Lump sum claims—notice by lawyers to clients about repayment requirements

- (1) This section applies if a person proposes to engage a lawyer to act for the person in a claim for damages in relation to an injury for which a claim for compensation has been made, or may be made, under this Act or under the statutory workers compensation scheme of a place outside the ACT.
- (2) Before accepting the engagement, the lawyer must give the person information explaining the requirements of the following sections for the repayment of compensation together with the employer's legal costs as between party and party:
 - section 36F (No ACT compensation if external compensation received)
 - section 183 (Remedies against employer and stranger)
 - section 184 (No compensation if damages received)
 - section 185 (Dependants recovering damages and not claiming compensation).

Maximum penalty: 50 penalty units.

Note If a form is approved under s 222 for information to be given by a lawyer under this provision, the form must be used.

- (3) Before accepting the engagement, the lawyer must tell the person the likely costs and consequences in relation to the payment of costs if the person pursues the claim for damages.

Maximum penalty: 50 penalty units.

- (4) An offence against this section is a strict liability offence.

183 Remedies against employer and stranger

- (1) If an injury in relation to which compensation is payable under this Act is caused under circumstances that appear to create a legal liability in a person other than the employer to pay damages in relation to the injury—
 - (a) the worker may take a proceeding against the person to recover damages and may also make a claim against the employer under this Act; and
 - (b) if the worker receives both amounts under this Act and damages from the other person—the worker must repay to the employer so much of the amounts as does not exceed the amount of the damages received from the person; and
 - (c) on notice to the other person, the employer has a first charge on money payable by the person to the worker to the extent of any amounts that the employer has paid to the worker under this Act; and
 - (d) if the worker has received amounts under this Act, but no damages or less than the full amount of the damages to which the worker is entitled—the person liable to pay the damages must indemnify the employer against so much of the amounts paid to the worker as does not exceed the damages for which that person is liable; and
 - (e) payment of money by the other person to the employer under paragraph (c) or (d) is, to the extent of the amount paid, a satisfaction of the liability of that person to the worker.
- (2) If an amount of compensation is paid in relation to a lump sum claim, this section applies as if a reference to *amounts* paid under this Act by an employer to a worker included a reference to any legal costs as between party and party that the employer is liable to pay in relation to the claim.

U 184 No compensation if damages received

- (1) Compensation under this Act (*ACT compensation*) is not payable in relation to a worker's injury to the extent that, independently of this Act, a judgment or agreement for damages (*independent damages*) has been obtained in relation to the same injury.
- (2) If a person receives ACT compensation from an employer in relation to a worker's injury and later receives independent damages in relation to the same injury, the employer is entitled to recover from the person the recoverable amount.
- (3) For subsection (2), the lesser of the following amounts is the recoverable amount:
 - (a) the amount of ACT compensation;
 - (b) the amount of the independent damages.
- (4) If an amount of ACT compensation is paid in relation to a lump sum claim, subsection (3) (a) applies as if the reference to the *amount of ACT compensation* paid by the employer included a reference to any legal costs as between party and party that the employer is liable to pay in relation to the claim.
- (5) An employer cannot recover an amount under this section in relation to an injury if the employer has recovered an amount under section 36F (No ACT compensation if external compensation received) in relation to the same injury.

185 Dependants recovering damages and not claiming compensation

- (1) This section applies if—
 - (a) an employer pays compensation to a dependant of a deceased worker in relation to an injury that resulted in the death of a worker; and

- (b) damages in relation to the injury have been recovered from the employer or any other person by another dependant of the deceased worker (a *non-claiming dependant*); and
 - (c) no claim for compensation in relation to the injury has been made by or on behalf of the non-claiming dependant.
- (2) If there is only 1 non-claiming dependant, he or she is liable to pay to the employer—
- (a) if the amount of the damages recovered by the non-claiming dependant is less than the total amount of compensation paid to the dependants of the worker in relation to the worker's injury—the amount of the damages; or
 - (b) in any other case—the total amount of compensation paid to the dependants of the worker in relation to the worker's injury.
- (3) If there is more than 1 non-claiming dependant, each non-claiming dependant is liable to pay to the employer—
- (a) an amount calculated in accordance with the formula—

$$C \times \frac{D}{TD}$$

where:

C means the total amount of compensation paid to the dependants of the worker in relation to the worker's injury.

D means the amount of damages recovered by the non-claiming dependant in relation to the injury to the worker.

TD means the total of the amounts of damages recovered by all the non-claiming dependants; or

- (b) if the amount of the damages recovered by the non-claiming dependant is less than the amount calculated in accordance with the formula in paragraph (a)—the amount of the damages.

- (4) For subsections (2) and (3), the amount of the compensation paid by the employer in relation to the worker's injury does not include—
- (a) any amount paid to a dependant of the worker who is not entitled to recover damages in relation to the worker's injury; or
 - (b) any amount paid under this Act, because of the worker's death, for the benefit of a child who was a dependant of the worker.
- (5) If an amount of compensation was paid (or is payable) to the worker in relation to a lump sum claim, subsections (2) and (3) apply as if a reference to *the total amount of compensation* paid by the employer included a reference to any legal costs as between party and party that the employer is liable to pay in relation to the claim.

186 Discharge of liability out of payments into court

- (1) If a worker or a dependant of a deceased worker is liable under section 183 (Remedies both against the employer and a stranger) or section 185 (Dependants recovering damages and not claiming compensation) to pay an amount to the worker's employer and the Magistrates Court or any person appointed by the Magistrates Court for the purpose holds on behalf of the worker or the dependant—
- (a) an amount of compensation payable for the benefit of, or of damages awarded to, the worker or the dependant; or
 - (b) investments acquired out of such an amount;
- the court or the person must—
- (c) deduct from that amount; or
 - (d) realise any or all of the investments and deduct from the proceeds of the realisation;
- an amount not exceeding the amount that the worker or dependant is so liable to pay the employer, and must pay the amount deducted to the employer.

- (2) The payment of an amount to an employer under subsection (1) is a discharge of the liability—
- (a) of the worker or dependant to the employer; and
 - (b) of the Magistrates Court or other person to the worker or dependant;
- to the extent of the amount paid.

Chapter 10 Inspection

187 Definitions—ch 10

In this chapter:

connected—a thing is connected with an offence if—

- (a) the offence has been committed in relation to it; or
- (b) it will provide evidence of the commission of the offence; or
- (c) it was used, or it is intended to be used, to commit the offence.

occupier, of premises, means a person believed by an inspector, on reasonable grounds, to be the occupier of, or in charge of, the premises.

offence includes an offence that there are reasonable grounds for believing has been, or will be, committed.

premises includes—

- (a) a structure, building, aircraft, vehicle or vessel; and
- (b) a place (whether enclosed or built on or not); and
- (c) a part of premises (including premises mentioned in paragraph (a) or (b)).

188 Inspectors

- (1) The chief executive may appoint, in writing, 1 or more inspectors for this Act or a provision of this Act.

Note 1 **Chief executive** means the chief executive of the administrative unit responsible for this section (see Legislation Act, s 163 (2) (a)).

Note 2 For the making of appointments (including acting appointments), see Legislation Act, div 19.3.

Note 3 In particular, a person may be appointed for a particular provision of a law (see Legislation Act, s 7 (3)) and an appointment may be made by naming a person or nominating the occupant of a position (see s 207).

- (2) A person must not be appointed under subsection (1) unless—
- (a) the person is an Australian citizen or a permanent resident of Australia; and
 - (b) the chief executive has certified in writing that, after appropriate inquiry, the chief executive is satisfied that the person is a suitable person to be appointed, having regard in particular to—
 - (i) whether the person has any criminal convictions; and
 - (ii) the person's employment record; and
 - (c) the person has satisfactorily completed adequate training to exercise the powers of an inspector proposed to be given to the person.

U 189 Identity cards

- (1) The chief executive must issue an inspector with an identity card that states the person is an inspector for this Act, or stated provisions of this Act, and shows—
- (a) a recent photograph of the person; and
 - (b) the name of the person; and
 - (c) the date of issue of the card; and
 - (d) a date of expiry for the card; and
 - (e) anything else prescribed by regulation.

- (2) A person who ceases to be an inspector must return his or her identity card to the chief executive as soon as practicable, but no later than 7 days after ceasing to be an inspector.

Maximum penalty: 1 penalty unit.

- (3) An offence against this section is a strict liability offence.

U 190 Provision of information to inspectors

- (1) An inspector may, by written notice given to an employer, require the employer to give to the inspector, within 28 days after the day the notice is given to the employer—
- (a) a certificate from a recognised auditor stating the total wages paid, in the period stated in the notice, by the employer to territory workers employed by the employer; and
 - (b) a statutory declaration setting out—
 - (i) the number of territory workers in each determined category employed by the employer in the period; and
 - (ii) the total wages paid to territory workers in each determined category in the reporting period.
- (2) An inspector may, by written notice given to an employer, require the employer, in the time and way stated in the notice—
- (a) to produce for inspection any compulsory insurance policy to which the employer is a party; and
 - (b) to provide the related information (if any) that the inspector requires in the notice.

- (3) An employer must comply with a notice given to the employer under subsection (1) or (2).

Maximum penalty: 50 penalty units.

Note Under s 213 (False information etc), it is an offence for an auditor to supply false, misleading or incomplete information in an auditor's certificate.

- (4) An offence against this section is a strict liability offence.

- (5) In this section:

employer includes a person whom an inspector believes, on reasonable grounds, is or has been an employer.

191 Entry and inspection of premises

- (1) If an inspector believes on reasonable grounds that commercial premises are used by an employer in relation to the employment of a worker by the employer, the inspector may, while the premises are being so used, enter those premises for the purpose of ensuring that this Act is complied with.
- (2) An inspector may enter any premises, and may exercise the powers of an inspector under subsection (3), if the entry is made, and the powers are exercised—
- (a) under a warrant issued under section 193;
 - (b) with the consent of the occupier of the land or premises; or
 - (c) under an order of a court.
- (3) An inspector who enters premises in accordance with this section may—
- (a) require any person on the premises to produce for inspection any documents or things relating to the employment of workers by the employer using the premises; and
 - (b) make copies of, or take extracts from, any such documents; and

- (c) require anyone on the premises to produce information relating to such documents or things, or information relating generally to the employment of workers by the employer using the premises; and
- (d) require—
 - (i) the occupier; or
 - (ii) an employer who is on the premises; or
 - (iii) a person whom the inspector believes on reasonable grounds is an employer and who is on the premises;
to supply—
 - (iv) his or her address; and
 - (v) the name under which the business carried on on the premises operates.
- (4) An inspector who enters premises in accordance with this section is not authorised to remain on the premises if, at the request of the occupier of the premises, the inspector does not show the occupier the identity card issued to the inspector under section 189.
- (5) A person must not contravene a requirement under this section.
Maximum penalty: 50 penalty units.
- (6) An offence against this section is a strict liability offence.
- (7) In this section:
commercial premises means premises where a business, trade, profession or calling is carried on, excluding any part of the premises that is used for residential purposes.

192 Consent to entry and inspection

- (1) Before seeking the consent of the occupier of premises or a place for section 191 (2) (b), an inspector must inform the occupier that the occupier may refuse to give that consent.
- (2) If an inspector obtains the occupier's consent for section 191 (2) (b), the inspector must ask the occupier to sign a written acknowledgment—
 - (a) that the occupier has given the inspector consent, for those purposes, to enter the occupier's premises and to exercise the powers of an inspector under section 191 (3); and
 - (b) that the occupier has been informed that the occupier may refuse to give that consent; and
 - (c) of the day and time when the consent was given.
- (3) If it is material, in any proceeding, for a court to be satisfied that an occupier has consented for section 191 (2) (b), and an acknowledgment in accordance with subsection (2) signed by the occupier is not produced in evidence, it is to be presumed that the occupier did not consent unless the contrary is established.

193 Search warrants

- (1) If an information on oath is laid before a magistrate alleging that there are reasonable grounds for suspecting that there may be, in or on any premises any thing of a particular kind connected with a particular offence against this Act, and the information sets out those grounds, the magistrate may issue a search warrant authorising an inspector named in the warrant, with the assistance and by the force that is necessary and reasonable—
 - (a) to enter the premises; and
 - (b) to search the premises for things of that kind; and

- (c) to exercise the powers of an inspector under section 191 (3) in relation to the premises or place.
- (2) A magistrate must not issue a warrant unless—
- (a) the informant or another person has given the magistrate, either orally or by affidavit, any further information that the magistrate requires about the grounds on which the issue of the warrant is being sought; and
 - (b) the magistrate is satisfied that there are reasonable grounds for issuing the warrant.
- (3) A warrant must—
- (a) state the purpose for which it is issued; and
 - (b) specify the nature of the offence (if any) in relation to which the entry and search are authorised; and
 - (c) specify particular hours when the entry is authorised, or state that the entry is authorised at any time of the day or night; and
 - (d) include a description of the kinds of things in relation to which the powers under section 191 (3) may be exercised; and
 - (e) specify the date, not later than 1 month after the date of issue of the warrant, when the warrant ceases to have effect.

U 194 Obstruction or hindrance of inspector

A person must not obstruct or hinder an inspector in the exercise of the inspector's functions under this Act.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

Chapter 11 Procedure for payment of compensation

195 Conciliation and arbitration

All matters and questions (other than prosecutions for offences) arising under this Act must, if no other provision is made in this Act, in the absence of agreement, be settled by conciliation or arbitration in accordance with the regulations.

U 196 Admissibility of statements by injured workers

- (1) A written statement in relation to a worker's injury that is given by the worker to the worker's employer or to the employer's insurer is not to be admitted in evidence on behalf of the employer or insurer in any proceeding under this Act unless the employer or insurer has, not later than 14 days before the proceeding is heard, given to the worker, or his or her lawyer or agent, a copy of the statement.
- (2) In this section:
insurer means—
 - (a) an approved insurer; or
 - (b) the nominal insurer.

197 Appeals

- (1) If a committee or the Magistrates Court gives a decision or makes an order or award in relation to any matter that may be or is required to be settled by arbitration under this Act, any party to the arbitration may appeal from the decision, order or award to the Supreme Court.

- (2) The *Magistrates Court Act 1930*, part 4.5 (Civil appeals) applies in relation to an appeal under subsection (1) as if—
- (a) it were an appeal from a judgment or order of a kind mentioned in that Act, section 274 (2) (Cases in which appeal may be brought); and
 - (b) for an appeal from a decision, order or award of a committee—the decision, order or award were a decision, order or award of the Magistrates Court; and
 - (c) any necessary changes, and any changes prescribed by regulation, were made.

U Chapter 12 On-the-spot fines**U 198 Definitions—ch 12**

In this chapter:

commissioner means the Occupational Health and Safety Commissioner.

determined fee means the fee determined under section 221 (Determination of fees) for this chapter.

final infringement notice means a notice under section 200.

infringement notice means a notice under section 199.

on-the-spot fine, in relation to a prescribed offence, means the fine prescribed by regulation for the offence.

relevant amount means—

- (a) in relation to an infringement notice—the on-the-spot fine for the alleged prescribed offence to which the notice relates; or
- (b) in relation to a final infringement notice—the on-the-spot fine for the alleged prescribed offence to which the notice relates, in addition to the determined fee.

relevant period for payment means—

- (a) in relation to an infringement notice—28 days after the date of the notice; or
- (b) in relation to a final infringement notice—14 days after the date of the notice; or
- (c) any extended period the commissioner allows under section 203 (4) (b).

U 199 **Infringement notices**

- (1) An inspector may serve an infringement notice on a person if the inspector believes on reasonable grounds that the person has committed a prescribed offence.
- (2) An infringement notice must—
 - (a) identify the inspector who issues the notice; and
 - (b) state the full name, or surname and initials, and address of the person on whom it is served; and
 - (c) specify the nature of the alleged offence and the amount of the on-the-spot fine; and
 - (d) specify the day, time and place of the alleged commission of the offence; and
 - (e) include a statement to the effect that if the person on whom the notice is served does not wish the offence to be prosecuted in court, the person may pay the on-the-spot fine to the commissioner within—
 - (i) 28 days after the date of the notice; or
 - (ii) if the determined fee is paid in addition—14 days after the date of a final infringement notice; or
 - (iii) any extended period allowed under this chapter; and
 - (f) specify the place where, and how, the fine may be paid; and
 - (g) include a statement of the possible consequences if the offence were to be prosecuted in court, including the Maximum penalty applicable; and
 - (h) include a statement about the procedures for obtaining an extension of time under this chapter; and

- (i) include a statement about the procedures for the withdrawal of the notice under this chapter; and
- (j) be dated and signed by the inspector who serves the notice.

Note If a form is approved under s 222 (Approved forms) for an infringement notice, the form must be used.

U 200 Final infringement notices

- (1) An inspector may serve a final infringement notice on a person if, after the service on the person of an infringement notice—
 - (a) within 28 days after the date of the infringement notice—
 - (i) the person fails to pay the on-the-spot fine; and
 - (ii) the person fails to apply for the withdrawal of the infringement notice under section 202; or
 - (b) if the person applies for the withdrawal of the infringement notice under section 202—
 - (i) the application is rejected; and
 - (ii) the person fails to pay the on-the-spot fine within the extended period allowed under section 203 (4) (b).
- (2) A final infringement notice must—
 - (a) identify the inspector who serves the notice; and
 - (b) state the full name, or surname and initials, and address of the person on whom it is served; and
 - (c) specify the nature of the alleged offence and the amount of the on-the-spot fine; and
 - (d) specify the day, time and place of the alleged commission of the offence; and

- (e) specify the date of the relevant infringement notice, and include a statement to the effect that the person has not paid the on-the-spot fine for the alleged offence to which the notice relates; and
- (f) include a statement to the effect that if the person on whom the notice is served does not wish the offence to be prosecuted in court, the person may pay the on-the-spot fine, in addition to the determined fee, to the commissioner within—
 - (i) 14 days after the date of the notice; or
 - (ii) any extended period allowed under this chapter; and
- (g) specify the place where, and how, the fine and fee may be paid; and
- (h) include a statement of the possible consequences if the offence were to be prosecuted in court, including the maximum penalty applicable; and
- (j) include a statement about the procedures for obtaining an extension of time under this chapter; and
- (k) include a statement about the procedures for the withdrawal of the notice under this chapter; and
- (m) be dated and signed by the inspector who serves the notice.

U 201 Discharge of liability for prescribed offences

- (1) This section applies if an infringement notice or a final infringement notice has been served on a person in relation to a prescribed offence and, before the end of the relevant period for payment—
 - (a) the relevant amount is paid in accordance with the notice; or
 - (b) the relevant notice is withdrawn.
- (2) If this section applies—

- (a) any liability of the person in relation to the offence is discharged; and
 - (b) no further proceeding may be taken in relation to the offence; and
 - (c) the person must not be regarded as having been convicted of the offence.
- (3) For this section, if a cheque is tendered in payment of the relevant amount, the payment is not taken to have been made unless and until the cheque is honoured on presentation.

U 202 **Application for withdrawal of infringement notice**

- (1) A person on whom an infringement notice or a final infringement notice is served in relation to the alleged commission of a prescribed offence may, by written notice to the commissioner within the relevant period, apply for the withdrawal of the notice.
- (2) A person shall not make more than 1 application under this section in relation to any particular alleged commission of a prescribed offence.

U 203 **Withdrawal of infringement notices**

- (1) On receipt of an application under section 202, the commissioner may withdraw the relevant infringement notice or final infringement notice if satisfied on reasonable grounds that any of the following grounds is made out:
 - (a) the applicant did not commit the offence;
 - (b) the applicant had a reasonable excuse for committing the act constituting the offence;
 - (c) it would be unreasonable in the circumstances to prosecute the applicant for the commission of the offence.

- (2) If the commissioner withdraws an infringement notice or final infringement notice, the commissioner must give the person on whom the notice was served written notice of the decision.
- (3) A notice under subsection (2) must—
 - (a) specify the infringement notice or final infringement notice that is withdrawn; and
 - (b) include a statement of the effect of section 201 (1) and (2).
- (4) If the commissioner does not withdraw an infringement notice or final infringement notice under subsection (1), the commissioner must—
 - (a) give the person written notice of the decision; and
 - (b) extend the period within which the relevant amount is to be paid, by a period of—
 - (i) for a decision not to withdraw an infringement notice—28 days beginning on the date of the notice under paragraph (a); or
 - (ii) for a decision not to withdraw a final infringement notice—14 days beginning on the date of the notice under paragraph (a).
- (5) If the commissioner does not give notice to a person under subsection (2) or (4) within 60 days after the receipt of an application for withdrawal of an infringement notice or a final infringement notice under section 202, the notice is taken to have been withdrawn.
- (6) If an infringement notice or final infringement notice served on a person is withdrawn under this section, the commissioner must refund any amount paid under section 199 or section 200 in payment of the relevant on-the-spot fine.

U 204 Prosecution of prescribed offences

- (1) The commissioner must not institute a prosecution for an offence in relation to which an infringement notice has been served on a person—
 - (a) until the end of the period of 14 days after the date of service of a final infringement notice in relation to that offence; or
 - (b) if the person applies for the withdrawal of the final infringement notice under section 202—unless and until the application is rejected and the extended period granted under section 203 (4) (b) has ended.
- (2) Nothing in section 199 or 200 is to be construed as—
 - (a) affecting the liability of a person to be prosecuted for a prescribed offence in relation to which an infringement notice has not been served;
 - (b) subject to subsection (1), prejudicing or affecting the institution or prosecution of a proceeding for a prescribed offence; or
 - (c) limiting the amount of the fine that may be imposed by the Magistrates Court in relation to a prescribed offence.
- (3) If a prosecution is instituted for an offence in relation to which an infringement notice has been served, the commissioner must refund any amount paid under section 199 or 200 in payment of the on-the-spot fine.

U 205 Non-antecedent value of infringement notice offences

- (1) In sentencing an accused for any offence, a court must not have regard to—
 - (a) the alleged commission of any infringement notice offence;

- (b) the circumstances surrounding any infringement notice offence; or
 - (c) the investigation of any infringement notice offence, or any related action under this chapter.
- (2) In subsection (1):
- infringement notice offence*, in relation to an accused, means an alleged offence—
- (a) in relation to which an infringement notice has been served on the accused; and
 - (b) that has not been found proved by a court.

U 206 **Service of notices under ch 12**

- (1) For this chapter, a notice may be served on the person to whom it is directed—
- (a) by delivering the notice personally; or
 - (b) by sending the notice by post addressed to the person at the person's last-known place of residence or business; or
 - (c) by leaving the notice at the person's last-known place of residence or business with some other person who is apparently—
 - (i) over 16 years old; and
 - (ii) an occupant of the place, or employed at that place.
- (2) Nothing in this section prevents the service on a person of more than 1 infringement notice or final infringement notice in relation to the same alleged offence, but it is sufficient for the application of section 201 to the person for the person to pay the relevant amount in accordance with any of the notices so served.

- (3) If an infringement notice is served on a child and the person serving the notice believes, on reasonable grounds, that the child is residing with a person who stands in place of a parent to that child, the person serving the notice shall serve a copy of the notice on that person.

U 207 **Evidence for ch 12**

- (1) For this chapter, a document that purports to have been signed by the commissioner is taken to have been so signed unless the contrary is proved.
- (2) In a prosecution for a prescribed offence, a certificate signed by the commissioner stating any of the following matters is evidence of the matters so stated:
- (a) that a notice was served under this chapter on a specified person on a specified date;
 - (b) if an infringement notice or a final infringement notice has been served on a person under this chapter, that—
 - (i) further time for payment was, or was not, allowed under section 203 (4) (b);
 - (ii) the notice was not withdrawn; or
 - (iii) the relevant amount was not paid in accordance with the notice within the relevant period for payment.

U Chapter 13 Review of decisions by administrative appeals tribunal

U 208 Notice of reviewable decisions to be given to affected people

(1) In this chapter:

reviewable decision means a decision made by the Minister that is prescribed by regulation.

(2) If the Minister makes a reviewable decision, the Minister must give written notice of the decision to each person affected by the decision.

(3) The notice must be in accordance with the requirements of the code of practice in force under of the *Administrative Appeals Tribunal Act 1989*, section 25B (1).

U 209 Review by administrative appeals tribunal of reviewable decisions

A person may apply in writing to the administrative appeals tribunal for review of a reviewable decision within 28 days after receiving notice of the decision.

U Chapter 14 Miscellaneous**U 210 Confidentiality**

- (1) If a person acquires information or a document under this Act, the person must not—
 - (a) make a record of the information or document; or
 - (b) give anyone else the information or document, or divulge or communicate the information or anything contained in the document in any other way.

Maximum penalty: 50 penalty units.

- (2) Subsection (1) does not apply to conduct if the conduct is carried out for this Act or as required by law.
- (3) An offence against this section is a strict liability offence.

U 211 Medical referees

- (1) The Minister may appoint, in writing, 1 or more doctors to be medical referees for this Act.
- (2) The Minister may appoint a doctor to be a medical referee only if satisfied that the doctor has the experience and expertise to adequately perform the duties of a medical referee.
- (3) A medical referee must not act as medical referee in relation to an injury if the medical referee's services have been used as a doctor in relation to the injury by, or on behalf of, the employer, worker or insurer.
- (4) A person appointed to be a medical referee is to be paid the fees decided by the Minister for the exercise of the person's functions as a medical referee.

- (5) An appointment under subsection (1) is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

U 212 Time for beginning prosecutions

- (1) A prosecution for an offence against any of the following sections may be begun within 5 years after the day, or the last day, the offence is committed:
- section 147 (Compulsory insurance—employers)
 - section 156 (Information for insurers on application for issue or renewal of policies)
 - section 157 (Information for insurers after renewal of policies)
 - section 158 (Information for insurers after end or cancellation of policies)
 - section 159 (Information for new insurers after change of insurers)
 - section 160 (Six-monthly information for insurers)
 - section 214 (Criminal liability of executive officers).
- (2) Subsection (1) only applies to an offence against section 214 if the offence relates to the contravention by a corporation of another section mentioned in subsection (1).
- (3) A prosecution for an offence against any other provision of this Act may be begun within 1 year after the commission of the offence.

U 213 False information etc

- (1) This section applies to each of the following statements (a *relevant statement*):
- (a) a statement in a notice under this Act;
 - (b) a statement by a recognised auditor in a certificate given for this Act;
 - (c) a statement in a claim for compensation;

- (d) a statement in a medical certificate or other document that relates to a claim for compensation;
 - (e) a statement giving information to someone about a claim for compensation (whether the information is given by the person who made the claim or not).
- (2) This section applies to a relevant statement even if it has been verified by a statutory declaration.
- (3) However, this section does not apply to the following statements:
- (a) a statement made in a document filed, or information given, in a court proceeding;
 - (b) a statement made in a document or information if the person who made the statement did not know that the document or information was to be given in relation to a claim for compensation.
- (4) A person commits an offence if—
- (a) the person makes a relevant statement; and
 - (b) the person does so knowing that the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is misleading.

Maximum penalty: 100 penalty units, imprisonment for 1 year or both.

- (5) A person commits an offence if—
- (a) the person makes a relevant statement; and
 - (b) the person is reckless about whether the statement—
 - (i) is false or misleading; or

(ii) omits anything without which the statement is misleading.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (6) Subsections (4) (b) (i) and (5) (b) (i) do not apply if the statement is not false or misleading in a material particular.
- (7) Subsections (4) (b) (ii) and (5) (b) (ii) do not apply if the omission does not make the statement misleading in a material particular.

U 214 **Criminal liability of executive officers**

- (1) An executive officer of a corporation commits an offence if—
 - (a) the corporation contravenes a defined provision of this Act; and
 - Note* Subsection (6) lists the *defined provisions* to which this paragraph applies.
 - (b) the contravention constitutes an offence against this Act (a *relevant offence*); and
 - (c) the officer was reckless about whether the contravention would happen; and
 - (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
 - (e) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.

- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
- (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
 - (i) that the corporation arranges regular professional assessments of the corporation's compliance with the defined provision;
 - (ii) that the corporation implements any appropriate recommendation arising from such an assessment;
 - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the defined provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (4) Subsection (3) does not limit the matters to which the court may have regard.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.
- (6) In this section:
- defined provision***, of this Act, means any of the following provisions of this Act:
- (a) section 92 (3) (Register of injuries);
 - (b) section 126 (Action by employer in relation to claims);
 - (c) section 142 (1) (Vocational rehabilitation);
 - (d) section 147 (Compulsory insurance—employers);

- (e) section 153 (Compulsory insurance—insurers);
- (f) section 156 (Information for insurers on application for issue or renewal of policies);
- (g) section 157 (Information for insurers after renewal of policies);
- (h) section 158 (2) (Information for insurers after end or cancellation of policies);
- (i) section 159 (Information for new insurers after change of insurers);
- (j) section 160 (1) (Six-monthly information for insurers);
- (k) section 161 (Statutory declarations—false information etc);
- (l) section 162 (3) (Employment after 2nd offence);
- (m) section 163 (6) (Provision of information to Minister);
- (n) section 176 (1) (Premiums—maximum rates);
- (o) section 190 (3) (Provision of information to inspectors);
- (p) section 191 (5) (Entry and inspection of premises);
- (q) section 194 (1) (Obstruction or hindrance of inspector);
- (r) section 210 (Confidentiality);
- (s) section 213 (False information etc).

U 216 Minister must take advice

- (1) The Minister must ask for, and take into consideration, the advice of the OH&S Council in relation to the development of regulations for this Act.
- (2) To remove any doubt—

- (a) it is a function of the OH&S Council to advise the Minister on matters relating to workers compensation; and

Note This function is given to the OH&S Council under the *Occupational Health and Safety Act 1989*, s 12 (1) (a) (ii).

- (b) the OH&S Council may set up an advisory committee, made up of people with suitable expertise, to help it in the exercise of this function.

Note The power to set up an advisory committee if necessary to assist in the exercise of a function is given to the OH&S Council under the *Occupational Health and Safety Act 1989*, s 25 (1).

Examples of suitable expertise

Legal or medical expertise.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) In this section:

OH&S Council—see the *Occupational Health and Safety Act 1989*, dictionary, definition of *council*.

U 217 Rules of court

The Executive may make rules in relation to procedure for this Act.

Note Rules must be notified, and presented to the Legislative Assembly, under the Legislation Act.

U 218 Directions about procedure

- (1) If the procedure for taking a step in a proceeding is not prescribed under this Act, the Chief Magistrate may, in writing, give directions about the procedure to be followed for the step.
- (2) A direction is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (3) If the procedure for taking a step in a proceeding is not prescribed under this Act (including under a direction mentioned under subsection (1)), the Magistrates Court may give directions about the procedure to be followed in relation to the step.

U 219 References to Workers' Compensation Act

In any Act, statutory instrument or document, a reference to the *Workers' Compensation Act 1951* is a reference to this Act.

U 220 Funds for administration of Act

- (1) The costs of administration of this Act must be paid out of money provided in accordance with this section by approved insurers and self-insurers and any other money received under this Act.
- (2) Liability for the costs of administration of this Act in relation to a financial year shall be apportioned by the Minister among those who were approved insurers or self-insurers during that year.
- (3) In making an apportionment under subsection (2) for a financial year, the Minister must have regard as far as practicable to—
- (a) the premium income received by each approved insurer in relation to compulsory insurance policies in the financial year; and
 - (b) the premium that would have been payable by each self-insurer if the self-insurer had obtained a compulsory insurance policy for the financial year (or the part of the financial year for which the self-insurer was a self-insurer).
- (4) If the Minister makes an apportionment under this section, the Minister must notify, in writing, each approved insurer and self-insurer concerned of particulars of the apportionment and require the insurer or self-insurer to pay to the Territory the apportioned amount, within the time specified in the notice.

- (5) An amount specified in a notice to a person under subsection (4) and unpaid at the end of the time specified in the notice is a debt due and owing to the Territory by the approved insurer or self-insurer and may be sued for and recovered by the Territory in a court of competent jurisdiction.
- (6) Money received under this section must be paid into a departmental bank account maintained by the chief executive in accordance with the *Financial Management Act 1996*, section 34 (2).

221 Determination of fees

- (1) The Minister may, in writing, determine fees for this Act.

Note The Legislation Act contains provisions about the making of determinations and regulations relating to fees (see pt 6.3).

- (2) A determination is a disallowable instrument.

Note A disallowable instrument must be notified, and presented to the Legislative Assembly, under the Legislation Act.

222 Approved forms

- (1) The Minister may, in writing, approve forms for this Act.
- (2) If the Minister approves a form for a particular purpose, the approved form must be used for that purpose.

Note For other provisions about forms, see the Legislation Act, s 255.

- (3) An approved form is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

U 223 Regulation-making power

- (1) The Executive may make regulations for this Act.

Note A regulation must be notified, and presented to the Legislative Assembly, under the Legislation Act.

- (2) A regulation may make provision in relation to the following:

- (a) medical assessments of injured workers;
- (b) the use of medical specialists in relation to compensable injuries;
- (c) the functions of medical referees appointed under this Act;
- (d) what compulsory insurance policies must, and must not, include;
- (e) how the performance of brokers and agents in relation to workers compensation in the ACT may be monitored;
- (f) the maximum fees and expenses that may be required for matters dealt with under this Act in relation to the following:
 - (i) medical examinations or medical treatment;
 - (ii) legal services;
 - (iii) retraining services;
 - (iv) investigative services;
- (g) fees and expenses that may not, or may not for a period, be claimed from a worker for a service provided in relation to a compensable injury;
- (h) the action that may be taken in relation to an approved insurer, self-insurer or approved rehabilitation provider in circumstances prescribed by regulation, including an order that an insurer or provider pay to the Territory an amount of not more than \$1 000;
- (i) the accreditation of people to act as injury managers;
- (j) arbitration of matters and questions arising under this Act, including provision for the exclusion or modification of the *Commercial Arbitration Act 1986* in its application to such an arbitration;

- (k) protocols that may be approved by the Minister for this Act and how they may be approved;
- (l) the approval of brokers for this Act, including—
 - (i) the factors to be taken into account in deciding whether to approve brokers; and
 - (ii) the conditions that may be imposed on approvals; and
 - (iii) how approvals may be renewed, suspended and revoked.
- (3) A regulation may also prescribe offences for contraventions of a regulation and prescribe maximum penalties of not more than 10 penalty units for offences against a regulation.

Chapter 15 Temporary provisions for acts of terrorism

U 224 Application of ch 15 to insurers

- (1) This chapter applies to an insurer if—
 - (a) the insurer has acted honestly and taken all proper and business-like steps to obtain reinsurance for the insurer's liability to pay compensation for injuries or deaths (or both) caused by acts of terrorism; and
 - (b) an act of terrorism happens before 1 April 2009; and
 - (c) the insurer accepts liability for claims for compensation for injuries or deaths (or both) caused by the act of terrorism; and
 - (d) the insurer has acted honestly and taken all proper and business-like steps to demand the maximum amounts the insurer may demand under the reinsurance contracts held by the insurer that apply in relation to the claims; and
 - (e) the total amount paid by the insurer for the claims, after the deduction of the maximum amounts the insurer may receive under the reinsurance contracts, is more than the temporary fund threshold amount that applies to the insurer.
- (2) For this chapter, the *temporary fund threshold amount* that applies to an insurer is the amount worked out using the following formula:
$$\text{insurer's market share} \times \text{relevant premium pool amount.}$$
- (3) In this section:
insurer's market share means the proportion (expressed as a percentage) of the administrative costs of the Act apportioned by the Minister to the insurer under section 220 (2) (Funds for

administration of Act) in relation to the financial year before the act of terror happens.

premium pool means the total amount of—

- (a) the premium income received by each approved insurer in relation to compulsory insurance policies in the financial year before the act of terror happens; and
- (b) the premium that would have been payable by each self-insurer if the self-insurer had obtained a compulsory insurance policy for the financial year (or the part of the financial year for which the self-insurer was a self-insurer).

relevant premium pool amount means 5% of the premium pool.

225 Definitions—ch 15

In this chapter:

act of terrorism—see section 226.

insurer means an approved insurer or a self-insurer.

temporary fund—see section 227 (1).

temporary fund threshold amount—see section 224 (2).

226 Meaning of *act of terrorism* for ch 15

- (1) In this chapter:

act of terrorism means the use or threat of action if—

- (a) the action falls within subsection (2); and
- (b) the use or threat is designed to influence a government or to intimidate the public or a section of the public; and
- (c) the use or threat is made for the purpose of advancing a political, religious or ideological cause.

- (2) Action falls within this subsection if it—
- (a) involves serious violence against a person; or
 - (b) involves serious damage to property; or
 - (c) endangers a person's life, other than that of the person committing the action; or
 - (d) creates a serious risk to the health or safety of the public or a section of the public; or
 - (e) is designed seriously to interfere with or seriously to disrupt an electronic system.
- (3) The use or threat of action falling within subsection (2) that involves the use of firearms or explosives is terrorism whether or not subsection (1) (b) is satisfied.
- (4) In this section:

action includes action outside the ACT or Australia.

government includes the government of another Australian jurisdiction or a foreign country.

person means a person anywhere, whether in or outside the ACT or Australia.

property means property located anywhere, whether in or outside the ACT or Australia.

public includes the public of a place outside the ACT or Australia.

U 227 Terrorism cover temporary reinsurance fund

- (1) If this chapter applies to an insurer, the terrorism cover temporary reinsurance fund (the *temporary fund*) is established.
- (2) The temporary fund consists of—
- (a) the amounts of levies paid by insurers under this chapter; and

- (b) amounts borrowed by the Territory for the fund; and
 - (c) any contributions made by the Territory to the fund; and
 - (d) any amounts paid to the fund under the *Workers Compensation Supplementation Fund Act 1980*; and
 - (e) income from the investment of amounts in the fund; and
 - (f) any other amounts that may lawfully be paid into the fund.
- (3) The temporary fund is to be managed by the Territory and money paid into it is taken to be trust money under the *Financial Management Act 1996*.

228 Entitlement of insurers to reimbursement from temporary fund

- (1) If this chapter applies to an insurer because of an act of terrorism, the insurer is entitled to be reimbursed from the temporary fund the insurer's uninsured liability for the act of terrorism less the temporary fund threshold amount that applies to the insurer in relation to the act of terrorism.
- (2) However, the insurer is entitled to be fully reimbursed from the temporary fund the insurer's uninsured liability for another act of terrorism that happens—
- (a) before 1 April 2009; and
 - (b) not later than 1 year after the day the act of terrorism mentioned in subsection (1) happens.
- (3) Subsection (2) applies only if the insurer has acted honestly and taken all proper and business-like steps to—
- (a) obtain reinsurance for the insurer's liability to pay compensation for injuries or deaths (or both) caused by the later act of terrorism; and

(b) demand the maximum amounts the insurer may demand under the reinsurance contracts held by the insurer that apply in relation to the later act of terrorism.

(4) In this section:

insurer's uninsured liability, for an act of terrorism, means the total of the amounts paid by the insurer for claims for compensation for injuries or deaths (or both) caused by the act of terrorism less all amounts that are recoverable (or to the extent that they are recoverable) by the insurer under the reinsurance contracts held by the insurer that apply in relation to the claims.

229 Payments out of temporary fund

The temporary fund may be used to—

- (a) pay any amount required under this chapter to be paid from the fund; and
- (b) repay any amount borrowed for, or contributed by the Territory to, the fund; and
- (c) pay interest on an amount mentioned in paragraph (b).

230 Regulations about temporary fund

- (1) A regulation may make provision in relation to the temporary fund, including—
 - (a) the imposition of levies on insurers for the fund; and
 - (b) payments from the fund.
- (2) In particular, a regulation may make provision in relation to—
 - (a) levies for the fund, including their rate; and
 - (b) payments to the fund, including contributions by the Territory to the fund; and

- (c) payments from the fund, including the information insurers claiming an entitlement to reimbursement from the fund must give to the fund's manager.
- (3) However, a regulation must not impose a levy for a period that is—
- (a) for an approved insurer—more than 10% of the premiums received by the insurer in relation to compulsory insurance policies issued by the insurer that begin during the period; and
 - (b) for a self-insurer—more than 10% of the estimated premium that would have been payable by the self-insurer for a compulsory insurance policy obtained by the self-insurer that began at the beginning of the period.

231 Exclusion of Corporations legislation

- (1) The temporary fund is declared to be an excluded matter for the purposes of the Corporations Act, section 5F in relation to the whole of the Corporations legislation to which the Corporations Act, part 1.1A (Interaction between Corporations Legislation and State and Territory laws) applies.

Note The Corporations Act, s 5F provides that if a law of a State or Territory declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation to which the Corporations Act, pt 1.1A applies (see s 5D), the provisions that are the subject of the declaration will not apply in relation to that matter in the State or Territory that made the declaration.

- (2) Without limiting subsection (1) and to remove any doubt, an act or omission by an entity in relation to the fund is declared to be an excluded matter for the purposes of the Corporations Act, section 5F in relation to the whole of the Corporations legislation to which the Corporations Act, part 1.1A applies.

232 Expiry—ch 15

This chapter expires on 1 October 2009.

Chapter 18 Modification of Act

250 Application—ch 18

This chapter modifies this Act.

251 Dictionary, definition of chiropractor

after

Health Professionals Act 2004

insert

or the *Chiropractors and Osteopaths Act 1983* (unless repealed)

252 Dictionary, definition of osteopath

after

Health Professionals Act 2004

insert

or the *Chiropractors and Osteopaths Act 1983* (unless repealed)

253 Dictionary, definition of physiotherapist

after

Health Professionals Act 2004

insert

or the *Physiotherapists Act 1977* (unless repealed)

254 Expiry—ch 18

This chapter expires on the day the *Health Professionals Act 2004*, section 136 (Repeals) expires.

**U Chapter 19 Transitional—Workers
Compensation Amendment
Act 2006**

Schedule 1 Compensation for permanent injuries

(see s 48 and s 51)

column 1 item	column 2 nature of injury	column 3 % of single loss amount payable
	Speech loss	
1	loss of power of speech	60
	Sensory loss	
2	loss of sense of taste or smell	17
3	loss of senses of taste and smell	34
	Hearing loss	
4	loss of hearing of both ears	65
5	loss of hearing of 1 ear	20
	Loss of vision	
6	loss of sight of both eyes	100
7	loss of sight of an only eye	100
8	loss of sight of 1 eye, together with serious diminution of the sight of the other eye	75
9	loss of sight of 1 eye	40
10	loss of binocular vision (if not otherwise compensable under this schedule)	40
11	loss of eyeball (in addition to compensation for loss of sight of the eye)	22
	Arm injuries	
12	loss of right arm at or above elbow	80
13	loss of right arm below elbow	75
14	loss of left arm at or above elbow	75
15	loss of left arm below elbow	70
	Hand injuries	
16	loss of right hand	70
17	loss of left hand	65
18	loss of thumb of right hand	30
19	loss of thumb of left hand	26

column 1 item	column 2 nature of injury	column 3 % of single loss amount payable
20	loss of a joint of thumb	16
21	loss of forefinger of right hand	21
22	loss of forefinger of left hand	18
23	loss of 2 joints of forefinger of right hand	16
24	loss of 2 joints of forefinger of left hand	12
25	loss of first joint of forefinger of right hand	10
26	loss of first joint of forefinger of left hand	9
27	loss of middle finger of either hand	12
28	loss of 2 joints of middle finger of either hand	10
29	loss of first joint of middle finger of either hand	6
30	loss of little or ring finger of either hand	11
31	loss of 2 joints of little or ring finger of either hand	9
32	loss of first joint of little or ring finger of either hand	6
	Leg injuries	
33	loss of either leg at or above knee	75
34	loss of either leg below knee	70
	Foot injuries	
35	loss of a foot	65
36	loss of great toe of either foot	22
37	loss of a joint of great toe of either foot	10
38	loss of any other toe	6
39	loss of any joint of any other toe	2
	Bowel injury	
40	permanent loss of bowel function	65
	Loss of sexual organs etc	
41	loss of sexual organs	47
42	loss of both breasts	47
43	loss of 1 breast	30
44	permanent and total loss of capacity to engage in sexual intercourse	75
	Brain damage	
45	permanent brain damage if not, or not completely an injury otherwise compensable under this schedule	100
	Permanent impairment of back, neck, pelvis	
46	permanent impairment of back	60
47	permanent impairment of neck	40

Schedule 1 Compensation for permanent injuries

column 1 item	column 2 nature of injury	column 3 % of single loss amount payable
48	permanent impairment of pelvis	15
	Disfigurement	
49	severe facial disfigurement if not, or not completely, an injury otherwise compensable under this schedule	80
50	severe bodily disfigurement if not, or not completely, an injury otherwise compensable under this schedule	50
	Disease	
51	HIV infection (Human Immunodeficiency Virus infection)	100
52	AIDS (Acquired Immune Deficiency Syndrome)	100

Schedule 2 Adjacent areas

(see s 36B (8), def *Territory or State*)

2.1 Definitions—sch 2

In this schedule:

continental shelf—see the Seas and Submerged Lands Act, section 3 (1).

Petroleum (Submerged Lands) Act means the *Petroleum (Submerged Lands) Act 1967* (Cwlth).

Seas and Submerged Lands Act means the *Seas and Submerged Lands Act 1973* (Cwlth).

territorial sea—see the Seas and Submerged Lands Act, section 3 (1).

2.2 Adjacent areas for States and the Northern Territory

- (1) The *adjacent area* for New South Wales, Victoria, South Australia or Tasmania is—
 - (a) the part of the area described in the Petroleum (Submerged Lands) Act, schedule 2 for the State that is within the outer limits of the continental shelf; and
 - (b) the space above and below that area.
- (2) The *adjacent area* for Queensland is—
 - (a) the part of the area described in the Petroleum (Submerged Lands) Act, schedule 2 for Queensland that is within the outer limits of the continental shelf; and
 - (b) the Coral Sea area within the meaning of the Petroleum (Submerged Lands) Act, section 5A (7), other than the territorial area within the Coral Sea area; and

- (c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 9 February 1983 under the Seas and Submerged Lands Act, section 7; and
 - (d) the space above and below the areas described in paragraphs (a), (b) and (c).
- (3) The *adjacent area* for Western Australia is the part of the area described in the Petroleum (Submerged Lands) Act, schedule 2 for Western Australia that—
- (a) is within the outer limits of the continental shelf, including the space above and below the area; and
 - (b) is not within Area A of the Zone of Cooperation.
- (4) The *adjacent area* for the Northern Territory is—
- (a) the part of the area described in the Petroleum (Submerged Lands) Act, schedule 2 for the Northern Territory that—
 - (i) is within the outer limits of the continental shelf; and
 - (ii) is not within Area A of the Zone of Cooperation; and
 - (b) the adjacent area for the Territory of Ashmore and Cartier Islands (within the meaning of the Petroleum Submerged Lands Act, section 5A (3)) other than the territorial sea within that area; and
 - (c) the space above and below the areas described in paragraph (a) and (b).
- (5) However, the *adjacent area* for a State or the Northern Territory does not include any area inside the limits of a State or Territory.

U **Schedule 3** **DI fund advisory committee**

U Dictionary

(see s 2)

approved insurer means an insurer approved by the Minister under section 145 (Approved insurers).

approved rehabilitation provider—see section 139 (1).

average pre-incapacity weekly earnings means earnings worked out under—

- (a) for a worker who is not a contractor—section 21 (Working out average pre-incapacity weekly earnings for non-contractor); or
- (b) for a worker who is a contractor—section 22 (Working out average pre-incapacity weekly earnings for contractor).

average pre-incapacity weekly hours means hours worked out under—

- (a) for a worker who is not a contractor—section 23 (Working out average pre-incapacity weekly hours for non-contractor); or
- (b) for a worker who is a contractor—section 24 (Working out average pre-incapacity weekly hours for contractor).

AWE means—

- (a) the average weekly earnings, States and Territories, seasonally adjusted for the ACT (all males total earnings) contained in *Average Weekly Earnings, Australia* issued by the Australian Statistician; or
- (b) if the Australian Statistician issues a publication (however described) containing average weekly earnings in substitution for, or instead of, the average weekly earnings mentioned in paragraph (a)—the substituted average weekly earnings.

awe indexed—see section 20.

boilermakers deafness includes deafness of a similar origin.

child, of a worker, means a child of the worker who is—

- (a) not in a domestic partnership; and
- (b) under 16 years old or a full-time student.

Note For the meaning of **domestic partnership**, see the Legislation Act, s 169.

chiropractor means a person entitled to practise as a chiropractor under the *Health Professionals Act 2004* or a corresponding law of a State or another Territory.

committee, for a matter arising under the Act between an employer and the employer's workers, means a committee that represents the employer and workers that has the power to decide the matter.

compensable injury means an injury in relation to which compensation is payable under this Act.

compensation means an amount payable under this Act in relation to an injury to, or the death of, a person.

compensation for costs, for a worker, means compensation to which the worker is entitled under part 4.5 (Compensation for medical treatment, damage and other costs).

compulsory insurance policy—see section 144.

cpi indexed—see section 20.

damages, for chapter 9 (Common law damages)—see section 180.

damages claim, for part 9.2 (Choice of law)—see section 182C.

deductible proportion, for part 4.4 (Compensation for permanent injuries)—see section 61 (1) (Deduction for previous injury or pre-existing condition).

dependant, of a dead worker, means an individual—

- (a) who was totally or partly dependent on the worker's earnings on the day of the worker's death or who would, apart from the

worker's incapacity because of the injury, have been so dependent; and

- (b) who was—
 - (i) a member of the worker's family; or
 - (ii) a person to whom the worker acted in place of a parent or who acted in place of a parent for the worker.

determined categories, of territory workers, means the categories of workers determined by the Minister under section 8 (3) (Who is a worker?).

disease includes any physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development, and also includes the aggravation, acceleration or recurrence of a pre-existing disease.

domestic partner, of a worker who has died, means the person who was the worker's domestic partner when the worker died.

Note This definition qualifies the meaning of ***domestic partner*** given by the Legislation Act, s 169.

employer—

- (a) see section 5 (Meaning of *employer*); and
- (b) for part 4.2A (Employment connection with ACT or State)—see section 36A (2) (Meaning of *Territory or State of connection* etc); and
- (c) for chapter 5 (Injury management process)—see section 87 (Meaning of *employer* and *insurer* if more than 1); and
- (d) for part 9.2 (Choice of law)—see section 182A (1).

employment, for part 4.2A (Employment connection with ACT or State)—see section 36A (2) (Meaning of *Territory or State of connection* etc).

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

full-time student means an individual who—

- (a) is at least 16 years old but younger than 25; and
- (b) is receiving full-time education at a secondary or tertiary educational institution.

given to the insurer, for pt 6.2 (Time for accepting or rejecting claims)—see section 127 (2).

incapacity date, for a worker, means—

- (a) the date of the beginning of the period of the worker's incapacity for work; or
- (b) if the worker has been incapacitated for work because of the same injury for a number of separate periods—the date of beginning of the last period of incapacity; or
- (c) if the worker is dead and the death was not immediately preceded by a period of incapacity for work in relation to which the worker received compensation under this Act—the date of the worker's death.

initial loss, for part 4.4 (Compensation for permanent injuries)—see section 61 (1) (Deduction for previous injury or pre-existing condition).

injured worker—see section 86.

injury—see section 4.

Note For an extended meaning of ***injury*** for ch 9 (Common law damages), see s 180.

injury management, for chapter 5 (Injury management process)—see section 86.

injury management program, for chapter 5 (Injury management process)—see section 86.

injury notice—

- (a) for chapter 5 (Injury management process)—see section 93 (2) (Early notification of workplace injury); and
- (b) for chapter 6 (Claims)—see section 120 (Time for taking proceedings generally).

inspector means an inspector appointed under section 188 (1).

insurer—

- (a) for chapter 5 (Injury management process), means—
 - (i) an approved insurer or a self-insurer; or
 - (ii) if there is more than 1 employer of the worker—see section 87; and
- (b) for part 6.2 (Time for accepting or rejecting claims)—see section 127 (1).

loss, for chapter 4 (Entitlement to compensation)—see section 48.

lump sum claim means a claim for compensation under this Act in relation to a loss to which part 4.4 (Compensation for permanent injuries) or 4.6 (Compensation for death) applies.

maximum loss amount, for part 4.4 (Compensation for permanent injuries)—see section 50.

medical referee means a medical referee appointed under section 211.

medical treatment means—

- (a) an examination, test or analysis, conducted by or under the direction, or at the request, of a doctor to diagnose an injury; or
- (b) medical or surgical treatment by a doctor; or

- (c) dental treatment by a dentist or a dental prosthetist; or
- (d) chiropractic treatment by a chiropractor; or
- (e) treatment by a psychologist; or
- (f) therapeutic treatment by a masseur, osteopath, physiotherapist, remedial kinesiologist or speech therapist; or
- (g) therapeutic treatment given on referral by a doctor or dentist; or
- (h) the taking of x-rays; or
- (i) the provision, repair or replacement of contact lenses, crutches, prostheses, spectacles or other artificial aids; or
- (j) a consultation, examination, therapeutic treatment or other service reasonably rendered in relation to a treatment mentioned in paragraph (c), (d), (f), (g), (h) or (i); or
- (k) treatment and maintenance as a patient at a hospital; or
- (l) the provision of nursing attendance, medicines, medical and surgical supplies and curative apparatus in a hospital or otherwise.

member of the family, in relation to a worker or an employer, means the grandchild, child, stepchild, adopted child, sister, brother, half-sister, half-brother, domestic partner, parent, step-parent, mother-in-law, father-in-law or grandparent of the worker or employer.

Note For the meaning of ***domestic partner***, see the Legislation Act, s 169. If a worker has died, the definition of ***domestic partner*** elsewhere in the dictionary provides that the term refers to the person who was the worker's domestic partner when the worker died.

nominal insurer means the nominal insurer appointed under section 164 (1).

nominated treating doctor, for chapter 5 (Injury management process)—see section 86.

non-business employer means an employer who employs the worker other than for work that is for (or incidental to) the employer's trade or business.

osteopath means a person entitled to practise osteopathy under the *Health Professionals Act 2004* or a corresponding law of a State or another Territory.

partially incapacitated—see section 7 (Meaning of *partially incapacitated*).

payment includes a non-monetary payment.

pension age, for a worker—see the *Social Security Act 1991* (Cwlth), section 23 (5A), (5B), (5C) and (5D).

personal injury plan, for chapter 5 (Injury management process)—see section 86.

physiotherapist means a person entitled to practise as a physiotherapist under the *Health Professionals Act 2004* or a corresponding law of a State or another Territory.

professional sporting activity means—

- (a) participation for fee or reward as a contestant in a sporting or athletic activity; or
- (b) training or preparation for such participation; or
- (c) travelling to or from a place for the purpose of such participation, training or preparation.

protocol—

- (a) for chapter 7 (Vocational rehabilitation)—see section 141 (Meaning of *protocol* in ch 7 etc); or
- (b) means a protocol, approved in accordance with the regulations, prescribing how certain activities under this Act should be performed.

recognised auditor, in relation to a certificate provided for an employer for this Act, means any of the following who are not the employer or an employee or executive officer of the employer:

- (a) an auditor registered under the Corporations Act;
- (b) a member of the Institute of Chartered Accountants in Australia;
- (c) a member of CPA Australia;
- (d) a member of the National Institute of Accountants.

registered agreement means an agreement registered under section 79 (Registration of agreements for compensation).

registered auditor means an auditor registered under the Corporations Act.

return-to-work program means a program mentioned in section 109 (Workplace rehabilitation).

reviewable decision, for chapter 13 (Review of decisions by administrative appeals tribunal)—see section 208 (Notice of reviewable decisions to be given to affected people).

rules means the rules made under this Act.

self-insurer means an employer who is exempted under section 152 (Self-insurers).

single loss amount, for part 4.4 (Compensation for permanent injuries)—see section 49.

speech therapist means—

- (a) a person entitled to practise as a speech therapist under a law of the Territory, a State or another Territory; or
- (b) a person who is a member of the Australian Association for Speech and Hearing.

statutory floor means the federal minimum wage decided from time to time by the Australian Industrial Relations Commission under the *Workplace Relations Act 1996* (Cwlth).

substantial means real, actual or material.

substantive law, for part 9.2 (Choice of law)—see section 182B.

Territory or State of connection—see section 36A.

territory worker means a worker for whom the ACT is the Territory or State of connection.

therapeutic treatment includes an examination, test or analysis done for the purpose of diagnosing, or treatment given for the purpose of alleviating, an injury.

totally incapacitated—see section 6.

vocational rehabilitation, for chapter 7 (Vocational rehabilitation)—see section 140.

weekly compensation, for a worker, means compensation to which the worker is entitled under section 39 (Totally incapacitated workers), section 40 (Partially incapacitated workers up to 26 weeks after incapacity date) or section 41 (Partially incapacitated workers after 26 weeks after incapacity date).

worker—

- (a) see chapter 3 (Meaning of worker); and
- (b) for part 4.2A (Employment connection with ACT or State)—see section 36A (2) (Meaning of *Territory or State of connection* etc); and
- (c) for part 9.2 (Choice of law)—see section 182A (1).

workers compensation law means a law of a place that sets up a statutory scheme for the compensation of injuries arising out of or in the course of employment.

workplace injury—see section 86 (Definitions for ch 5).

work-related injury, for part 9.2 (Choice of law)—see section 182A (2) and (3).

Endnotes

1 About the endnotes

Endnotes

1 About the endnotes

Amending and modifying laws are annotated in the legislation history and the amendment history. Current modifications are not included in the republished law but are set out in the endnotes.

Not all editorial amendments made under the *Legislation Act 2001*, part 11.3 are annotated in the amendment history. Full details of any amendments can be obtained from the Parliamentary Counsel's Office.

Uncommenced amending laws and expiries are listed in the legislation history and the amendment history. These details are underlined. Uncommenced provisions and amendments are not included in the republished law but are set out in the last endnote.

If all the provisions of the law have been renumbered, a table of renumbered provisions gives details of previous and current numbering.

The endnotes also include a table of earlier republications.

2 Abbreviation key

am = amended	ord = ordinance
amdt = amendment	orig = original
ch = chapter	par = paragraph/subparagraph
def = definition	pres = present
dict = dictionary	prev = previous
disallowed = disallowed by the Legislative Assembly	(prev...) = previously
div = division	pt = part
exp = expires/expired	r = rule/subrule
Gaz = gazette	renum = renumbered
hdg = heading	reloc = relocated
IA = Interpretation Act 1967	R[X] = Republication No
ins = inserted/added	RI = reissue
LA = Legislation Act 2001	s = section/subsection
LR = legislation register	sch = schedule
LRA = Legislation (Republication) Act 1996	sdiv = subdivision
mod = modified/modification	sub = substituted
o = order	SL = Subordinate Law
om = omitted/repealed	<u>underlining</u> = whole or part not commenced or to be expired

3 Legislation history

This Act was originally a Commonwealth ordinance—the *Workmen's Compensation Ordinance 1951* No 2 (Cwlth).

The *Australian Capital Territory (Self-Government) Act 1988* (Cwlth), s 34 (4) converted most former Commonwealth ordinances in force in the ACT into ACT enactments. This allowed the ACT Legislative Assembly to amend and repeal the laws. This Act was converted into an ACT enactment on 11 May 1989 (self-government day).

As with most ordinances in force in the ACT, the name was changed from *Ordinance* to *Act* by the *Self-Government (Citation of Laws) Act 1989* No 21, s 5 on 11 May 1989 (self-government day).

The Act was renamed as the *Workers' Compensation Act 1951* by the *Workers' Compensation (Amendment) Act 1991* No 105, and later renamed as the *Workers Compensation Act 1951* under the *Legislation Act 2001* (see also Act 2001 No 81 s 5).

Before 11 May 1989, ordinances commenced on their notification day unless otherwise stated (see *Seat of Government (Administration) Act 1910* (Cwlth), s 12).

Legislation before becoming Territory enactment

Workmen's Compensation Act 1951 No 2

notified 21 March 1951
commenced 21 March 1951

as amended by

Workmen's Compensation Ordinance 1952 No 4

notified 1 May 1952
commenced 1 May 1952 (Cwlth Gaz 1952 p 2417)

Workmen's Compensation Ordinance 1954 No 12

notified 3 June 1954
commenced 3 June 1954

Workmen's Compensation Ordinance 1956 No 1

notified 1 March 1956
commenced 1 March 1956

Endnotes

3 Legislation history

Workmen's Compensation Ordinance 1959 No 12

notified 17 September 1959
commenced 17 September 1959

Workmen's Compensation Ordinance (No 2) 1959 No 20

notified 23 December 1959
commenced 23 December 1959

Ordinances Revision Ordinance 1959 No 21

notified 23 December 1959
commenced 31 December 1959

Workmen's Compensation Ordinance 1961 No 8

notified 1 June 1961
commenced 1 June 1961

Workmen's Compensation Ordinance 1962 No 10

notified 6 September 1962
commenced 6 September 1962

Workmen's Compensation Ordinance 1965 No 6

notified 13 May 1965
commenced 10 June 1965

Workmen's Compensation Ordinance 1967 No 44

notified 14 December 1967
commenced 14 December 1967

Workmen's Compensation Ordinance 1968 No 19

notified 3 October 1968
commenced 3 October 1968

Workmen's Compensation Ordinance 1969 No 7

notified 29 May 1969
commenced 29 May 1969

Workmen's Compensation Ordinance (No 2) 1969 No 13

notified 24 July 1969
commenced 24 July 1969

Workmen's Compensation Ordinance (No 3) 1969 No 18

notified 28 August 1969
commenced 1 September 1969

Workmen's Compensation Ordinance 1970 No 26

notified 9 July 1970

commenced 20 July 1970 (Cwlth Gaz 1970 p 4716)

Workmen's Compensation Ordinance 1971 No 15 (as amended by 1978 No 47)

notified 1 July 1971

commenced 1 July 1971

Workmen's Compensation Ordinance 1972 No 35

notified 2 November 1972

commenced 2 November 1972

Workmen's Compensation Ordinance (No 2) 1972 No 38

notified 23 November 1972

commenced 23 November 1972

Workmen's Compensation Ordinance 1973 No 11

notified 5 April 1973

commenced 5 April 1973

Workmen's Compensation Ordinance 1974 No 34

notified 25 September 1974

commenced 25 September 1974

Workmen's Compensation Ordinance 1975 No 11

notified 1 May 1975

commenced 1 May 1975

Workmen's Compensation (Amendment) Ordinance 1978 No 15 (as amended by 1978 No 47)

notified 8 June 1978

commenced 8 June 1978

Ordinances Revision Ordinance 1978 No 46

notified 28 December 1978

commenced 28 December 1978

Workmen's Compensation (Amendment) Ordinance (No 2) 1978 No 47 (as amended by 1979 No 15)

notified 28 December 1978

commenced 28 December 1978

Endnotes

3 Legislation history

Workmen's Compensation (Amendment) Ordinance 1979 No 15

notified 29 June 1979
commenced 29 June 1979

Workmen's Compensation (Amendment) Ordinance 1980 No 29

notified 11 September 1980
commenced 11 September 1980

Workmen's Compensation (Amendment) Ordinance 1981 No 4

notified 4 March 1981
commenced 4 March 1981

Workmen's Compensation (Amendment) Ordinance 1982 No 103

notified 31 December 1982
commenced 1 July 1982

**Workmen's Compensation (Amendment) Ordinance (No 2) 1982
No 104**

notified 31 December 1982
commenced 1 January 1989

**Workmen's Compensation (Amendment) Ordinance 1983 No 69 (as
amended by 1984 No 5)**

notified 30 December 1983
commenced 30 December 1983 (Cwlth Gaz 1983 No S349)

Court of Petty Sessions (Civil Jurisdiction) Ordinance 1984 No 76

notified 19 December 1984
commenced 19 December 1984

Public Trustee (Miscellaneous Amendments) Ordinance 1985 No 9

notified 8 March 1985
commenced 28 October 1985 (Cwlth Gaz 1985 No G42)

Magistrates Court Ordinance 1985 No 67

notified 19 December 1985
commenced 1 February 1986 (Cwlth Gaz 1986 No G3)

Commercial Arbitration Ordinance 1986 No 84

notified 22 December 1986
commenced 2 March 1987 (Cwlth Gaz 1987 No G6)

Workmen's Compensation (Amendment) Ordinance 1987 No 10

notified 2 April 1987
commenced 2 April 1987

Workmen's Compensation (Amendment) Ordinance (No 2) 1987 No 24

notified 15 June 1987
commenced 15 June 1987

Self-Government (Consequential Amendments) Ordinance 1989 No 38 sch 1

notified 10 May 1989 (Cwlth Gaz 1989 No S160)
s 1, s 2 commenced 10 May 1989 (s 2 (1))
sch 1 commenced 11 May 1989 (s 2 (2) and see Cwlth Gaz 1989 No S164)

Legislation after becoming Territory enactment**Magistrates and Coroner's Courts (Registrar) Act 1991 No 44 s 7**

notified 20 September 1991 (Gaz 1991 No S95)
s 1, s 2 commenced 20 September 1991 (s 2 (1))
s 7 commenced 25 September 1991 (s 2 (2) and Gaz 1991 No S103)

Workers' Compensation (Amendment) Act 1991 No 105

notified 15 January 1992 (Gaz 1992 No S3)
ss 1-3 commenced 15 January 1992 (s 2 (1))
remainder commenced 22 January 1992 (s 2 (2) and Gaz 1992 No S9)

Workers' Compensation (Amendment) Act 1993 No 19

notified 9 March 1993 (Gaz 1993 No S26)
commenced 9 March 1993 (s 2)

Administrative Appeals (Consequential Amendments) Act 1994 No 60 sch 1

notified 11 October 1994 (Gaz 1994 No S197)
s 1, s 2 commenced 11 October 1994 (s 2 (1))
sch 1 commenced 14 November 1994 (s 2 (2) and see Gaz 1994 No S250)

Endnotes

3 Legislation history

Workers' Compensation (Amendment) Act 1994 No 68

notified 1 November 1994 (Gaz 1994 No S229)
s 1, s 2 commenced 1 November 1994 (s 2 (1))
s 5 (in pt) 25 November 1994 (s 2 (2) and Gaz 1994 No S286)
remainder commenced 1 January 1995 (s 2 (2) and Gaz 1995 No S286)

Statutory Offices (Miscellaneous Provisions) Act 1994 No 97 sch pt 1

notified 15 December 1994 (Gaz 1994 No S280)
s 1, s 2 commenced 15 December 1994 (s 2 (1))
sch pt 1 commenced 15 December 1994 (s 2 (2) and Gaz 1994 No S293)

Statute Law Revision Act 1995 No 46 sch

notified 18 December 1995 (Gaz 1995 No S306)
amnds commenced 18 December 1995 (s 2)

Workers' Compensation (Amendment) Act 1995 No 52

notified 20 December 1995 (Gaz 1995 No S313)
commenced 20 December 1995 (s 2)

Workers' Compensation (Amendment) Act 1996 No 13

notified 1 May 1996 (Gaz 1996 No S71)
commenced 1 May 1996 (s 2)

Workers' Compensation (Amendment) Act 1997 No 27

notified 16 July 1997 (Gaz 1997 No S185)
ss 1-3 commenced 16 July 1997 (s 2 (1))
remainder commenced 13 January 1998 (s 2 (2) and Gaz 1998 No S19)

Workers' Compensation (Amendment) Act (No 2) 1997 No 66

notified 9 October 1997 (Gaz 1997 No 300)
ss 1-3 commenced 9 October 1997 (s 2 (1))
remainder commenced 17 December 1997 (s 2 (2) and Gaz 1997 No S414)

Legal Practitioners (Consequential Amendments) Act 1997 No 96 sch 1

notified 1 December 1997 (Gaz 1997 S380)
s 1, s 2 commenced 1 December 1997 (s 2 (1))
sch 1 commenced 1 June 1998 (s 2 (2))

Workers' Compensation (Amendment) Act 1998 No 31

notified 11 September 1998 (Gaz 1998 No S193)
commenced 11 September 1998 (s 2)

Statute Law Revision (Penalties) Act 1998 No 54 sch

notified 27 November 1998 (Gaz 1998 No S207)
s 1, s 2 commenced 27 November 1998 (s 2 (1))
sch commenced 9 December 1998 (s 2 (2) and Gaz 1998 No 49)

Law Reform (Miscellaneous Provisions) Act 1999 No 66 sch 3

notified 10 November 1999 (Gaz 1999 No 45)
commenced 10 November 1999 (s 2)

Occupational Health and Safety (Amendment) Act (No 2) 1999 No 82

notified 23 December 1999 (Gaz 1999 No S65)
ss 1-3 commenced 23 December 1999 (s 2 (1))
remainder commenced 23 June 2000 (s 2 (3))

Long Service Leave (Cleaning, Building and Property Services) Act 1999 No 85 s 70

notified 23 December 1999 (Gaz 1999 No S65)
pts 1 and 2 (ss 1-28) commenced 23 December 1999 (s 2 (1))
s 70 commenced 23 June 2000 (s 2 (3))

Workers' Compensation Amendment Act 2000 No 74

notified 21 December 2000 (Gaz 2000 No S69)
commenced 21 December 2000 (s 2)

Statute Law Amendment Act 2000 No 80 sch 3

notified 21 December 2000 (Gaz 2000 No S69)
amnds commenced 21 December 2000 (s 2 (1))

Legislation (Consequential Amendments) Act 2001 No 44 pt 418

notified 26 July 2001 (Gaz 2001 No 30)
s 1, s 2 commenced 26 July 2001 (IA s 10B)
pt 418 commenced 12 Sept 2001 (s 2 and see Gaz 2001 No S65)

Endnotes

3 Legislation history

Workers Compensation Amendment Act 2001 No 81

notified LR 28 September 2001

s 1, s 2 commenced 28 September 2001 (LA s 75)

new s 8OA as ins by s 11 and sch 2 commenced 28 September 2001 (s 2 (2))

remainder commences 1 July 2002 (s 2 (1))

Legislation Amendment Act 2002 No 11 amdts 2.113-2.115

notified LR 27 May 2002

s 1, s 2 commenced 27 May 2002 (LA s 75)

amdts 2.113-2.115 commenced 1 July 2002 (s 2 (2))

Workers Compensation (Acts of Terrorism) Amendment Act 2002 No 22

notified LR 28 June 2002

s 1, s 2 commenced 28 June 2002 (LA s 75)

remainder commenced 1 July 2002 (s 2)

as modified by

Workers Compensation Regulations 2002 SL2002-20

as amended by

Workers Compensation Amendment Regulations 2002 (No 1) SL2002-29 reg 14, reg 15

notified LR 25 October 2002

reg 1, reg 2 commenced 25 October 2002 (LA s 75 (1))

reg 14, reg 15 commenced 26 October 2002 (reg 2)

as amended by

Statute Law Amendment Act 2002 (No 2) No 49 pt 1.5 and pt 3.30

notified LR 20 December 2002

s 1, s 2 taken to have commenced 7 October 1994 (LA s 75 (2))

pt 1.5 and pt 3.30 commenced 17 January 2003 (s 2 (1))

Criminal Code 2002 No 51 pt 1.29

notified LR 20 December 2002

s 1, s 2 commenced 20 December 2002 (LA s 75 (1))

pt 1.29 commenced 1 January 2003 (s 2 (1))

Workers Compensation Amendment Act 2003 A2003-32

notified LR 30 June 2003
s 1, s 2 commenced 30 June 2003 (LA s 75 (1))
remainder commenced 1 July 2003 (s 2)

Statute Law Amendment Act 2003 A2003-41 sch 3 pt 3.24

notified LR 11 September 2003
s 1, s 2 commenced 11 September 2003 (LA s 75 (1))
sch 3 pt 3.24 commenced 9 October 2003 (s 2 (1))

Workers Compensation Amendment Act 2003 (No 2) A2003-49

notified LR 3 December 2003
s 1, s 2 commenced 3 December 2003 (LA s 75 (1))
sch 1 commenced 3 June 2004 (s 2 and LA s 79)
remainder commenced 5 April 2004 (s 2 and CN2004-7)

**Sexuality Discrimination Legislation Amendment Act 2004 A2004-2
sch 1 pt 1.19**

notified LR 18 February 2004
s 1, s 2 commenced 18 February 2004 (LA s 75 (1))
sch 1 pt 1.19 commenced 22 March 2004 (s 2 and CN2004-4)

Education Act 2004 A2004-17 sch 2 pt 2.7

notified LR 8 April 2004
s 1, s 2 commenced 8 April 2004 (LA s 75 (1))
sch 2 pt 2.7 commenced 1 January 2005 (s 2)

**Health Professionals Legislation Amendment Act 2004 A2004-39
sch 1 pt 1.10**

notified LR 8 July 2004
s 1, s 2 commenced 8 July 2004 (LA s 75 (1))
sch 1 pt 1.10 commenced 7 July 2005 (s 2 and see Health
Professionals Act 2004 A2004-38, s 2 and CN2005-11)

Statute Law Amendment Act 2004 A2004-42 sch 3 pt 3.22

notified LR 11 August 2004
s 1, s 2 commenced 11 August 2004 (LA s 75 (1))
sch 3 pt 3.22 commenced 25 August 2004 (s 2 (1))

Endnotes

3 Legislation history

Court Procedures (Consequential Amendments) Act 2004 A2004-60 sch 1 pt 1.74

notified LR 2 September 2004
s 1, s 2 commenced 2 September 2004 (LA s 75 (1))
sch 1 pt 1.74 commenced 10 January 2005 (s 2 and see Court Procedures Act 2004 A2004-59, s 2 and CN2004-29)

Workers Compensation Amendment Act 2005 A2005-16

notified LR 13 April 2005
s 1, s 2 commenced 13 April 2005 (LA s 75 (1))
commenced 14 April 2005 (s 2)

Statute Law Amendment Act 2005 A2005-20 sch 3 pt 3.73

notified LR 12 May 2005
s 1, s 2 taken to have commenced 8 March 2005 (LA s 75 (2))
sch 3 pt 3.73 commenced 2 June 2005 (s 2 (1))

Workers Compensation Amendment Act 2006 A2006-4

notified LR 22 February 2006
s 1, s 2 commenced 22 February 2006 (LA s 75 (1))
remainder awaiting commencement (s 2)

Note default commencement under s 2 (2): 1 July 2006 (default commencement under LA s 79 does not apply to this Act)

Workers Compensation Amendment Act 2006 (No 2) A2006-8

notified LR 15 March 2006
s 1, s 2 commenced 15 March 2006 (LA s 75 (1))
remainder commences on the commencement of the Workers Compensation Amendment Act 2006 A2006-4 (s 2)

Note default commencement under A2006-4: 1 July 2006

Sentencing Legislation Amendment Act 2006 A2006-23 sch 1 pt 1.39

notified LR 18 May 2006
s 1, s 2 commenced 18 May 2006 (LA s 75 (1))
sch 1 pt 1.39 commenced 2 June 2006 (s 2 (1) and see Crimes (Sentence Administration) Act 2005 A2005-59 s 2, Crimes (Sentencing) Act 2005 A2005-58, s 2 and LA s 79)

4 Amendment history

Title

title am 1983 No 69 s 4; 1991 No 105 s 4

Preliminary

pt 1 hdg ins 1991 No 105 s 5
om 2001 No 81 s 4

Entitlement to compensation

pt 2 hdg ins 1991 No 105 s 7
om 2001 No 81 s 6

Occupational rehabilitation

pt 2A hdg ins 1994 No 68 s 5
om 2001 No 81 s 19

Insurance

pt 3 hdg ins 1991 No 105 s 11
renum as ch 8 hdg 2001 No 81 amdt 1.17

Compensation and common law remedies

pt 4 hdg ins 1991 No 105 s 17
renum as ch 9 hdg 2001 No 81 amdt 1.31

Inspection

pt 5 hdg ins 1991 No 105 s 18
renum as ch 10 hdg 2001 No 81 amdt 1.38

Procedure for payment of compensation

pt 6 hdg ins 1991 No 105 s 18
renum as ch 11 hdg 2001 No 81 amdt 1.42

Weekly compensation payments

pt 6A hdg ins 1994 No 68 s 6
om 2001 No 81 amdt 1.45

On-the-spot fines

pt 6B hdg ins 1997 No 66 s 15
renum as ch 12 hdg 2001 No 81 amdt 1.46

Miscellaneous

pt 7 hdg renum as ch 14 hdg 2001 No 81 amdt 1.50

Transitional

pt 8 hdg ins 2000 No 80 amdt 3.40
om 2001 No 81 s 31

Preliminary

ch 1 hdg ins 2001 No 81 s 4

Endnotes

4 Amendment history

Name of Act

s 1 sub 1991 No 105 s 5; 2001 No 81 s 5

Interpretation generally

ch 2 hdg ins 2001 No 81 s 5

Dictionary

s 1A renum as s 2

Dictionary

s 2 orig s 2 om 2001 No 44 amdt 1.4351
(prev s 1A) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Meaning of *injury*

s 2A renum as s 4

Notes

s 3 orig s 3 om 1978 No 46 sch 2
(prev s 2) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)
s 3 (2), (3) and bracketed section heading notes exp 1 July
2004 (s 3 (3))

Offences against Act—application of Criminal Code etc

s 3A orig s 3A renum as s 6
ins A2003-49 amdt 2.1
(1), (3), note 3 exp 31 December 2005 (s 3A (3))

Meaning of *injury*

s 4 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 4 orig s 4 om 1959 No 21
(prev s 2A) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Who is a *worker*?

s 4A renum as s 8

Who is not a *worker*?

s 4B renum as s 9

Casuals not employed for trade or business

s 4C renum as s 10

Regular contractors and casuals

s 4D renum as s 11

Meaning of *employer*

s 5 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 5 orig s 5 om 1959 No 21 sch 1
(prev s 3) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Subcontracting

s 5AA (prev s 14) renum as s 13

Trainees

s 5A renum as s 14

Outworkers

s 5B renum as s 15

Timber contractors

s 5C renum as s 16

Religious workers

s 5D renum as s 17

Commercial voluntary workers

s 5E renum as s 18

Public interest voluntary workers

s 5F renum as s 19

Meaning of *cpi indexed* and *awe indexed*

s 5G renum as s 20

Working out average pre-incapacity weekly earnings for non-contractor

s 5H renum as s 21

Working out average pre-incapacity weekly earnings for contractor

s 5I renum as s 22

Working out average pre-incapacity weekly hours for non-contractor

s 5J renum as s 23

Working out average pre-incapacity weekly hours for contractor

s 5K renum as s 24

Overtime—hours and wages

s 5L renum as s 25

Gradual onset of incapacity

s 5M renum as s 26

Compensation for death or incapacity through disease

s 5N (prev s 9) renum as s 27

Employment-related diseases

s 5O (prev s 9A) renum as s 28

Compensation for disease

s 5P (prev s 9B) renum as s 29

Endnotes

4 Amendment history

Meaning of *totally incapacitated*

s 6 orig s 6 am 1952 No 4 s 5; 1954 No 12 s 2; 1956 No 1 s 2; 1959 No 12 s 2; 1959 No 21 sch 1; 1962 No 10 s 2; 1965 No 6 s 3; 1967 No 44 sch 1; 1969 No 18 s 3; 1973 No 11 s 2; 1975 No 11 s 2; 1978 No 15 s 3; 1978 No 47 s 3; 1979 No 15 s 3; 1981 No 4 s 3; 1982 No 104 s 3; 1983 No 69 s 5; 1985 No 67 sch pt 1; 1987 No 24 s 3; 1989 No 38 sch 1; 1991 No 105 s 6, sch 2 and sch 3; 1994 No 60 sch 1; 1994 No 68 s 4; 1994 No 97 sch pt 1; 1995 No 46 sch; 1995 No 52 s 5; 1997 No 27 s 4; 1997 No 66 s 4; 2001 No 44 amdts 1.4352-1.4354; 2001 No 81 amdts 1.1-1.4, amdt 2.1, amdt 2.2
defs reloc to dict 2001 No 81 amdt 1.5
om 2001 No 81 amdt 1.6
(prev s 3A) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Religious workers

s 6A ins 1991 No 105 s 7; am 2001 No 44 amdts 1.4355-1.4357
om 2001 No 81 amdt 1.7

Determined categories of workers

s 6B ins 1991 No 105 s 7; am 2001 No 44 amdt 1.4358,
amdt 1.4359
om 2001 No 81 amdt 1.7

General entitlement to compensation for personal injury

s 6C renum as s 30

Amounts of compensation under Act cumulative

s 6D renum as s 31

Payments to people with legal disabilities

s 6E renum as s 32

Meaning of *partially incapacitated*

s 7 orig s 7 am 1983 No 69 s 6 (as am 1984 No 5); 1991 No 105 sch 2, sch 3 and note about section headings
om 2001 No 81 s 8
(prev s 4) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Compensation limited to Territory workers

s 7A renum as s 33

Injury outside Australia

s 7B renum as s 34

When is a worker taken to be totally incapacitated?

s 7C renum as s 35

Meaning of worker

ch 3 hdg ins 2001 No 81 s 5
ch 3 hdg notes am [A2006-8 s 4, s 5](#)

Who is a worker?

s 8 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 8 orig s 8 renum as s 36
(prev s 4A) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 s 4; [A2006-4 amdt 1.1](#)

What if the worker is dead?

s 8A renum as s 37

When do weekly compensation payments begin?

s 8B renum as s 38

Totally incapacitated workers

s 8C renum as s 39

Partially incapacitated workers up to 26 weeks after incapacity date

s 8D renum as s 40

Partially incapacitated workers after 26 weeks after incapacity date

s 8E renum as s 41

Stopping of payments for partial incapacity

s 8F renum as s 42

Effect on payment period of loss of entitlement to weekly compensation

s 8G renum as s 43

Living outside Australia

s 8H renum as s 44

Effect of living outside Australia if compensation still payable

s 8I renum as s 45

Effect of payment of weekly compensation on other benefits etc

s 8J renum as s 46

No assignment etc of weekly compensation

s 8K renum as s 47

Meaning of loss

s 8L renum as s 48

Meaning of single loss amount

s 8M renum as s 49

Meaning of maximum loss amount

s 8N renum as s 50

Endnotes

4 Amendment history

Compensation for permanent injuries generally

s 8O renum as s 51

Actuarial review and back, neck and pelvis impairments

s 8OA renum as s 52

Compensation for 2 or more losses

s 8P renum as s 53

Compensation and left-handedness

s 8Q renum as s 54

Compensation for combination of items

s 8R renum as s 55

Compensation for only arm, leg, hand or foot

s 8S renum as s 56

Compensation for loss of sexual organs

s 8T renum as s 57

Loss of bowel function

s 8U renum as s 58

Proportionate loss of use

s 8V renum as s 59

Special provisions for HIV/AIDS

s 8W renum as s 60

Deduction for previous injury or pre-existing condition

s 8X renum as s 61

Further loss and deductible proportions

s 8Y renum as s 62

Loss of hearing because of age

s 8Z renum as s 63

Who is not a *worker*?

s 9 hdg bracketed note exp 1 July 2004 (s 3 (3))

s 9 orig s 9 reloc as s 5N

renum as s 27

prev s 9 renum as s 64

(prev s 4B) ins 2001 No 81 s 5

renum R9 LA (see 2001 No 81 s 34)

Hearing loss—application of s 9

s 9AA ins 1993 No 19 s 4

om 2001 No 81 amdt 1.13

Presumption to be drawn from refusal to submit to hearing examination

s 9A orig s 9A reloc as s 50
renum as s 28
prev s 9A renum as s 65

Employer's responsibility to pay for hearing loss tests

s 9B orig s 9B reloc as s 5P
renum as s 29
prev s 9B renum as s 66

Reimbursement for costs of medical certificate and examination

s 9C renum as s 67

Limited entitlement if death happens within 3 months

s 9D renum as s 68

Application—pt 4.5

s 9E renum as s 69

Employer liability for medical treatment and damage

s 9F renum as s 70

Claim for compensation for pt 4.5

s 9G renum as s 71

Second assessments

s 9H renum as s 72

Payments for treatment received from hospital

s 9I renum as s 73

Transport costs other than private car

s 9J renum as s 74

Working out transport costs for private cars

s 9K renum as s 75

Costs of accommodation and meals

s 9L renum as s 76

Casuals not employed for trade or business

s 10 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 10 orig s 10 am 1968 No 19 s 3; 1970 No 26 sch; 1971 No 15
sch; 1972 No 38 sch; 1975 No 11 sch; 1983 No 69 s 9; 1991
No 105 s 8 and sch 3
om 2001 No 81 s 15
(prev s 4C) ins 2001 No 81 s 5
am 2002 No 22 amdt 1.8
renum R9 LA (see 2001 No 81 s 34)

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Payment into court of lump sum death benefits

s 10A orig s 10A ins 1983 No 69 s 10
am 1987 No 10 s 3; 1991 No 105 sch 2
om 2001 No 81 s 15
prev s 10A renum as s 78

Registration of agreements for compensation

s 10B orig s 10B ins 1983 No 69 s 10
am 1987 No 10 s 4; 1991 No 105 sch 2
om 2001 No 81 s 15
prev s 10B renum as s 79

Effect of registration of agreements

s 10C orig s 10C ins 1983 No 69 s 10
am 1987 No 10 s 5; 1991 No 105 sch 2
om 2001 No 81 s 15
prev s 10C renum as s 80

Cancellation or amendment of registered agreements

s 10D orig s 10D ins 1983 No 69 s 10
am 1991 No 105 sch 2
om 2001 No 81 s 15
prev s 10D renum as s 81

When is compensation under Act generally not payable?

s 10E orig s 10E ins 1983 No 69 s 10
om 2001 No 81 s 15
prev s 10E renum as s 82

No compensation while imprisoned

s 10F orig s 10F ins 1983 No 69 s 10
am 1991 No 105 s 9 and sch 2
om 2001 No 81 s 15
prev s 10F renum as s 83

Compensation for sporting injuries

s 10G renum as s 84

Object of ch 5

s 10H renum as s 85

Definitions for ch 5

s 10I renum as s 86

Meaning of *employer* and *insurer* if more than 1

s 10J renum as s 87

Insurer to establish etc injury management program

s 10K renum as s 88

Insurer to give effect to injury management program

s 10L renum as s 89

Insurer's obligation of prompt payment

s 10M renum as s 90

Employer's obligations for injury management programs

s 10N renum as s 91

Register of injuries

s 10NA renum as s 92

Early notification of workplace injury

s 10O renum as s 93

Injury notice

s 10P renum as s 94

What if employer does not give notice of injury within time?

s 10Q renum as s 95

Obligation of insurer on being notified of injury

s 10R renum as s 96

Personal injury plan for worker with significant injury

s 10S renum as s 97

Provision of information about personal injury plan

s 10T renum as s 98

Vocational rehabilitation

s 10U renum as s 99

Employer's personal injury plan obligations

s 10V renum as s 100

Worker's personal injury plan obligations

s 10W renum as s 101

Nomination of doctor for personal injury plan

s 10X renum as s 102

Subsequent medical certificates under personal injury plan

s 10Y renum as s 103

Injured worker's obligation to return to work

s 10Z renum as s 104

Employer must provide suitable work for full-time, part-time and casual workers

s 10ZA renum as s 105

Employer must provide suitable work for contract workers

s 10ZB renum as s 106

Payment of cost of treatment of injured worker

s 10ZC renum as s 107

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Second injury arrangements

s 10ZD renum as s 108

Workplace rehabilitation

s 10ZE renum as s 109

Return-to-work guidelines

s 10ZF renum as s 110

Obligation of Minister

s 10ZG renum as s 111

Compliance by insurers

s 10ZH renum as s 112

Compliance by workers

s 10ZI renum as s 113

Unreasonableness in stopping payment

S 10ZIA renum as s 114

Liability not affected

s 10ZJ renum as s 115

Regular contractors and casuals

s 11 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 11 orig s 11 renum as s 116
(prev s 4D) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Claim for property loss or damage

s 11A renum as s 117

Medical certificates and claims for compensation

s 11B renum as s 118

What if no medical certificate with doctor's opinion?

s 11C renum as s 119

Time for taking proceedings generally

s 11D renum as s 120

Time for making claim under pt 4.4

s 11E renum as s 121

When is a claim made?

s 11F renum as s 122

The notice for an injury

s 11G renum as s 123

No notice or defective or inaccurate notice

S 11H renum as s 124

Admissibility of statements by injured workers

s 11I renum as s 125

Action by employer in relation to claims

s 11J renum as s 126

Labour hire arrangements

s 12 orig s 12 am 1952 No 4 s 8; 1954 No 12 s 4; 1959 No 20 s 3; 1965 No 6 s 5; 1967 No 44 sch 1; 1968 No 19 s 4; 1970 No 26 sch; 1971 No 15 sch; 1972 No 38 sch; 1975 No 11 sch; 1983 No 69 s 11; 1991 No 105 sch 2 and sch 3 om 1997 No 66 s 7 (prev s 5) ins 2001 No 81 s 5 renum R9 LA (see 2001 No 81 s 34)

Claim accepted if not rejected within 28 days

s 12A renum as s 128

Rejecting claims generally

s 12B renum as s 129

Rejecting claim within 28 days

s 12C orig s 12C ins 1975 No 11 s 3 om 1991 No 105 sch 3 prev s 12C renum as s 130

Rejecting claims after 28 days but within 1 year

s 12D renum as s 131

Rejecting claims from 1 year

s 12E renum as s 132

Without prejudice payments

s 12F renum as s 133

Liability on claim not accepted or rejected

s 12G renum as s 134

Order for refund of overpayments of compensation

s 12H renum as s 135

Contracting out

s 12I renum as s 136

How worker may commute rights

s 12J renum as s 137

No assignment etc of payout of weekly compensation

s 12K renum as s 138

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Subcontracting

s 13 orig s 13 am 1968 No 19 s 5; 1991 No 105 sch 2 and sch 3
om 2001 No 81 s 17
(prev s 14) am 1967 No 44 s 2; 1991 No 105 sch 3; 2001
No 81 amdt 2.5
reloc as s 5AA 2001 No 81 amdt 1.15
renum as s 13 R9 LA (see 2001 No 81 s 34)

Trainees

s 14 orig s 14 reloc as s 5AA
renum as s 13
(prev s 5A) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 1.6; A2003-49 ss 5-7; ss renum R18 LA
(see A2003-49 s 8); A2004-17 amdt 2.13

Outworkers

s 15 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 15 orig s 15 am 1969 No 13 s 2; 1991 No 105 sch 2 and sch 3
sub 2001 No 81 s 18
reloc as s 26RD 2001 No 81 amdt 1.16
(prev s 5B) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)

Meaning of *approved rehabilitation provider* etc

s 15A renum as s 139

Meaning of *vocational rehabilitation*

s 15B renum as s 140

Meaning of *protocol in ch 7* etc

s 15C renum as s 141

Vocational rehabilitation

s 15D renum as s 142

False representation of approval

s 15E renum as s 143

Approval of protocol

s 15F ins 1994 No 68 s 5
am 1996 No 13 s 4; 2001 No 44 amdt 1.4360, amdt 1.4361;
R7 LA (see amdt 1.4362)
om 2001 No 81 s 19

Disallowance

s 15G ins 1994 No 68 s 5
om 2001 No 44 amdt 1.4363

Publication

s 15H ins 1994 No 68 s 5
 am 2001 No 44 amdt 1.4364
 om 2001 No 81 s 19

Timber contractors

s 16 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 16 orig s 16 renum as s 144
 (prev s 5C) ins 2001 No 81 s 5
 renum R9 LA (see 2001 No 81 s 34)

Family day care carers

s 16A renum as s 145
 ins A2006-8 s 6

Effect of revocation or suspension of approval

s 16B renum as s 146

Compulsory insurance—employers

s 16C renum as s 147

Liability of executive officers

s 16D renum as s 148

Religious workers

s 17 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 17 orig s 17 om 1959 No 12 s 3
 prev s 17 renum as s 149
 (prev s 5D) ins 2001 No 81 s 5
 renum R9 LA (see 2001 No 81 s 34)
 am A2006-8 s 7

Volunteers

s 17A orig s 17A renum as s 150
 ins A2003-49 s 9

Evidence of maintenance of compulsory insurance policy

s 17B renum as s 151

Self-insurers

s 17C renum as s 152

Compulsory insurance—insurers

s 17D renum as s 153

Cancellation

s 17DA renum as s 154

Cover notes

s 17E renum as s 155

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Commercial voluntary workers

s 18 orig s 18 renum as s 156
(prev s 5E) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 s 10

Information for insurers after end of policy

s 18AA renum as s 157

Information for insurers about reporting period

s 18AB renum as s 158

Information for insurers after cancellation

s 18AC renum as s 159

Offence by registered auditor

s 18AD renum as s 160

Offence in relation to statutory declaration

s 18AE renum as s 161

Offence to employ etc after 2nd offence

s 18AF renum as s 162

Provision of information to Minister

s 18A renum as s 163

Nominal insurer

s 18B renum as s 164

Claims for payment by nominal insurer

s 18C renum as s 165

Payments by nominal insurer

s 18D renum as s 166

Reopening of agreements and awards

s 18E renum as s 167

Deciding or redeciding claim

s 18EAA renum as s 168

Power of Supreme Court to set aside certain agreements

s 18EA renum as s 169

Intervention by nominal insurer

s 18F renum as s 170

Nominal insurer may act

s 18FA renum as s 171

Effects of payment by nominal insurer

s 18G renum as s 172

Funds for payments by nominal insurer

s 18H renum as s 173

Information and assistance by employer to nominal insurer

s 18J renum as s 174

Proceedings to be in the name of 'The Nominal Insurer'

s 18K renum as s 175

Public interest voluntary workers

s 19 orig s 19 am 1967 No 44 sch 1; 1969 No 18 s 10
om 1991 No 105 sch 3
(prev s 5F) ins 2001 No 81 s 5
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 s 11

Entitlement to compensation

ch 4 hdg ins 2001 No 81 s 6

Important concepts

pt 4.1 hdg ins 2001 No 81 s 7

Meaning of *cpi indexed* and *awe indexed*

s 20 orig s 20 renum as s 176
(prev s 5G) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)
am A2003-41 amdt 3.518, amdt 3.519

Premiums—remuneration for professional sporting activity

s 20AA renum as s 177

Variation of insurance policies

s 20A ins 1991 No 105 s 17
om 2001 No 81 amdt 1.29

Working out average pre-incapacity weekly earnings for non-contractor

s 21 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 21 orig s 21 renum as s 178
(prev s 5H) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)

Regulations to allow Minister to authorise people

s 21AA renum as s 179

Definitions for pt 4

s 21A renum as s 180

References to person who recovers damage etc

s 21AB renum as s 181

Payments by nominal insurer

s 21B renum as s 182

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Working out average pre-incapacity weekly earnings for contractor

s 22 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 22 orig s 22 renum as s 183
(prev s 5I) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)

Working out average pre-incapacity weekly hours for non-contractor

s 23 orig s 23 renum as s 184
(prev s 5J) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)

Dependants recovering damages and not claiming compensation

s 23A renum as s 185

Discharge of liability out of payments into court

s 23B renum as s 186

Definitions for pt 5

s 23C renum as s 187

Inspectors

s 23D renum as s 188

Identity cards

s 23E renum as s 189

Provision of information to inspectors

s 23F renum as s 190

Entry and inspection of premises

s 23G renum as s 191

Consent to entry and inspection

s 23H renum as s 192

Search warrants

s 23I renum as s 193

Obstruction etc for inspector

s 23J renum as s 194

Working out average pre-incapacity weekly hours for contractor

s 24 orig s 24 renum as s 195
(prev s 5K) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)

Overtime—hours and wages

s 25 orig s 25 am 1983 No 69 s 16; 1991 No 105 sch 2 and sch 3
om 2001 No 81 amdt 1.44
(prev s 5L) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)

Admissibility of statements by injured workers

s 25A renum as s 196

Gradual onset of incapacity

s 26 orig s 26 renum as s 197
(prev s 5M) ins 2001 No 81 s 7
renum R9 LA (see 2001 No 81 s 34)

Notice to employer's insurer

s 26A ins 1994 No 68 s 6
am 1998 No 54 sch
om 2001 No 81 amdt 1.45

Commencement

s 26B ins 1994 No 68 s 6
am 1998 No 54 sch
om 2001 No 81 amdt 1.45

Notice by worker

s 26BA ins 1997 No 66 s 14
om 2001 No 81 amdt 1.45

Termination

s 26C ins 1994 No 68 s 6
om 2001 No 81 amdt 1.45

Review of termination

s 26D ins 1994 No 68 s 6
om 2001 No 81 amdt 1.45

Court-approved termination

s 26E ins 1994 No 68 s 6
om 2001 No 81 amdt 1.45

Notice to nominal insurer

s 26F ins 1994 No 68 s 6
am 1998 No 54 sch
om 2001 No 81 amdt 1.45

Definitions for ch 12

s 26G renum as s 198

Infringement notices

s 26H renum as s 199

Final infringement notices

s 26J renum as s 200

Discharge of liability for prescribed offences

s 26K renum as s 201

Application for withdrawal of infringement notice

s 26L renum as s 202

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Withdrawal of infringement notices

s 26M renum as s 203

Prosecution of prescribed offences

s 26N renum as s 204

Non-antecedent value of infringement notice offences

s 26P renum as s 205

Service of notices

s 26Q renum as s 206

Evidence

s 26R renum as s 207

Notice of reviewable decisions to be given to affected people

s 26RA renum as s 208

Review by administrative appeals tribunal of reviewable decisions

s 26RB renum as s 209

Confidentiality

s 26RC renum as s 210

Medical referees

s 26RD (prev s 15) reloc as s 26RD
renum as s 211

Time for beginning prosecutions

s 26S renum as s 212

False claims etc

s 26T renum as s 213

Acts and omissions of representatives

s 26U renum as s 214

Compensation for death or incapacity through disease

s 27 orig s 27 om 1989 No 38 sch 1
(prev s 9) sub 1983 No 69 s 8
am 1991 No 105 sch 2, sch 3 and note about section
headings; 2001 No 81 s 12
reloc as s 5N 2001 No 81 amdt 1.12
renum as s 27 R9 LA (see 2001 No 81 s 34)
am A2006-8 s 8

Minister must take advice

s 27A orig s 27A ins 1991 No 105 s 20
om 1998 No 54 sch
prev s 27A renum as s 216

Rules of court

s 27B renum as s 217

Directions about procedure

s 27C orig s 27C ins 1991 No 105 s 20
om 2001 No 44 amdt 1.4382
prev s 27C renum as s 218

References to Workers' Compensation Act

s 27CA renum as s 219

Funds for administration of Act

s 27D renum as s 220

Employment-related diseases

s 28 orig s 28 renum as s 221
(prev s 9A) ins 1983 No 69 s 8
am 1991 No 105 sch 2
reloc as s 5O 2001 No 81 amdt 1.14
renum as s 28 R9 LA (see 2001 No 81 s 34)

Compensation for disease

s 29 orig s 29 renum as s 31
prev s 29 renum as s 222
(prev s 9B) ins 1983 No 69 s 8
am 1991 No 105 sch 2 and note about section headings; 2001
No 81 s 13, s 14
reloc as s 5P 2001 No 81 amdt 1.14
renum as s 29 R9 LA (see 2001 No 81 s 34)

DI fund manager required to pay weekly compensation

s 30 ins A2006-4 s 4
(2)-(4) exp 3 years after the day this section commences
(s 30 (4) (LA s 88 declaration applies))

Compensation for personal injury

pt 4.2 hdg ins 2001 No 81 s 8

General entitlement to compensation for personal injury

s 30 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 30 orig s 30 renum as s 223
(prev s 6C) ins 2001 No 81 s 8
am 2002 No 22 amdt 1.9
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 1.1; A2006-4 amdt 1.2

Application of ch 15 to insurers

s 30A renum as s 224

Definitions for ch 15

s 30B renum as s 225

Meaning of act of terrorism for ch 15

s 30C renum as s 226

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Terrorism cover temporary reinsurance fund

s 30D renum as s 227

Entitlement of insurers to reimbursement from temporary fund

s 30E renum as s 228

Payments out of temporary fund

s 30F renum as s 229

Regulations about temporary fund

s 30G renum as s 230

Exclusion of Corporations legislation

s 30H renum as s 231

Expiry of ch 15

s 30I renum as s 232

Amounts of compensation under Act cumulative

s 31 hdg bracketed note exp 1 July 2004 (s 3 (3))

s 31 (prev s 29) ins 2000 No 80 amdt 3.40

renum 2001 No 44 amdt 1.4384

om 2001 No 81 s 31

(prev s 6D) ins 2001 No 81 s 8

renum R9 LA (see 2001 No 81 s 34)

am A2006-4 amdt 1.2

Payments to people with legal disabilities

s 32 orig s 32 renum as s 233

(prev s 6E) ins 2001 No 81 s 8

renum R9 LA (see 2001 No 81 s 34)

am A2006-4 amdt 1.2

Compensation limited to Territory workers

s 33 orig s 33 renum as s 234

(prev s 7A) ins 1997 No 27 s 5

am 2001 No 81 s 9, amdts 1.8-1.10, amdt 2.3

renum R9 LA (see 2001 No 81 s 34)

om A2003-49 amdt 1.2

Injury outside Australia

s 34 orig s 34 renum as s 235

(prev s 7B) ins 1997 No 27 s 5

sub 2001 No 81 amdt 1.11

renum R9 LA (see 2001 No 81 s 34)

When is a worker taken to be totally incapacitated?

s 35 orig s 35 renum as s 236

(prev s 7C) ins 1997 No 66 s 5

sub 2001 No 81 amdt 2.4

renum R9 LA (see 2001 No 81 s 34)

Journey claims

s 36 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 36 orig s 36 renum as s 237
 (prev s 8) am 1952 No 4 s 6; 1968 No 19 s 2; 1983 No 69 s 7;
 1991 No 105 sch 3
 sub 2001 No 81 s 10
 renum R9 LA (see 2001 No 81 s 34)
 am A2006-4 amdt 1.3

Employment connection with ACT or State

pt 4.2A hdg ins A2003-49 amdt 1.3

Meaning of Territory or State of connection etc

s 36A ins A2003-49 amdt 1.3

Employment connection test

s 36B ins A2003-49 amdt 1.3

Determination of Territory or State of connection in workers compensation proceedings

s 36C ins A2003-49 amdt 1.3

Determination of Territory or State of connection by Magistrates Court

s 36D ins A2003-49 amdt 1.3

Recognition of previous determinations of Territory or State of connection

s 36E ins A2003-49 amdt 1.3

No ACT compensation if external compensation received

s 36F ins A2003-49 amdt 1.3

Weekly compensation

pt 4.3 hdg ins 2001 No 81 s 11

Definitions—pt 4.3

s 36G ins A2006-4 s 5
 def ***initial incapacity date*** ins A2006-4 s 5
 def ***weekly compensation*** ins A2006-4 s 5

What if the worker is dead?

s 37 orig s 37 renum as s 238
 (prev s 8A) ins 2001 No 81 s 11
 renum R9 LA (see 2001 No 81 s 34)

Prescribed insurance policies

s 37A renum as s 239

Approved rehabilitation providers

s 37B renum as s 240

Children and Young People Act and compensation

s 37C renum as s 241

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Periodic Detention Act and compensation

s 37D renum as s 242

Remand Centres Act and compensation

s 37E renum as s 243

Supervision of Offenders (Community Service Orders) Act and compensation

s 37F renum as s 244

When do weekly compensation payments begin etc?

s 38 orig s 38 renum as s 245
(prev s 8B) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 1.7
sub A2006-4 s 6

Entitlement to weekly compensation for first 26 weeks of incapacity

s 39 orig s 39 renum as s 246
(prev s 8C) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 6
am A2006-8 s 9

Entitlement to weekly compensation after first 26 weeks of incapacity

s 40 (prev s 8D) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 6
am A2006-8 s 10

Entitlement to weekly compensation after 26 weeks of total incapacity

s 41 (prev s 8E) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 6

Entitlement to weekly compensation after 26 weeks of partial incapacity

s 42 (prev s 8F) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 6
am A2006-8 s 11, s 12

Stopping payments for total incapacity

s 43 (prev s 8G) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 6

Stopping payments for partial incapacity

s 43A ins A2006-4 s 6

Effect on payment period of loss of entitlement to weekly compensation

s 43B ins A2006-4 s 6

Living outside Australia

s 44 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 44 (prev s 8H) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Effect of living outside Australia if compensation still payable

s 45 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 45 (prev s 8I) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
am R28 LA; [A2006-4 s 7](#)

Effect of payment of weekly compensation on other benefits etc

s 46 (prev s 8J) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

No assignment etc of weekly compensation

s 47 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 47 (prev s 8K) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for permanent injuries

pt 4.4 hdg ins 2001 No 81 s 11

Meaning of loss

s 48 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 48 (prev s 8L) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Meaning of single loss amount

s 49 (prev s 8M) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Meaning of maximum loss amount

s 50 (prev s 8N) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for permanent injuries generally

s 51 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 51 (prev s 8O) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Actuarial review and back, neck and pelvis impairments

s 52 (prev s 8OA) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2002 (s 52 (10))

Compensation for 2 or more losses

s 53 (prev s 8P) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

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Compensation and left-handedness

s 54 (prev s 8Q) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for combination of items

s 55 (prev s 8R) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for only arm, leg, hand or foot

s 56 (prev s 8S) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for loss of sexual organs

s 57 (prev s 8T) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Loss of bowel function

s 58 (prev s 8U) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Proportionate loss of use

s 59 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 59 (prev s 8V) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 1.8

Special provisions for HIV/AIDS

s 60 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 60 (prev s 8W) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Deduction for previous injury or pre-existing condition

s 61 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 61 (prev s 8X) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Further loss and deductible proportions

s 62 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 62 (prev s 8Y) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Loss of hearing because of age

s 63 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 63 (prev s 8Z) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

No compensation for less than 6% hearing loss

s 64 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 64 (prev s 9) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Presumption to be drawn from refusal to submit to hearing examination

s 65 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 65 (prev s 9A) ins 2001 No 81 s 11
 renum R9 LA (see 2001 No 81 s 34)

Employer's responsibility to pay for hearing loss tests

s 66 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 66 (prev s 9B) ins 2001 No 81 s 11
 renum R9 LA (see 2001 No 81 s 34)

Reimbursement for costs of medical certificate and examination

s 67 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 67 (prev s 9C) ins 2001 No 81 s 11
 am 2002 No 22 amdt 1.10
 renum R9 LA (see 2001 No 81 s 34)

Limited entitlement if death happens within 3 months

s 68 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 68 (prev s 9D) ins 2001 No 81 s 11
 renum R9 LA (see 2001 No 81 s 34)

Compensation for medical treatment, damage and other costs

pt 4.5 hdg ins 2001 No 81 s 11

Application—pt 4.5

s 69 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 69 (prev s 9E) ins 2001 No 81 s 11
 renum R9 LA (see 2001 No 81 s 34)

Employer liability for medical treatment etc

s 70 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 70 (prev s 9F) ins 2001 No 81 s 11
 renum R9 LA (see 2001 No 81 s 34)
sub A2006-8 s 13

Claim for compensation for pt 4.5

s 71 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 71 (prev s 9G) ins 2001 No 81 s 11
 renum R9 LA (see 2001 No 81 s 34)
am A2006-8 s 14

Second assessments

s 72 hdg (prev s 9H hdg) sub 2002 No 22 amdt 1.11
 renum R9 LA (see 2001 No 81 s 34)
 bracketed note exp 1 July 2004 (s 3 (3))
 s 72 (prev s 9H) ins 2001 No 81 s 11
 am 2002 No 22 amdt 1.12
 renum R9 LA (see 2001 No 81 s 34)

Endnotes

4 Amendment history

Payments for medical treatment received from hospital

- s 73 hdg bracketed note exp 1 July 2004 (s 3 (3))
sub [A2006-8 s 15](#)
- s 73 (prev s 9I) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Transport costs other than private car

- s 74 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 74 (prev s 9J) ins 2001 No 81 s 11
am 2002 No 22 amdt 1.13
renum R9 LA (see 2001 No 81 s 34)
[am A2006-8 s 16](#)

Working out transport costs for private cars

- s 75 (prev s 9K) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
[am A2006-8 s 17](#)

Costs of accommodation and meals

- s 76 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 76 (prev s 9L) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
[am A2006-8 s 18, s 19](#)

Compensation for death

- pt 4.6 hdg ins 2001 No 81 s 11

Death benefits

- s 77 (prev s 10) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 1.9, amdt 1.10; ss renum R14 LA
(see 2002 No 49 amdt 3.255)

Payment into court of lump sum death benefits

- s 78 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 78 (prev s 10A) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Registration of agreements for compensation

- pt 4.7 hdg ins 2001 No 81 s 11

Registration of agreements for compensation

- s 79 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 79 (prev s 10B) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 1.11

Effect of registration of agreements

- s 80 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 80 (prev s 10C) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Cancellation or amendment of registered agreements

s 81 (prev s 10D) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Exceptions to entitlements to compensation

pt 4.8 hdg ins 2001 No 81 s 11

When is compensation under Act generally not payable?

s 82 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 82 (prev s 10E) ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

No compensation while imprisoned

s 83 (prev s 10F) orig s 10F ins 1983 No 69 s 10
am 1991 No 105 s 9
om 2001 No 81 s 15
ins 2001 No 81 s 11
renum R9 LA (see 2001 No 81 s 34)

Compensation for sporting injuries

s 84 (prev s 10G) ins 1995 No 52 s 6
renum R9 LA (see 2001 No 81 s 34)

Injury management process

ch 5 hdg ins 2001 No 81 s 16

Object and definitions for ch 5

pt 5.1 hdg ins 2001 No 81 s 16

Object—ch 5

s 85 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 85 (prev s 10H) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Definitions for ch 5

s 86 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 86 (prev s 10I) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
sub A2006-8 s 20
def *injured worker* sub A2006-8 s 20
def *injury management* sub A2006-8 s 20
def *injury management program* sub A2006-8 s 20
def *injury notice* sub A2006-8 s 20
def *insurer* om A2006-4 s 8
def *nominated treating doctor* sub A2006-8 s 20
def *personal injury plan* sub A2006-8 s 20
def *workplace injury* sub A2006-8 s 20

Meaning of *insurer* for ch 5

s 86A ins A2006-4 s 9

Endnotes

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Meaning of *employer* and *insurer* if more than 1

s 87 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 87 (prev s 10J) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

General obligations

pt 5.2 hdg ins 2001 No 81 s 16

Insurer to establish etc injury management program

s 88 (prev s 10K) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 10

Insurer to give effect to injury management program

s 89 (prev s 10L) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 11

Insurer's obligation of prompt payment

s 90 (prev s 10M) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 2.2
am A2006-4 s 12

Employer's obligations for injury management programs

s 91 (prev s 10N) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.3, amdt 2.4

Register of injuries

s 92 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 92 (prev s 10NA) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.5, amdt 2.6

Obligations on injury

pt 5.3 hdg ins 2001 No 81 s 16

Early notification of workplace injury

s 93 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 93 (prev s 10O) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Injury notice

s 94 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 94 (prev s 10P) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Uninsured employer to give DI fund manager injury notice etc

s 94A ins A2006-4 s 13

Liquidator to give DI fund manager injury notice etc

s 94B ins A2006-4 s 13

Injured workers of uninsured employers may give DI fund manager injury notice etc

s 94C ins A2006-4 s 13

What if employer does not give notice of injury within time?

s 95 (prev s 10Q) ins 2001 No 81 s 16
am 2002 No 22 amdt 1.14
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 14, s 15

Obligation of insurer on being notified of injury

s 96 (prev s 10R) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 s 12

Obligations in relation to personal injury plans

pt 5.4 hdg ins 2001 No 81 s 16

Personal injury plan for worker with significant injury

s 97 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 97 (prev s 10S) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Provision of information about personal injury plan

s 98 (prev s 10T) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Vocational rehabilitation

s 99 (prev s 10U) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Employer's personal injury plan obligations

s 100 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 100 (prev s 10V) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.7

Worker's personal injury plan obligations

s 101 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 101 (prev s 10W) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2006-8 s 21

Nomination of doctor for personal injury plan

s 102 (prev s 10X) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Endnotes

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Subsequent medical certificates under personal injury plan

s 103 (prev s 10Y) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Other obligations

pt 5.5 hdg ins 2001 No 81 s 16

Injured worker's obligation to return to work

s 104 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 104 (prev s 10Z) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Employer must provide suitable work for full-time, part-time and casual workers

s 105 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 105 (prev s 10ZA) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.8

Employer must provide suitable work for contract workers

s 106 (prev s 10ZB) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.9, amdt 2.10

Payment of cost of medical treatment and rehabilitation services for injured worker

s 107 hdg bracketed note exp 1 July 2004 (s 3 (3))
sub A2006-8 s 22
s 107 (prev s 10ZC) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2006-8 s 22

Second injury arrangements

s 108 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 108 (prev s 10ZD) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Workplace rehabilitation

s 109 (prev s 10ZE) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 2.11
am A2006-4 s 16; ss renum A2006-4 s 17

Return-to-work guidelines

s 110 (prev s 10ZF) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Compliance with ch 5

pt 5.6 hdg ins 2001 No 81 s 16

Obligation of Minister

s 111 (prev s 10ZG) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)

Compliance by insurers, including DI fund

s 112 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 112 (prev s 10ZH) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 18

Compliance by workers

s 113 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 113 (prev s 10ZI) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 19; pars renum A2006-4 s 20

Unreasonableness in stopping payment

S 114 (prev s 10ZIA) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.12

Liability not affected

s 115 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 115 (prev s 10ZJ) ins 2001 No 81 s 16
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 3.256; A2006-8 s 23

Claims

ch 6 hdg ins 2001 No 81 s 17

Making claims

pt 6.1 hdg ins 2001 No 81 s 17

Making claim for compensation

s 116 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 116 (prev s 11) am 1952 No 4 s 7; 1954 No 12 s 3; 1959 No 20
s 2; 1965 No 6 s 4; 1967 No 44 sch 1; 1971 No 15 s 3; 1991
No 105 s 10 and sch 3; 1997 No 66 s 6
sub 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Claim for property loss or damage

s 117 (prev s 11A) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Medical certificates and claims for compensation

s 118 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 118 (prev s 11B) ins 2001 No 81 s 17
am 2002 No 22 amdt 1.15
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 s 13

Endnotes

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No compliant certificate with claim

- s 119 hdg (prev s 11C hdg) sub 2002 No 22 amdt 1.16
renum R9 LA (see 2001 No 81 s 34)
- s 119 (prev s 11C) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Time for taking proceedings generally

- s 120 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 120 (prev s 11D) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 3.257; A2003-49 ss 14-16

Proceedings on late claims

- s 120A ins A2003-49 s 17

Time for making claim under pt 4.4

- s 121 (prev s 11E) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

When is a claim made?

- s 122 (prev s 11F) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 21

The notice for an injury

- s 123 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 123 (prev s 11G) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

No notice or defective or inaccurate notice

- s 124 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 124 (prev s 11H) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Admissibility of statements by injured workers

- s 125 (prev s 11I) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 22

Action by employer in relation to claims

- s 126 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 126 (prev s 11J) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.13, amdt 2.14

Lump sum claims—notice by insurers about double compensation etc

- s 126A ins A2003-49 s 18

Time for accepting or rejecting claims

- pt 6.2 hdg ins 2001 No 81 s 17

Meaning of *insurer* and *given to insurer* for pt 6.2

s 127 (prev s 12) ins 2001 No 81 s 17
sub 2002 No 22 amdt 1.17
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 23

Claim accepted if not rejected within 28 days

s 128 (prev s 12A) ins 1975 No 11 s 3
am 1982 No 103 s 3; 1991 No 105 sch 3
sub 1997 No 66 s 7; 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 24

Rejecting claims generally

s 129 (prev s 12B) ins 1975 No 11 s 3
sub 2001 No 81 s 17
am 2002 No 22 amdts 1.18-1.20
renum R9 LA (see 2001 No 81 s 34)

Rejecting claim within 28 days

s 130 (prev s 12C) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Rejecting claims after 28 days but within 1 year

s 131 (prev s 12D) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Rejecting claims from 1 year

s 132 (prev s 12E) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Liability on claims

pt 6.3 hdg ins 2001 No 81 s 17

Without prejudice payments

s 133 (prev s 12F) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Liability on claim not accepted or rejected

s 134 (prev s 12G) ins 2001 No 81 s 17
am 2002 No 22 amdt 1.21
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 25

Order for refund of overpayments of compensation

s 135 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 135 (prev s 12H) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 26, s 27

Endnotes

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Settlement of claims

pt 6.4 hdg ins 2001 No 81 s 17

Contracting out

s 136 (prev s 12I) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

How worker may commute rights

s 137 (prev s 12J) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

No assignment etc of payout of weekly compensation

s 138 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 138 (prev s 12K) ins 2001 No 81 s 17
renum R9 LA (see 2001 No 81 s 34)

Vocational rehabilitation

ch 7 hdg ins 2001 No 81 s 19

Meaning of *approved rehabilitation provider* etc

s 139 (prev s 15A) ins 1994 No 68 s 5
sub 2001 No 81 s 19
am 2002 No 22 amdt 1.22
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.15

Meaning of *vocational rehabilitation*

s 140 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 140 (prev s 15B) ins 1994 No 68 s 5
sub 2001 No 81 s 19
renum R9 LA (see 2001 No 81 s 34)

Meaning of *protocol* in ch 7 etc

s 141 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 141 (prev s 15C) ins 1994 No 68 s 5
am 1998 No 54 sch
sub 2001 No 81 s 19
renum R9 LA (see 2001 No 81 s 34)

Vocational rehabilitation

s 142 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 142 (prev s 15D) ins 1994 No 68 s 5
am 1998 No 54 sch
sub 2001 No 81 s 19
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.16

False representation of approval

s 143 (prev s 15E) ins 1994 No 68 s 5
 am 1998 No 54 sch
 sub 2001 No 81 s 19
 renum R9 LA (see 2001 No 81 s 34)

Insurance

ch 8 hdg (prev pt 3 hdg) ins 1991 No 105 s 11
 renum 2001 No 81 amdt 1.17

General

pt 8.1 hdg ins A2006-4 s 28

Meaning of compulsory insurance policy

s 144 (prev s 16) am 1967 No 44 sch 1; 1987 No 24 s 4
 sub 1991 No 105 s 12
 am 1997 No 27 sch 1; 1997 No 66 s 8; 1999 No 85 s 70; 2001
 No 44 amdt 1.4365, amdt 1.4366; R7 LA (see 2001 No 44
 amdt 1.4367)
 sub 2001 No 81 s 20
 renum R9 LA (see 2001 No 81 s 34)
 am A2003-49 amdt 1.4; A2006-4 amdt 1.4

Approved insurers

s 145 (prev s 16A) ins 2001 No 81 s 20
 renum R9 LA (see 2001 No 81 s 34)

Effect of revocation or suspension of approval

s 146 (prev s 16B) ins 2001 No 81 s 20
 renum R9 LA (see 2001 No 81 s 34)
 am A2006-4 s 29

Compulsory insurance—employers

s 147 (prev s 16C) ins 2001 No 81 s 20
 renum R9 LA (see 2001 No 81 s 34)
 sub A2003-49 amdt 1.5

Liability of executive officers

s 148 (prev s 16D) ins 2001 No 81 s 20
 renum R9 LA (see 2001 No 81 s 34)
 om A2003-49 amdt 2.17

Effect of failure to maintain compulsory insurance on other insurance etc for this Act

s 149 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 149 (prev s 17) ins 1991 No 105 s 12
 am 2001 No 44 amdt 1.4368, amdt 1.4369
 sub 2001 No 81 s 20
 renum R9 LA (see 2001 No 81 s 34)
 am A2006-4 s 30, s 31

Endnotes

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Nominal insurer entitled to triple premiums

s 150 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 150 (prev s 17A) ins 1991 No 105 s 12
sub 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 1.6, amdt 1.7
sub as s 149 A2006-4 s 32

Evidence of maintenance of compulsory insurance policy

s 151 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 151 (prev s 17B) ins 1991 No 105 s 12
am 1997 No 66 s 9; 1998 No 54 sch; 2000 No 74 s 3; 2001
No 81 amdt 2.6, amdt 2.7
sub 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 amdt 1.5

Self-insurers

s 152 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 152 (prev s 17C) ins 1991 No 105 s 12
am 2001 No 44 amdt 1.4370, amdt 1.4371
sub 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 amdt 1.5

Compulsory insurance—insurers

s 153 (prev s 17D) ins 1991 No 105 s 12
am 1998 No 54 sch
sub 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.18; A2006-4 amdt 1.5

Cancellation

s 154 (prev s 17DA) ins 2001 No 81 s 20
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 2.19
am A2006-4 amdt 1.5

Cover notes

s 155 (prev s 17E) ins 1997 No 66 s 10
am 2001 No 81 s 21
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.20; ss renum R18 LA (see A2003-49
amdt 2.21); A2006-4 amdt 1.5

Information for insurers on application for issue or renewal of policies

s 156 (prev s 18) am 1959 No 12 s 4; 1967 No 44 sch 1; 1969 No 18 s 4; 1980 No 29 s 2; 1983 No 69 s 12; 1987 No 24 s 5
sub 1991 No 105 s 12
am 1997 No 27 sch 1; 1998 No 54 sch; 2000 No 74 s 4, s 5;
2001 No 81 amdt 2.8, amdt 2.9
sub 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 9
sub A2003-49 s 19
am A2006-4 s 33, s 34

Information for insurers after renewal of policies

s 157 (prev s 18AA) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 9
sub A2003-49 s 19
am A2006-4 ss 35-37

Information for insurers after end or cancellation of policies

s 158 (prev s 18AB) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 s 19
am A2006-4 s 38, s 39

Information for new insurers after change of insurers

s 159 (prev s 18AC) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 9
sub A2003-49 s 19
am A2006-4 amdt 1.6, amdt 1.7

Certificate of currency

s 160 (prev s 18AD) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 9
sub A2003-49 s 19
am A2006-4 ss 40-42

Requirement to produce certificate of currency

s 161 (prev s 18AE) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 51 amdt 1.59
sub A2003-49 s 19
am A2006-4 s 42, amdt 1.8, amdt 1.9

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Employment after 2nd offence

s 162 (prev s 18AF) ins 2001 No 81 s 22
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 s 19
am A2006-4 amdt 1.10, amdt 1.11

Provision of information to Minister

s 163 (prev s 18A) ins 1959 No 12 s 5
am 1967 No 44 sch 1; 1991 No 105 s 13 and sch 3; 1998
No 54 sch; 2001 No 81 amdt 1.18, amdts 2.10-2.13
renum R9 LA (see 2001 No 81 s 34)
am A2004-2 amdt 1.60; A2003-49 amdts 2.22-2.25; A2006-4
s 43, s 44

Nominal insurer

s 164 (prev s 18B) ins 1959 No 12 s 5
am 1991 No 105 note about section headings; 2001 No 44
amdt 1.4372, amdt 1.4373
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 45

Default insurance fund

pt 8.2 hdg ins A2006-4 s 45

Definitions for pt 8.2

div 8.2.1 hdg ins A2006-4 s 45

Definitions for pt 8.2

s 165 (prev s 18C) ins 1959 No 12 s 5
am 1969 No 18 s 5; 1983 No 69 s 13; 1991 No 105 sch 2,
sch 3 and note about section headings; 1997 No 27 sch 1
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 45
def *claim for payment* ins A2006-4 s 45
def *claims manager* ins A2006-4 s 45

Establishment, staff and consultants of DI fund

div 8.2.2 hdg ins A2006-4 s 45

Establishment of DI fund

s 166 (prev s 18D) ins 1959 No 12 s 5
sub 1969 No 18 s 6
am 1983 No 69 s 14; 1991 No 105 s 14 and sch 3; 2001 No 81
amdt 2.14
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 45

Purpose of DI fund

s 166A ins A2006-4 s 45

Payments out of DI fund

s 166B ins A2006-4 s 45
(2), (3) exp 1 October 2009 (s 166B (3))

Appointment of DI fund manager

s 166C ins A2006-4 s 45

DI fund manager's functions etc

s 166D ins A2006-4 s 45

DI fund staff

s 166E ins A2006-4 s 45

DI fund manager may engage consultants including claims manager

s 166F ins A2006-4 s 45

Claims manager's functions

s 166G ins A2006-4 s 45

Engagement of DI fund actuary

s 166H ins A2006-4 s 45

Delegation by DI fund manager

s 166I ins A2006-4 s 45

Administration of DI fund

div 8.2.3 hdg ins A2006-4 s 45

Accounts for DI fund

s 167 (prev s 18E) ins 1959 No 12
am 1961 No 8; 1969 No 18; 1991 No 105
sub 2001 No 81 amdt 2.15
am 2001 No 81 amdt 1.19
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 45

Investments of amounts of DI fund

s 167A ins A2006-4 s 45

Borrowing for DI fund

s 167B ins A2006-4 s 45

Audit of DI fund

s 167C ins A2006-4 s 45

Information and assistance by employer to DI fund manager

s 167D ins A2006-4 s 45

Contributions to DI fund

div 8.2.4 hdg ins A2006-4 s 45

Endnotes

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Approved insurers must give information

s 168 (prev s 18EAA) ins 2001 No 81 amdt 2.15
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 45

Contributions to DI fund by approved insurers and self-insurers

s 168A ins A2006-4 s 45

Refunds of excess DI fund amounts

s 168B ins A2006-4 s 45

DI fund's relationship with liquidators of approved insurers

div 8.2.5 hdg ins A2006-4 s 45

Displacement of liquidator's Corporations Act obligation

s 169 (prev s 18EA) ins 1969 No 18 s 8
am 1991 No 105 sch 3; 1998 No 54 sch; 2001 No 81
amdt 1.20, amdts 2.16-2.18
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.26; ss renum R18 LA (see A2003-49
amdt 2.27)
sub A2006-4 s 45

Payment to DI fund of amounts recovered by liquidator from reinsurer

s 169A ins A2006-4 s 45

Payment to DI fund of amounts recovered by liquidator using fund amounts

s 169B ins A2006-4 s 45

Rights of DI fund manager against approved insurer

s 169C ins A2006-4 s 45

Liquidator to notify DI fund manager of dissolution

s 169D ins A2006-4 s 45

Making claims for payment

div 8.2.6 hdg ins A2006-4 s 45

Who may make claim for payment

s 170 (prev s 18F) ins 1959 No 12 s 5
am 1967 No 44 sch 1; 1991 No 105 s 15 and sch 3; 1998
No 54 sch
sub 2001 No 81 s 23
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.28; ss renum R18 LA (see A2003-49
amdt 2.29)
sub A2006-4 s 45

When must claim for payment be made

s 170A ins A2006-4 s 45

How claim for payment made if no insurer

s 170B ins A2006-4 s 45

How claim for payment made if insurer not wound up

s 170C ins A2006-4 s 45

How claim for payment made if insurer wound up

s 170D ins A2006-4 s 45

Claim for payment if employer to pay and liability not covered by compulsory insurance policy etc

s 170E ins A2006-4 s 45

Claim for payment if final judgment etc and liability not covered by compulsory insurance policy

s 170F ins A2006-4 s 45

Claim for payment if agreement to discharge liability at common law and liability not covered by compulsory insurance policy

s 170G ins A2006-4 s 45

Claim for payment if final judgment etc and liability covered by compulsory insurance policy

s 170H ins A2006-4 s 45

Claim for payment if entitlement to claim compensation and liability covered by compulsory insurance policy

s 170I ins A2006-4 s 45

Liquidator to forward claims to DI fund manager

s 170J ins A2006-4 s 45

Power of Supreme Court to set aside agreements

s 170K ins A2006-4 s 45

Treatment of set aside agreement

s 170L ins A2006-4 s 45

Time-barred rights after agreement set aside

s 170M ins A2006-4 s 45

Proceeding after agreement set aside

s 170N ins A2006-4 s 45

DI fund manager not to consent to judgment etc unless defendant agrees

s 170O ins A2006-4 s 45

Payment of claims

div 8.2.7 hdg ins A2006-4 s 45

Payments out of DI fund

s 171 (prev s 18FA) ins 2001 No 81 s 23
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 45

Endnotes

4 Amendment history

Reopening of agreements and awards

s 171A ins A2006-4 s 45

Deciding or re-deciding claim

s 171B ins A2006-4 s 45

Approval of terms of settlement by court

s 171C ins A2006-4 s 45

DI fund paying claims for payment if liability not completely covered by a compulsory insurance policy and settlement approved

s 171D ins A2006-4 s 45

DI fund paying claims for payment against approved insurers settlement approved

s 171E ins A2006-4 s 45

Liquidators to account to DI fund manager

s 171F ins A2006-4 s 45

Intervention by DI fund manager

s 171G ins A2006-4 s 45

DI fund manager may act

s 171H ins A2006-4 s 45

Effect of payment of claims

s 171I ins A2006-4 s 45

Miscellaneous

div 8.2.8 hdg ins A2006-4 s 45

Proceedings to be in the name of 'Workers Compensation Default Insurance Fund Manager'

s 172 (prev s 18G) ins 1959 No 12 s 5
am 1969 No 18 s 9; 2000 No 74 s 6
sub 2001 No 81 s 24
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 45

DI fund manager not personally liable

s 173 (prev s 18H) ins 1959 No 12 s 5
am 1991 No 105 sch 3 and note about section headings; 1997
No 66 s 11; 2001 No 81 amdts 1.21-1.26; 2002 No 22
amdt 1.23
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 45

Information and assistance by employer to nominal insurer

s 174 (prev s 18J) ins 1959 No 12 s 5
am 1967 No 44 sch 1; 1991 No 105 s 16 and sch 3; 1998
No 54 sch; 2001 No 81 amdts 2.19-2.21
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.30, amdt 2.31
om A2006-4 s 45

Proceedings to be in the name of 'The Nominal Insurer'

s 175 (prev s 18K) ins 1959 No 12 s 5
am 1991 No 105 sch 3
renum R9 LA (see 2001 No 81 s 34)
om A2006-4 s 45

Premiums—maximum rates

s 176 (prev s 20) am 1967 No 44 sch 1
sub 1991 No 105 s 17 and sch 2
am 1991 No 105 sch 3 and note about section headings; 1998
No 54 sch
sub 2001 No 81 amdt 1.27
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.32, amdt 2.33

Premiums—remuneration for professional sporting activity

s 177 (prev s 20AA) ins 1995 No 52 s 7
am 2001 No 81 amdt 1.28
renum R9 LA (see 2001 No 81 s 34)

Workers rights to information

s 178 hdg bracketed note exp 1 July 2004 (s 3 (3))
s 178 (prev s 21) am 1967 No 44 sch 1; 1969 No 18 s 11
sub 1991 No 105 s 17
am 1997 No 27 sch 1; 1998 No 54 sch; 2001 No 44
amdts 1.4374-1.4376; R7 LA (see amdt 1.4377)
sub 2001 No 81 amdt 1.30
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.34

Regulations to allow Minister to authorise people

s 179 (prev s 21AA) ins 2001 No 81 s 25
renum R9 LA (see 2001 No 81 s 34)

Common law damages

ch 9 hdg (prev pt 4 hdg) ins 1991 No 105 s 17
renum 2001 No 81 amdt 1.31
sub A2003-49 amdt 1.8

Interpretation and application—ch 9

pt 9.1 hdg ins A2003-49 amdt 1.8

Endnotes

4 Amendment history

Definitions—ch 9

- s 180 hdg (prev s 21A hdg) sub 2001 No 81 amdt 2.22
renum R9 LA (see 2001 No 81 s 34)
- s 180 (prev s 21A) ins 1991 No 105 s 17
am 2001 No 81 amdt 1.32, amdt 2.23, amdt 2.24
renum R9 LA (see 2001 No 81 s 34)
def **compensation** om 2001 No 81 amdt 1.33

References to person who recovers damage etc

- s 181 (prev s 21AB) ins 2001 No 81 amdt 2.24
renum R9 LA (see 2001 No 81 s 34)

Payments by DI fund manager

- s 182 (prev s 21B) ins 1991 No 105 s 17
am 2001 No 81 amdt 1.34, amdt 1.35
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 49 amdt 3.258
sub A2006-4 s 46

Choice of law

- pt 9.2 hdg ins A2003-49 amdt 1.9

Definitions—pt 9.2

- s 182A ins A2003-49 amdt 1.9
def **damages claim** ins A2003-49 amdt 1.9
def **employer** ins A2003-49 amdt 1.9
def **substantive law** ins A2003-49 amdt 1.9
def **worker** ins A2003-49 amdt 1.9

Meaning of substantive law

- s 182B ins A2003-49 amdt 1.9

Meaning of damages claim

- s 182C ins A2003-49 amdt 1.9

Applicable substantive law for damages claims

- s 182D ins A2003-49 amdt 1.9

Claims to which pt 9.2 applies

- s 182E ins A2003-49 amdt 1.9

Compensation and common law damages

- pt 9.3 hdg ins A2003-49 amdt 1.9

Lump sum claims—notice by lawyers to clients about repayment requirements

- s 182F ins A2003-49 s 20

Remedies against employer and stranger

s 183 hdg sub A2003-49 s 21
 s 183 (prev s 22) am 1952 No 4 s 9; 1959 No 12 s 6; 1991 No 105
 sch 2 and sch 3; 2001 No 81 amdt 1.36
 renum R9 LA (see 2001 No 81 s 34)
 am A2003-49 s 22, s 23

No compensation if damages received

s 184 (prev s 23) am 1962 No 10 s 3; 1983 No 69 s 15; 1991 No 105
 sch 3
 sub 1997 No 27 s 6
 am 2001 No 81 amdt 1.36
 renum R9 LA (see 2001 No 81 s 34)
 sub A2003-49 s 24
 am A2006-4 s 47

Dependants recovering damages and not claiming compensation

s 185 (prev s 23A) ins 1991 No 105 s 18
 am 2001 No 81 amdt 1.36, amdt 1.37
 renum R9 LA (see 2001 No 81 s 34)
 am A2003-49 ss 25-27

Discharge of liability out of payments into court

s 186 (prev s 23B) ins 1991 No 105 s 18
 renum R9 LA (see 2001 No 81 s 34)

Inspection

ch 10 hdg (prev pt 5 hdg) ins 1991 No 105 s 18
 renum 2001 No 81 amdt 1.38

Definitions—ch 10

s 187 hdg (prev s 23C hdg) am 2001 No 81 amdt 1.39
 renum R9 LA (see 2001 No 81 s 34)
 s 187 (prev s 23C) ins 1991 No 105 s 18
 sub 2001 No 81 amdt 2.25
 am 2001 No 81 amdt 1.40
 renum R9 LA (see 2001 No 81 s 34)

Inspectors

s 188 (prev s 23D) ins 1991 No 105 s 18
 sub 1994 No 97 sch pt 1; 2001 No 81 s 26
 renum R9 LA (see 2001 No 81 s 34)
 am 2002 No 49 amdt 3.259

Endnotes

4 Amendment history

Identity cards

s 189 (prev s 23E) ins 1991 No 105 s 18
sub 1994 No 97 sch pt 1
am 1998 No 54 sch
sub 2001 No 81 s 26
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.35, amdt 2.36
sub A2006-4 s 48
ss (5)-(7) exp on the day this section commences (s 189 (7))
(LA s 88 declaration applies)

Provision of information to inspectors

s 190 (prev s 23F) ins 1991 No 105 s 18
am 1997 No 27 sch 1; 1997 No 66 s 12; 1998 No 54 sch
sub 2001 No 81 amdt 1.41
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 9; A2003-49 s 28, amdt 2.37
am A2006-4 s 49

Entry and inspection of premises

s 191 (prev s 23G) ins 1991 No 105 s 18
am 1997 No 66 s 13; 1998 No 54 sch; 2001 No 81 amdt 2.26
renum R9 LA (see 2001 No 81 s 34)
am A2003-49 amdt 2.38; ss renum R18 LA (see A2003-49
amdt 2.39)

Consent to entry and inspection

s 192 (prev s 23H) ins 1991 No 105 s 18
renum R9 LA (see 2001 No 81 s 34)

Search warrants

s 193 (prev s 23I) ins 1991 No 105 s 18
am 2002 No 11 amdt 2.113
renum R9 LA (see 2001 No 81 s 34)

Obstruction or hindrance of inspector

s 194 (prev s 23J) ins 2001 No 81 s 27
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 2.40
om A2006-4 s 50

Procedure for payment of compensation

ch 11 hdg (prev pt 6 hdg) ins 1991 No 105 s 18
renum 2001 No 81 amdt 1.42

Conciliation and arbitration

- s 195 hdg sub 2002 No 22 amdt 1.24
renum R9 LA (see 2001 No 81 s 34)
- s 195 (prev s 24) am 1991 No 105 sch 3 and note about section headings; 2001 No 81 amdt 1.43; 2002 No 22 amdt 1.25
renum R9 LA (see 2001 No 81 s 34)

Admissibility of statements by injured workers

- s 196 (prev s 25A) ins 1991 No 105 s 19
am 1997 No 96 sch 1; 2001 No 81 amdt 2.27
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 51

Appeals

- s 197 (prev s 26) am 1959 No 12 s 7; 1961 No 8 s 3; 1973 No 11 s 3; 1984 No 76 s 9; 1985 No 67 sch pt 1; 1999 No 66 sch 3; 2001 No 81 amdt 2.28
renum R9 LA (see 2001 No 81 s 34)
am A2004-60 amdt 1.703; A2005-20 amdt 3.463

On-the-spot fines

- ch 12 hdg (prev pt 6B hdg) ins 1997 No 66
renum 2001 No 81 amdt 1.46
om A2006-4 s 52

Definitions—ch 12

- s 198 (prev s 26G) ins 1997 No 66 s 15
am 2001 No 81 amdt 1.47
renum R9 LA (see 2001 No 81 s 34)
om A2006-4 s 52
def **commissioner** ins 1999 No 82 sch pt 2
om A2006-4 s 52
def **determined fee** sub 2001 No 44 amdt 1.4378
om A2006-4 s 52
def **on-the-spot fine** sub 2001 No 81 amdt 1.48
om A2006-4 s 52
def **Registrar** om 1999 No 82 sch pt 2
def **relevant period for payment** am 1999 No 82 sch pt 2
om A2006-4 s 52

Infringement notices

- s 199 (prev s 26H) ins 1997 No 66 s 15
am 1999 No 82 sch pt 2; 2001 No 44 amdt 1.4379,
amdt 1.4380; 2001 No 81 amdt 1.49
renum R9 LA (see 2001 No 81 s 34)
om A2006-4 s 52

Endnotes

4 Amendment history

Final infringement notices

s 200 (prev s 26J) ins 1997 No 66 s 15
am 1999 No 82 sch pt 2; 2001 No 44 amdt 1.4381; 2001
No 81 amdt 1.49
renum R9 LA (see 2001 No 81 s 34)
om A2006-4 s 52

Discharge of liability for prescribed offences

s 201 (prev s 26K) ins 1997 No 66 s 15
renum R9 LA (see 2001 No 81 s 34)
om A2006-4 s 52

Application for withdrawal of infringement notice

s 202 (prev s 26L) ins 1997 No 66 s 15
am 1999 No 82 sch pt 2; 2001 No 81 amdt 1.49
renum R9 LA (see 2001 No 81 s 34)
om A2006-4 s 52

Withdrawal of infringement notices

s 203 (prev s 26M) ins 1997 No 66 s 15
am 1999 No 82 sch pt 2
renum R9 LA (see 2001 No 81 s 34)
om A2006-4 s 52

Court-directed publicity for offences

s 204 (prev s 26N) ins 1997 No 66 s 15
am 1999 No 82 sch pt 2
renum R9 LA (see 2001 No 81 s 34)
om A2006-4 s 52
ins A2006-4 s 53

Publication by chief executive of convictions etc

s 205 (prev s 26P) ins 1997 No 66 s 15
am 2001 No 81 amdt 1.49
renum R9 LA (see 2001 No 81 s 34)
am A2006-23 amdt 1.311
om A2006-4 s 52
ins A2006-4 s 53

Service of notices under ch 12

s 206 (prev s 26Q) ins 1997 No 66 s 15
am 2001 No 81 amdt 1.49, amdt 2.29
renum R9 LA (see 2001 No 81 s 34)
om A2006-4 s 52

Evidence for ch 12

s 207 (prev s 26R) ins 1997 No 66 s 15
am 1999 No 82 sch pt 2; 2001 No 81 amdt 1.49
renum R9 LA (see 2001 No 81 s 34)
om A2006-4 s 52

Review of decisions by administrative appeals tribunal

ch 13 hdg ins 2001 No 81 s 28
 sub 2002 No 22 amdt 1.26
 am A2006-4 amdt 1.12

Notice of reviewable decisions to be given to affected people

s 208 (prev s 26RA) ins 2001 No 81 s 28
 renum R9 LA (see 2001 No 81 s 34)
 am A2006-4 amdt 1.13

Review by administrative appeals tribunal of reviewable decisions

s 209 (prev s 26RB) ins 2001 No 81 s 28
 renum R9 LA (see 2001 No 81 s 34)
 am A2006-4 amdt 1.13

Miscellaneous

ch 14 hdg (prev pt 7 hdg) ins 1991 No 105 s 20
 renum 2001 No 81 amdt 1.50
 am A2006-4 amdt 1.14

Confidentiality

s 210 (prev s 26RC) ins 2001 No 81 s 29
 renum R9 LA (see 2001 No 81 s 34)
 sub A2003-49 amdt 2.41
 sub as s 200 A2006-4 s 54

Medical referees

s 211 hdg bracketed note exp 1 July 2004 (s 3 (3))
 s 211 (prev s 15) reloc as s 26RD 2001 No 81 amdt 1.16
 am 2002 No 22 amdt 1.27, amdt 1.28
 renum as s 211 R9 LA (see 2001 No 81 s 34)
 am A2006-4 amdt 1.15

Time for beginning prosecutions

s 212 (prev s 26S) ins 1997 No 66 s 16
 sub 2001 No 81 s 29
 renum R9 LA (see 2001 No 81 s 34)
 am A2003-49 s 29; ss renum R18 LA (see A2003-49 s 30)
 (4), (5) exp 1 July 2004 (s 212 (4))
 am A2006-4 amdt 1.16, amdt 1.17

False information etc

s 213 (prev s 26T) ins 2001 No 81 s 29
 renum R9 LA (see 2001 No 81 s 34)
 sub A2003-49 amdt 2.42
 om A2006-4 s 55

Endnotes

4 Amendment history

Criminal liability of executive officers

s 214 (prev s 26U) ins 2001 No 81 s 29
am 2002 No 11 amdt 2.114
renum R9 LA (see 2001 No 81 s 34)
am 2002 No 51 amdt 1.60
sub A2003-49 amdt 2.42
am A2006-4 ss 56-58

Criminal liability of officers of corporation

s 215 (prev s 27) ins 1991 No 105 s 20
sub 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)
om A2003-49 amdt 2.42

Minister must take advice

s 216 (prev s 27A) ins 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 amdt 1.18

Rules of court

s 217 (prev s 27B) ins 1991 No 105 s 20
am 1994 No 60 sch 1; 1995 No 46 sch
sub 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 amdt 1.18

Directions about procedure

s 218 (prev s 27C) ins 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 amdt 1.18

References to Workers' Compensation Act

s 219 (prev s 27CA) ins 2001 No 81 s 29
renum R9 LA (see 2001 No 81 s 34)
sub as s 209 A2006-4 s 59

Funds for administration of Act

s 220 (prev s 27D) ins 1998 No 31 s 4
am 2001 No 81 amdt 1.51-1.55; 2002 No 22 amdt 1.29
renum R9 LA (see 2001 No 81 s 34)
sub A2006-4 s 59

Determination of fees

s 221 (prev s 28) am 1952 No 4 s 10; 1967 No 44 sch 1; 1969 No 13
s 3; 1989 No 38 sch 1; 1991 No 105 s 21; 1994 No 68 s 7;
1998 No 54 sch
sub 2001 No 44 amdt 1.4383
renum R9 LA (see 2001 No 81 s 34)

Approved forms

s 222 (prev s 29) ins 2001 No 44 amdt 1.4383
renum R9 LA (see 2001 No 81 s 34)
(4)-(7) exp 12 September 2002 (s 222 (7))

Regulation-making power

s 223 (prev s 30) ins 2001 No 44 amdt 1.4383
am 2001 No 81 s 30; 2002 No 22 amdt 1.30, amdt 1.31
renum R9 LA (see 2001 No 81 s 34)
am A2006-8 s 24

Temporary provisions for acts of terrorism

ch 14A hdg renum as ch 15 hdg

Temporary provisions for acts of terrorism

ch 15 hdg (prev ch 14A hdg) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2009 (s 232)

Application of ch 15 to insurers

s 224 (prev s 30A) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 4; A2005-16 s 4; A2006-4 amdt 1.19
exp 1 October 2009 (s 232)

Definitions—ch 15

s 225 (prev s 30B) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2009 (s 232)

Meaning of act of terrorism for ch 15

s 226 (prev s 30C) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2009 (s 232)

Terrorism cover temporary reinsurance fund

s 227 (prev s 30D) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
am A2006-4 s 60
exp 1 October 2009 (s 232)

Entitlement of insurers to reimbursement from temporary fund

s 228 (prev s 30E) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
am A2003-32 s 5; A2005-16 s 5
exp 1 October 2009 (s 232)

Payments out of temporary fund

s 229 (prev s 30F) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2009 (s 232)

Endnotes

4 Amendment history

Regulations about temporary fund

s 230 (prev s 30G) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2009 (s 232)

Exclusion of Corporations legislation

s 231 (prev s 30H) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
exp 1 October 2009 (s 232)

Expiry—ch 15

s 232 (prev s 30I) ins 2002 No 22 s 4
renum R9 LA (see 2001 No 81 s 34)
sub A2003-32 s 6
am A2005-16 s 6
exp 1 October 2009 (s 232)

Transitional—Workers Compensation Amendment Act 2001

ch 16 hdg (prev ch 15 hdg) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
sub A2003-49 amdt 1.10
exp 1 July 2004 (s 246)

Definitions for ch 16

s 233 (prev s 32) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

What injuries does this Act apply to?

s 234 (prev s 33) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

What happens to injuries before the commencement of the amendment Act?

s 235 (prev s 34) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Determined categories of workers

s 236 (prev s 35) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Approved insurers

s 237 (prev s 36) ins 2001 No 81 s 32
sub 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Exempt employers

s 238 (prev s 37) ins 2001 No 81 s 32
sub 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Prescribed insurance policies

s 239 (prev s 37A) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Approved rehabilitation providers

s 240 (prev s 37B) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Work experience students

s 240A ins as mod SL 2002 No 20 pt 12, sch 4
exp 1 July 2004 (s 246)

Children and Young People Act and compensation

s 241 (prev s 37C) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Periodic Detention Act and compensation

s 242 (prev s 37D) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Remand Centres Act and compensation

s 243 (prev s 37E) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Supervision of Offenders (Community Service Orders) Act and compensation

s 244 (prev s 37F) ins 2002 No 22 amdt 1.32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Modification of ch 16's operation

s 245 (prev s 38) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Application of Criminal Code—Workers Compensation Amendment Act 2003

s 245A ins A2003-32 s 7
exp 1 July 2004 (s 246)

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Auditors' certificates—Workers Compensation Amendment Act 2003

s 245B ins A2003-32 s 7
exp 1 July 2004 (s 246)

Expiry of ch 16

s 246 (prev s 39) ins 2001 No 81 s 32
renum R9 LA (see 2001 No 81 s 34)
exp 1 July 2004 (s 246)

Transitional—Workers Compensation Amendment Act 2003 (No 2)

ch 17 hdg ch 17 hdg ins A2004-39 amdt 1.43 renum as ch 18 hdg
ins A2003-49 amdt 1.11
exp 3 June 2006 (s 249)

Definitions—ch 17

s 247 s 247 ins A2004-39 amdt 1.43 renum as s 250
ins A2003-49 amdt 1.11
def **cross-border scheme commencement day** ins
A2003-49 amdt 1.11
def **cross-border scheme provisions** ins
A2003-49 amdt 1.11
s 247 exp 3 June 2006 (s 249 (LA s 88 declaration applies))

Application of cross-border scheme provisions

s 248 s 248 ins A2004-39 amdt 1.43 renum as s 251
ins A2003-49 amdt 1.11
exp 3 June 2006 (s 249 (LA s 88 declaration applies))

Expiry—ch 17

s 249 s 249 ins A2004-39 amdt 1.43 renum as s 252
ins A2003-49 amdt 1.11
exp 3 June 2006 (s 249)

Modification of Act

ch 18 hdg (prev ch 17 hdg) ins A2004-39 amdt 1.43
renum as ch 18 hdg R21 LA
exp on the day the Health Professionals Act 2004 s 136
expires (s 254)

Application—ch 17

s 250 s 250 ins A2004-39 amdt 1.43 renum as s 253
(prev s 247) ins A2004-39 amdt 1.43
renum as s 250 R21 LA
exp on the day the Health Professionals Act 2004 s 136
expires (s 254)

Dictionary, definition of *chiropractor*

s 251 s 251 ins A2004-39 amdt 1.43 renum as s 254
 (prev s 248) ins A2004-39 amdt 1.43
 renum as s 251 R21 LA
exp on the day the Health Professionals Act 2004 s 136
 expires (s 254)

Dictionary, definition of *osteopath*

s 252 (prev s 249) ins A2004-39 amdt 1.43
 renum as s 252 R21 LA
exp on the day the Health Professionals Act 2004 s 136
 expires (s 254)

Dictionary, definition of *physiotherapist*

s 253 (prev s 250) ins A2004-39 amdt 1.43
 renum as s 253 R21 LA
exp on the day the Health Professionals Act 2004 s 136
 expires (s 254)

Expiry—ch 18

s 254 (prev s 251) ins A2004-39 amdt 1.43
 renum as s 254 R21 LA
exp on the day the Health Professionals Act 2004 s 136
 expires (s 254)

Transitional—Workers Compensation Amendment Act 2006

ch 19 hdg ins A2006-4 s 61
exp 2 years after the day it commences (s 264 (LA s 88
 declaration applies))

Definitions—ch 19

s 255 ins A2006-4 s 61
exp 2 years after the day it commences (s 264 (LA s 88
 declaration applies))
def **commencement day** ins A2006-4 s 61
def **nominal insurer** ins A2006-4 s 61
def **WCSF Act** ins A2006-4 s 61
def **workers compensation supplementation fund** ins
 A2006-4 s 61

Transfer of nominal insurer's assets and liabilities

s 256 ins A2006-4 s 61
exp 2 years after the day it commences (s 264 (LA s 88
 declaration applies))

Amounts in workers compensation supplementation fund

s 257 ins A2006-4 s 61
exp 2 years after the day it commences (s 264 (LA s 88
 declaration applies))

Endnotes

4 Amendment history

Amounts to be paid

s 258 ins A2006-4 s 61
exp 2 years after the day it commences (s 264 (LA s 88
declaration applies))

Proceedings and evidence in relation to previous entities

s 259 ins A2006-4 s 61
exp 2 years after the day it commences (s 264 (LA s 88
declaration applies))

Claims made against nominal insurer

s 260 ins A2006-4 s 61
exp 2 years after the day it commences (s 264 (LA s 88
declaration applies))

Claims made under WCSF Act before commencement day

s 261 ins A2006-4 s 61
exp 2 years after the day it commences (s 264 (LA s 88
declaration applies))

Claims for weekly payments

s 262 ins A2006-4 s 61
exp 2 years after the day it commences (s 264 (LA s 88
declaration applies))

Transitional regulations

s 263 ins A2006-4 s 61
exp 2 years after the day it commences (s 264 (LA s 88
declaration applies))

Expiry of ch 19

s 264 ins A2006-4 s 61
exp 2 years after the day it commences (s 264 (LA s 88
declaration applies))

Compensation for permanent injuries

sch 1 hdg am 1991 No 105 sch 4
sub 2001 No 81 s 33
sch 1 am 1952 No 4 s 11; 1954 No 12 s 5; 1959 No 12 s 8; 1959
No 20 s 4; 1961 No 8 s 4; 1965 No 6 s 6; 1967 No 44 sch 1;
1968 No 19 s 3 and sch 1; 1969 No 7 sch; 1970 No 26 sch;
1971 No 15 sch; 1972 No 35 s 2; 1972 No 38 sch; 1973
No 11 s 4; 1974 No 34 sch; 1975 No 11 sch; 1983 No 69
s 17; 1985 No 9 sch 2; 1987 No 10 s 6; 1991 No 44 s 7 and
sch 1; 1991 No 105 sch 1, sch 2 and sch 4; 1993 No 19 s 5;
1994 No 68 s 8; 1997 No 66 s 17
sub 2001 No 81 s 33
am 2002 No 49 amdt 1.12

Adjacent areas

sch 2 hdg am 1991 No 105 s 24
 sch 2 sub 1952 No 4 s 12; 1954 No 12 s 6; 1959 No 20 s 5; 1965
 No 6 s 7; 1967 No 44 s 4; 1968 No 19 sch 2
 am 1991 No 105 s 24 and sch 2; 1997 No 66 s 18
 om 2001 No 81 s 33
 ins A2003-49 amdt 1.12
 ss renum R28 LA

DI fund advisory committee

sch 3 hdg am 1991 No 105 sch 5
 sch 3 am 1952 No 4 s 13; 1967 No 44 sch 1; 1969 No 18 s 12; 1987
 No 24 s 6; 1989 No 38 sch 1; 1991 No 105 sch 2 and sch 5;
 1997 No 27 sch 2; 1997 No 66 s 19
 om 2001 No 81 s 33
 ins A2006-4 s 62

Rules relating to arbitrations under this Act

sch 4 hdg am 1991 No 105 sch 6
 sch 4 am 1961 No 8 s 5; 1983 No 69 s 18; 1986 No 84 s 61; 1991
 No 44 s 7 and sch 1; 1991 No 105 s 23, sch 2 and sch 6
 am 1997 No 96 sch 1; 2001 No 44 amdt 1.4385, amdt 1.4386
 om 2001 No 81 s 33

Dictionary

dict ins 2001 No 81 s 33
am A2006-4 s 63
 def **ABS** ins 2001 No 81 s 33
 om A2003-41 amdt 3.520
 def **approved insurer** ins 2001 No 81 s 33
 def **approved rehabilitation provider** ins 2001 No 81 s 33
 sub A2003-49 amdt 2.43
def auditor ins A2006-4 s 64
 def **average pre-incapacity weekly earnings** ins 2001 No 81
 s 33
 def **average pre-incapacity weekly hours** ins 2001 No 81
 s 33
 def **AWE** ins 2001 No 81 s 33
 sub A2003-41 amdt 3.521
 def **awe indexed** ins 2001 No 81 s 33
 def **boilermakers deafness** ins 2001 No 81 s 33
def chair ins A2006-4 s 64
 def **child** ins 2001 No 81 s 33
 sub A2004-2 amdt 1.61
 def **chiropractor** reloc from s 6 (1) 2001 No 81 amdt 1.5
 am A2004-39 amdt 1.44

Endnotes

4 Amendment history

- def ***claim for payment*** ins A2006-4 s 64
- def ***claims manager*** ins A2006-4 s 64
- def ***committee*** ins 2002 No 22 amdt 1.33
- def ***committee***, for schedule 3 ins A2006-4 s 64
- def ***compensable injury*** ins 2001 No 81 s 33
- def ***compensation*** ins 2001 No 81 s 33
- def ***compensation for costs*** ins 2001 No 81 s 33
- def ***compulsory insurance policy*** ins 2001 No 81 s 33
- def ***cpi indexed*** ins 2001 No 81 s 33
- def ***damages*** ins A2003-49 amdt 1.13
- def ***damages claim*** ins A2003-49 amdt 1.13
- def ***deductible proportion*** ins 2001 No 81 s 33
- def ***defined offence*** reloc from s 6 (1) 2001 No 81 amdt 1.5
om 2002 No 11 amdt 2.115
- def ***dependant*** ins 2001 No 81 s 33
- def ***determined categories*** ins 2001 No 81 s 33
- def ***DI fund*** ins A2006-4 s 64
- def ***DI fund actuary*** ins A2006-4 s 64
- def ***DI fund advisory committee*** ins A2006-4 s 64
- def ***DI fund manager*** ins A2006-4 s 64
- def ***disease*** reloc from s 6 (1) 2001 No 81 amdt 1.5
- def ***domestic partner*** ins A2004-2 amdt 1.62
- def ***earned premium*** ins A2006-4 s 64
- def ***employer*** ins 2001 No 81 s 33
am R7 LA; A2003-49 amdt 1.14
- def ***employment*** ins A2003-49 amdt 1.15
- def ***executive officer*** ins 2001 No 81 s 33
- def ***full-time student*** ins 2001 No 81 s 33
- def ***given*** ins 2001 No 81 s 33
sub 2002 No 22 amdt 1.34
- def ***incapacity date*** ins 2001 No 81 s 33
om A2006-4 s 65
- def ***initial incapacity date*** ins A2006-4 s 66
- def ***initial loss*** ins 2001 No 81 s 33
- def ***injured worker*** ins 2001 No 81 s 33
sub 2002 No 22 amdt 1.35
- def ***injury*** ins 2001 No 81 s 33
am A2003-49 amdt 1.16
- def ***injury management*** ins 2001 No 81 s 33
- def ***injury management program*** ins 2001 No 81 s 33
- def ***injury notice*** ins 2001 No 81 s 33
- def ***insurer*** ins 2001 No 81 s 33
sub 2002 No 22 amdt 1.36; A2006-4 s 67
- def ***inspector*** reloc from s 6 (1) 2001 No 81 amdt 1.5
om R13 LA
ins 2002 No 49 amdt 3.260

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- def **liquidator** ins A2006-4 s 68
def **loss** ins 2001 No 81 s 33
def **lump sum claim** ins A2003-49 s 31
def **managing controller** ins A2006-4 s 68
def **maximum loss amount** ins 2001 No 81 s 33
def **medical referee** ins 2001 No 81 s 33
 sub A2006-4 amdt 1.20
def **medical treatment** ins 2001 No 81 s 33
def **member** ins A2006-4 s 68
def **member of the family** reloc from s 6 (1) 2001
 No 81 amdt 1.5
 am A2004-2 amdt 1.63, amdt 1.64
def **nominal insurer** reloc from s 6 (1) 2001 No 81 amdt 1.5
 om A2006-4 s 69
def **nominated treating doctor** ins 2001 No 81 s 33
def **non-business employer** ins 2001 No 81 s 33
def **official manager** ins A2006-4 s 70
def **osteopath** reloc from s 6 (1) 2001 No 81 amdt 1.5
 am A2004-39 amdt 1.45
def **partially incapacitated** ins 2001 No 81 s 33
def **payment** ins 2001 No 81 s 33
def **pension age** ins 2001 No 81 s 33
 om A2006-8 s 25
def **personal injury plan** ins 2001 No 81 s 33
def **physiotherapist** reloc from s 6 (1) 2001 No 81 amdt 1.5
 am A2004-39 amdt 1.46
def **professional sporting activity** reloc from s 6 (1) 2001
 No 81 amdt 1.5
def **protocol** ins 2001 No 81 s 33
def **receiver and manager** ins A2006-4 s 70
def **recognised auditor** ins A2003-32 s 8
 am A2003-49 s 32; A2004-42 amdt 3.122
 sub A2006-4 s 71
def **registered agreement** ins 2001 No 81 s 33
def **registered auditor** ins 2001 No 81 s 33
def **rehabilitation services** ins A2006-8 s 26
def **return-to-work program** ins 2001 No 81 s 33
def **reviewable decision** ins 2001 No 81 s 33
 sub A2006-4 amdt 1.21
def **rules** ins 2001 No 81 s 33
 om A2006-4 s 72
def **self-insurer** ins 2001 No 81 s 33
 sub A2006-4 amdt 1.22
def **single loss amount** ins 2001 No 81 s 33
def **speech therapist** reloc from s 6 (1) 2001 No 81 amdt 1.5
def **spouse** reloc from s 6 (1) 2001 No 81 amdt 1.5
 om A2004-2 amdt 1.65

Endnotes

5 Earlier republications

- def **statutory floor** ins 2001 No 81 s 33
- def **substantial** ins 2001 No 81 s 33
- def **substantive law** ins A2003-49 amdt 1.17
- def **Territory or State of connection** ins A2003-49 amdt 1.17
- def **territory worker** ins 2001 No 81 s 33
sub A2003-49 amdt 1.17
- def **therapeutic treatment** reloc from s 6 (1) 2001 No 81
amdt 1.5
- def **totally incapacitated** ins 2001 No 81 s 33
- def **vocational rehabilitation** ins 2001 No 81 s 33
- def **weekly compensation** ins 2001 No 81 s 33
sub A2006-4 s 73
- def **worker** ins 2001 No 81 s 33
sub A2003-49 amdt 1.18
- def **workers compensation law** ins A2003-49 amdt 1.18
- def **workplace injury** ins 2001 No 81 s 33
sub 2002 No 22 amdt 1.37
- def **work-related injury** ins A2003-49 amdt 1.18

Adjacent areas

sch 2

ss renum R28 LA

5 Earlier republications

Some earlier republications were not numbered. The number in column 1 refers to the publication order.

Since 12 September 2001 every authorised republication has been published in electronic pdf format on the ACT legislation register. A selection of authorised republications have also been published in printed format. These republications are marked with an asterisk (*) in column 1. Electronic and printed versions of an authorised republication are identical.

Republication No	Amendments to	Republication date
1	Act 1991 No 105	31 March 1992
2	Act 1993 No 19	31 January 1994
3	Act 1994 No 97	1 January 1995
4	Act 1996 No 13	31 March 1997
5	Act 1997 No 96	31 January 1998
6	Act 1998 No 54	31 December 1998

Republication No	Amendments to	Republication date
7	<u>Act 2001 No 81</u>	28 September 2001
8	<u>Act 2002 No 11</u>	30 May 2002
9	Act 2001 No 22	1 July 2002
10	Act 2002 No 22	2 July 2002
11	Act 2002 No 22	13 September 2002
12	Act 2002 No 22	29 October 2002
13	Act 2002 No 51	1 January 2003
14*	A2002-51	17 January 2003
14 (RI)	A2002-51	31 January 2005
15	A2003-32	1 July 2003
15 (RI)	A2003-32	31 January 2005
16	A2003-41	9 October 2003
16 (RI)	A2003-41	31 January 2005
17	A2004-2	22 March 2004
17 (RI)	A2004-2	31 January 2005
18	A2004-2	5 April 2004
18 (RI)	A2004-2	31 January 2005
19	<u>A2004-17</u>	3 June 2004
19 (RI)	<u>A2004-17</u>	31 January 2005
20	<u>A2004-17</u>	2 July 2004
20 (RI)	<u>A2004-17</u>	31 January 2005
21	A2004-42	25 August 2004
21 (RI)	A2004-42	28 October 2004
22	<u>A2004-39</u>	1 January 2005
23	A2004-60	10 January 2005
24	A2005-16	14 April 2005
25*	A2005-20	2 June 2005
26	A2005-20	7 July 2005

Endnotes

6 Renumbered provisions

Republication No	Amendments to	Republication date
27	A2005-20	1 January 2006
28 (RI)	A2006-23	9 August 2007

6 Renumbered provisions

This Act was renumbered under the *Legislation Act 2001* in R9 (see Act 2001 No 81). Details of renumbered provisions are shown in endnote 4 (Amendment history). For a table showing the renumbered provisions, see R12.

7 Uncommenced amendments

The following amendments have not been included in this republication because they were uncommenced at the republication date:

Workers Compensation Amendment Act 2006 A2006-4

4 New section 30

in part 4.1, insert

30 DI fund manager required to pay weekly compensation

- (1) To remove any doubt, the DI fund manager is liable to indemnify an employer in relation to weekly compensation payable in relation to an injured worker's injury if—
 - (a) there is no compulsory insurance policy in force that applies to the worker in relation to the injury; or
 - (b) the compulsory insurance policy in force that applies to the worker in relation to the injury was issued by an insurer that—
 - (i) cannot provide the indemnity required to be provided under the policy; or
 - (ii) has been wound up; or

-
- (c) the employer is a self insurer and the employer is unable to pay the injured worker's weekly compensation; or
 - (d) the manager receives a copy of the injury notice for the worker in relation to the injury under section 94A (Uninsured employer to give DI fund manager injury notice etc) or section 94C (Injured workers of uninsured employers may give DI fund manager injury notice); or
 - (e) the manager is otherwise satisfied that it is reasonably likely that there is no compulsory insurance policy in force that applies to the worker in relation to the injury.
- (2) However, the DI fund manager need not indemnify an employer in relation to weekly compensation payable in relation to an injured worker's injury if—
- (a) the injury happened before the commencement of the *Workers Compensation Amendment Act 2006*; and
 - (b) either—
 - (i) the nominal insurer had been given an injury notice for the injury or was otherwise aware that there was no compulsory insurance policy that applied to the worker in relation to the injury; or
 - (ii) the compulsory insurance policy that applies to the worker in relation to the injury was issued by an insurer that immediately before the commencement of the *Workers Compensation Amendment Act 2006*—
 - (A) could not provide the indemnity required to be provided under the policy; or
 - (B) had been wound up.
- (3) Subsection (2) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

Endnotes

7 Uncommenced amendments

- (4) Subsections (2) and (3) and this subsection expire 3 years after the day this section commences.

Note A provision of an Act expires at the end of the day fixed for its expiry (see Legislation Act, s 85 (3); *repeal* in s 85 includes expiry—see s 82).

5 New section 36G

in part 4.3, insert

36G Definitions—pt 4.3

In this part:

initial incapacity date, for a worker in relation to an injury that causes incapacity or death, means—

- (a) the date the worker first becomes incapacitated (whether totally or partially) for work because of the injury;
- (b) if the worker is dead and the death was not preceded by a period of incapacity for work—the date of the worker's death.

weekly compensation, for a worker, means compensation to which the worker is entitled under section 39 (Entitlement to weekly compensation for first 26 weeks of incapacity) or section 40 (Entitlement to weekly compensation after first 26 weeks of incapacity).

6 Sections 38 to 43

substitute

38 When do weekly compensation payments begin etc?

- (1) If the worker is or may be entitled to compensation for a compensable injury—
- (a) the payment of weekly compensation must begin when the worker gives notice of the injury to the employer; and

- (b) the worker is or may be entitled to weekly compensation from the date of the injury.

Note An employer is liable to pay compensation if the employer's worker suffers personal injury arising out of, or in the course of, the worker's employment (see s 31 (1)).

- (2) However, if, at the end of 7 days after the date of the injury, the worker has not made a claim for compensation—
- (a) payment of weekly compensation ends; and
- (b) the worker is not entitled to weekly compensation for the injury for the period—
- (i) beginning on the day 8 days after the date of the injury; and
- (ii) ending on the day before the day the worker makes a claim for the injury.
- (3) Subsection (2) does not apply in relation to the worker if—
- (a) the worker cannot make a claim before the end of the 7-day period because of the injury; and
- (b) the worker makes the claim not later than 7 days after the day the worker is first able to make the claim.

39 Entitlement to weekly compensation for first 26 weeks of incapacity

- (1) This section applies if a worker is incapacitated (whether totally or partially) because of a compensable injury.
- (2) The worker is entitled to receive weekly compensation under this section for any period on or after the initial incapacity date that the worker is incapacitated because of the injury.
- (3) However, the worker is not entitled to weekly compensation under this section for the injury—

Endnotes

7 Uncommenced amendments

- (a) for a period of longer than, or for periods (whether or not continuous) totalling more than, 26 weeks; or
 - (b) if the worker was, on the initial incapacity date for the injury, younger than 63 years old—for any period after the worker reaches pension age; or
 - (c) if the worker was, on the initial incapacity date for the injury, at least 63 years old—for any period more than 2 years after the initial incapacity date.
- (4) The worker's entitlement under this section is worked out as follows:
- (a) for any period during which the person is totally incapacitated during the period of entitlement—the worker's average pre-incapacity weekly earnings;
 - (b) for any period during which the person is partially incapacitated during the period of entitlement—the difference between—
 - (i) the worker's average pre-incapacity weekly earnings; and
 - (ii) the average weekly amount that the worker is being paid for working or could earn in reasonably available suitable employment.
- (5) For this section, in working out the average weekly amount the worker could earn, consideration may be given to the following:
- (a) suitable employment that the worker unreasonably rejects;
 - (b) suitable employment that the worker obtains but unreasonably discontinues.

40 Entitlement to weekly compensation after first 26 weeks of incapacity

- (1) This section applies if—

-
- (a) a worker is incapacitated (whether totally or partially) because of a compensable injury; and
 - (b) the worker has received weekly compensation under section 39 for the injury for a period of, or periods (whether or not continuous) totalling, 26 weeks.
- (2) The worker is entitled to receive weekly compensation under section 41 (Entitlement to weekly compensation after 26 weeks of total incapacity) for any period after the 26-week period when the worker is totally incapacitated.
 - (3) The worker is entitled to receive weekly compensation under section 42 (Entitlement to weekly compensation after 26 weeks of partial incapacity) for any period after the 26-week period when the worker is partially incapacitated.
 - (4) However, the worker is not entitled to weekly compensation for the injury—
 - (a) if the worker was, on the initial incapacity date for the injury, younger than 63 years old—for any period after the worker reaches pension age; or
 - (b) if the worker was, on the initial incapacity date for the injury, at least 63 years old, or older—for any period more than 2 years after the initial incapacity date.

41 Entitlement to weekly compensation after 26 weeks of total incapacity

- (1) If a worker is entitled to receive weekly compensation under this section for a period, the worker is entitled to receive weekly compensation equal to—
 - (a) if 100% of the worker's average pre-incapacity weekly earnings is less than the pre-incapacity floor for the worker—100% of the worker's average pre-incapacity weekly earnings; or

- (b) if 100% of the worker's average pre-incapacity weekly earnings is more, but 65% of those earnings is less, than the pre-incapacity floor for the worker—the statutory floor; or

Note **Statutory floor** is defined in the dictionary.

- (c) if 65% of the worker's average pre-incapacity weekly earnings is more than the pre-incapacity floor for the worker—whichever of the following is (at the time of payment) more:

- (i) 65% of the worker's average pre-incapacity weekly earnings;
- (ii) the statutory floor.

Example for par (c)

Jim is injured at work and totally incapacitated for 14 weeks. After unsuccessfully attempting a return to work for 3 days, Jim is totally incapacitated for another 18 weeks. Jim is entitled under section 39 to compensation equal to his average pre-incapacity weekly earnings for the 14 weeks and the next 12 weeks of his total incapacity (making a total of 26 weeks not including the 3 days return to work). He is then entitled to be paid 65% of his pre-incapacity weekly earnings (or the statutory floor, if more at the time of payment) for the remaining period (6 weeks) he is totally incapacitated.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) In this section:

pre-incapacity floor, for a worker, means the statutory floor that applied immediately before the initial incapacity date for the worker in relation to the injury.

42 Entitlement to weekly compensation after 26 weeks of partial incapacity

- (1) If a worker is entitled to receive weekly compensation under this section for a period, the worker is entitled to receive weekly

compensation equal to the difference between the weekly amount the worker is being paid for working and—

- (a) if 100% of the worker's average pre-incapacity weekly earnings is less than the statutory floor—100% of the worker's average pre-incapacity weekly earnings; or
 - (b) if the relevant percentage of the worker's average pre-incapacity weekly earnings is less than the statutory floor—the statutory floor; or
 - (c) if the relevant percentage of the worker's average pre-incapacity weekly earnings is more than the statutory ceiling—the statutory ceiling; or
 - (d) in any other case—the relevant percentage of the worker's average pre-incapacity weekly earnings.
- (2) For this section, the *relevant percentage* is—
- (a) if the worker is not working or works 25% of the worker's average pre-incapacity weekly hours or less—65%; or
 - (b) if the worker is working more than 25% of the worker's average pre-incapacity weekly hours but not more than 50%—75%; or
 - (c) if the worker is working more than 50% of the worker's average pre-incapacity weekly hours but not more than 75%—85%; or
 - (d) if the worker is working more than 75% of the worker's average pre-incapacity weekly hours but not more than 85%—95%; or
 - (e) if the worker is working more than 85% of the worker's average pre-incapacity weekly hours—100%.

Examples

- 1 Bronwyn injures herself at work in her full-time job. Bronwyn's injury causes her to become partially incapacitated and prevents her from fulfilling

Endnotes

7 Uncommenced amendments

her normal duties over normal work hours for 28 weeks. In those 28 weeks, Bronwyn works, on average, 50% of her pre-incapacity weekly hours. Bronwyn returns to normal duties for 4 weeks but suffers from a relapse, becoming partially incapacitated again and staying that way for a further 7 weeks. Bronwyn's employer is required to pay Bronwyn her wage for the time she has worked during the 35 weeks of partial incapacity. Bronwyn is also entitled to the following weekly compensation:

- (a) weekly compensation equal to the amount she has lost in wages for the first 26 weeks of reduced hours work;
 - (b) weekly compensation for the remaining 9 weeks of working on reduced hours equal to the difference between the weekly amount Bronwyn is being paid for working and the statutory ceiling (because Bronwyn is earning more than 150% of AWE at the time the compensation is being paid).
- 2 Nicholas works full time in a job that pays him an amount equivalent to the statutory floor. Nicholas injures himself at work and is totally incapacitated for 6 weeks and partially incapacitated for 26 weeks. Nicholas is advised he could work on light duties for 3 weeks of the partial incapacity period. However, suitable employment is not provided for this period. Nicholas' condition improves to the point where he returns to work on a part-time basis and works 20% of his average pre-incapacity hours for 10 weeks. Nicholas' condition further improves to the point where he works on average 60% of his pre-incapacity weekly hours for the last 13 weeks of partial incapacity. Nicholas' entitlements are as follows:
- (a) the following amounts for wages (paid to Nicholas by his employer) for the time he has worked during the 35 weeks of partial incapacity:
 - (i) for the first 3 weeks when Nicolas suffers from partial incapacity but is capable of undertaking suitable work and is not provided with it—nothing;
 - (ii) 20% of his normal pre-incapacity earnings for the next 10 weeks of partial incapacity;
 - (iii) 60% of his normal pre-incapacity earnings for the last 13 weeks of partial incapacity;
 - (b) the following amounts for weekly compensation:
 - (i) for the initial 6 weeks he is totally incapacitated—compensation equal to his average pre-incapacity weekly earnings;
 - (ii) for the first 3 weeks of partial incapacity when he is capable of undertaking suitable work but is not provided with it—100% of his normal pre-incapacity earnings;

(iii) for the next 17 weeks of partial incapacity—the difference between the average weekly amount that Nicholas is paid for working and his pre-incapacity earnings;

(iv) for the remaining 6 weeks—the difference between the statutory floor (because Nicholas is paid at the same rate as the statutory floor) and the amount that Nicholas is paid for working.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) In this section:

statutory ceiling, in relation to an amount, means 150% of AWE at the time the amount is to be paid.

43 Stopping payments for total incapacity

- (1) A worker stops being entitled to weekly compensation for total incapacity for a compensable injury at the earliest of the following times:
- (a) when the worker stops being totally incapacitated because of the injury;
 - (b) when the worker returns to work;
 - (c) when the worker dies.
- (2) However, if the worker stops being entitled to weekly compensation under subsection (1) (a) or (b), the worker may again become entitled to weekly compensation for the compensable injury if the worker again becomes totally or partially incapacitated because of the injury.

43A Stopping payments for partial incapacity

- (1) A worker stops being entitled to weekly compensation for partial incapacity for a compensable injury at the earliest of the following times:
 - (a) when the worker stops being partially incapacitated because of the injury;
 - (b) when the worker dies.
- (2) However, if the worker stops being entitled to weekly compensation under subsection (1) (a), the worker may again become entitled to weekly compensation if the worker again becomes totally or partially incapacitated because of the compensable injury.

43B Effect on payment period of loss of entitlement to weekly compensation

- (1) This section applies if a worker would be entitled to weekly compensation under section 39 (Entitlement to weekly compensation for first 26 weeks of incapacity) or section 40 (Entitlement to weekly compensation after first 26 weeks incapacity) if payment of the compensation had not been stopped under section 83 (No compensation while imprisoned) or section 113 (Compliance by workers).
- (2) The period when the worker's entitlement is stopped is counted as part of the 26-week period mentioned in section 39 and section 40 as if payment of compensation had not been stopped.

**7 Effect of living outside Australia if compensation still payable
Section 45 (4)**

omit

8 **Definitions for ch 5**
Section 86, definition of *insurer*

omit

9 **New section 86A**

insert

86A **Meaning of *insurer* for ch 5**

- (1) In this chapter:

insurer means—

- (a) an approved insurer; or
- (b) a self-insurer; or
- (c) for an injured worker's injury if the insurer that issued a compulsory insurance policy that covers the worker in relation to the injury cannot provide the indemnity required to be provided under the policy—the DI fund; or
- (d) for an injured worker's injury if there is no compulsory insurance policy that covers the worker in relation to the injury and the worker's employer is not a self-insurer—the DI fund.

Note The DI fund manager must act as if the DI fund were the insurer in other situations (see s 112 (3)).

- (2) However, in applying this chapter to the DI fund as insurer—

- (a) a requirement that the insurer do or not do something is taken to be a requirement that the DI fund manager do or not do the thing; and
- (b) the manager is not required to comply with section 88 (Insurer to establish etc injury management program) or section 89 (Insurer to give effect to injury management program); and

Note Also, s 128 (1) (b) does not apply to the DI fund (see s 128 (2)).

Endnotes

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- (c) although otherwise required to comply with this chapter, the manager is not liable to be prosecuted for an offence against this chapter.

10 Insurer to establish etc injury management program Section 88 (1), new note

insert

Note The DI fund manager is not required to comply with this section (see s 86A (2) (b)).

11 Insurer to give effect to injury management program Section 89 (1), new note

insert

Note The DI fund manager is not required to comply with this section (see s 86A (2) (b)).

12 Insurer's obligation of prompt payment Section 90 (1)

substitute

- (1) An insurer commits an offence if—
- (a) the insurer receives written notice requiring payment for the provision of a service; and
 - (b) the insurer is required under this Act to pay for the service; and
 - (c) the insurer fails to pay the person who provided the service (the *service provider*) for the service not later than 30 days after the day the insurer receives the notice.

Maximum penalty: 10 penalty units.

13 New sections 94A to 94C

insert

94A Uninsured employer to give DI fund manager injury notice etc

- (1) An employer (other than a self-insurer) commits an offence if—
- (a) the employer is given an injury notice for an injured worker; and
 - (b) the employer does not have a compulsory insurance policy that applies to the worker in relation to the injury; and
 - (c) the employer does not, within 48 hours after receiving the injury notice—
 - (i) give the DI fund manager a copy of the injury notice; and
 - (ii) tell the manager, in writing, that the employer does not have a compulsory insurance policy that applies to the worker in relation to the injury.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

94B Liquidator to give DI fund manager injury notice etc

- (1) The liquidator of an insurer (other than an insurer that has been wound up under the Corporations Act) commits an offence if—
- (a) the liquidator is given an injury notice; and
 - (b) the injury notice is for an injury of an injured worker of an employer; and
 - (c) the employer holds or held a compulsory insurance policy with the insurer that requires or required indemnity to be provided for the injured worker's injury; and

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- (d) the insurer cannot provide the indemnity required to be provided under the policy; and
- (e) the liquidator does not, within 48 hours after receiving the injury notice—
 - (i) give the DI fund manager a copy of the injury notice; and
 - (ii) tell the manager, in writing, that the employer holds or held a compulsory insurance policy with the insurer that requires or required indemnity for the injury to be provided.

Maximum penalty: 50 penalty units.

- (2) The liquidator of an approved insurer that has been wound up under the Corporations Act commits an offence if—
 - (a) the liquidator is given an injury notice; and
 - (b) the injury notice is for an injury of an injured worker of an employer; and
 - (c) the employer held a compulsory insurance policy with the insurer that required indemnity for the injured worker's injury to be provided; and
 - (d) the liquidator does not, within 48 hours after the liquidator receives the notice—
 - (i) return the injury notice to the injured worker; and
 - (ii) tell the worker, in writing, to give the injury notice to the DI fund manager.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

94C Injured workers of uninsured employers may give DI fund manager injury notice

An injured worker may give the DI fund manager a copy of the injured worker's injury notice if—

- (a) the injured worker's employer—
 - (i) is required to give the notice to the fund manager under section 94A (Uninsured employer to give DI fund manager injury notice etc); but
 - (ii) has not given the notice as required; or
- (b) the injured worker's employer is required to give the notice to the fund manager under section 94A but the injured worker suspects that the employer may not have given the notice to the fund manager; or
- (c) a liquidator—
 - (i) tells the injured worker to give the worker's injury notice to the fund manager under section 94B (Liquidator to give DI fund manager injury notice etc); or
 - (ii) is required under section 94B to tell the injured worker to give the worker's injury notice to the fund manager, but does not tell the injured worker as required; or
- (d) the injured worker was employed by an employer who held a compulsory insurance policy under which the insurer was required to provide indemnity for the worker's injury, but the insurer cannot provide the indemnity required to be provided under the policy; or
- (e) the injured worker was employed by an employer who was a self-insurer and the injured worker believes, on reasonable grounds, that the employer is unable to pay compensation in relation to the injury; or
- (f) the injured worker's employer no longer exists.

Endnotes

7 Uncommenced amendments

14 **What if employer does not give notice of injury within time?**
Section 95 (1)

omit

(the *notification time*)

15 **Section 95 (2)**

substitute

- (2) The employer is liable to pay the worker weekly compensation from the date of injury until the employer gives the insurer the injury notice.

16 **Workplace rehabilitation**
New section 109 (4)

insert

- (4) To remove any doubt, subsection (3) (d) does not limit the people the employer may consult when developing the return-to-work program.

17 **Section 109 (4) to (6)**

renumber as section 109 (5) to (7)

18 **Section 112**

substitute

112 **Compliance by insurers, including DI fund**

- (1) It is a condition of an insurer's approval that the insurer must comply with the requirements of this chapter.
- (2) If, for this chapter, the insurer in relation to an injured worker's injury is the DI fund, the DI fund manager must comply with the requirements of this chapter applying to the fund.

- (3) Without limiting subsection (2), the DI fund manager must comply with the requirements of this chapter applying to the DI fund as insurer in relation to an injured worker's injury if the manager—
- (a) receives a copy of the injury notice for the worker in relation to the injury under section 94A (Uninsured employer to give DI fund manager injury notice etc), section 94B (Liquidator to give DI fund manager injury notice etc) or section 94C (Injured workers of uninsured employers may give DI fund manager injury notice); or
 - (b) is otherwise satisfied that it is reasonably likely that there is no compulsory insurance policy in force that applies to the worker in relation to the injury.

Example

Melissa suffers a workplace injury while working for Joe. Joe does not have a compulsory insurance policy and gives the DI fund manager a copy of the injury notice. The DI fund manager must comply with the requirements of an insurer under this chapter in relation to Melissa's injury.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**19 Compliance by workers
New section 113 (1) (d)**

insert

- (d) fails to attend a medical assessment of the worker's injury; or

20 Section 113 (1) (d) and (e)

renumber as section 113 (1) (e) and (f)

Endnotes

7 Uncommenced amendments

21 When is a claim made? Section 122 (1), new note

insert

Note Payment of weekly compensation begins when the worker gives notice of the injury to the employer (see s 38).

22 Admissibility of statements by injured workers Section 125 (2), definition of *insurer*, paragraph (b)

substitute

(b) the DI fund.

23 Meaning of *insurer* and *given to insurer* for pt 6.2 Section 127 (1), definition of *insurer*, paragraph (c)

substitute

(c) if, when the injury happened, the employer was not a self-insurer and the employer has or had no compulsory insurance policy that applies to the claim—the DI fund.

24 Section 128

substitute

128 Claim accepted if not rejected within 28 days

- (1) If, at the end of 28 days after the day the insurer receives a worker's claim for compensation under this Act, the insurer has not rejected the claim—
 - (a) the insurer is taken to have accepted the claim; and
 - (b) any payment made by the insurer in relation to the claim is not recoverable.
- (2) However, subsection (1) (b) does not apply to a payment made by the DI fund manager as insurer.

**25 Liability on claim not accepted or rejected
Section 134 (1)**

omit

an injury

substitute

an injury for which compensation is payable under this Act

**26 Order for refund of overpayments of compensation
Section 135 (2)**

omit

an offence against section 213 (False claims etc)

substitute

a Criminal Code offence

27 New section 135 (7)

insert

(7) In this section:

Criminal Code offence means an offence against the Criminal Code that relates to—

- (a) completing, keeping or giving a document under or in relation to this Act; or
- (b) a requirement that a document be completed, kept or given, under or in relation to this Act.

28 New part 8.1 heading

insert

Part 8.1 General

Endnotes

7 Uncommenced amendments

29 Effect of revocation or suspension of approval Section 146 (2) (c)

substitute

- (c) affect the liability of the insurer under section 168A (Contributions to DI fund by approved insurers and self-insurers).

30 Effect of failure to maintain compulsory insurance on other insurance etc for this Act Section 149 (2) (c)

substitute

- (c) affect the liability of the insurer under section 168A (Contributions to DI fund by approved insurers and self-insurers).

31 Section 149 (as amended)

renumber as section 148

32 Section 150

substitute

149 DI fund entitled to triple recovery amount

- (1) If an employer fails to maintain a compulsory insurance policy, the DI fund manager may recover the triple recovery amount as a debt owing by the employer to the DI fund.
- (2) However, the employer is not liable under subsection (1) for a failure to maintain a compulsory insurance policy in relation to a worker if—
 - (a) the employer believed, on reasonable grounds, that a State was the Territory or State of connection for the employment under

the law of a State corresponding to part 4.2A (Employment connection with ACT or State); and

- (b) the employer had insurance, or was registered, as required under a law of the State in relation to liability for workers compensation under the law of the State.

Note *State* includes the Northern Territory (see Legislation Act, dict, pt 1).

- (3) In this section:

employer does not include a self-insurer or non-business employer.

triple recovery amount means an amount equal to triple the amount of the premiums that would have been payable to an approved insurer if the employer had maintained a compulsory insurance policy.

33 Information for insurers on application for issue or renewal of policies Section 156 (6), note

substitute

Note An employer who makes a statement in a statutory declaration that is false, misleading or incomplete may commit an offence (see s 162 and Criminal Code, pt 3.4).

34 Section 156 (as amended)

renumber as section 155

35 Information for insurers after renewal of policies Section 157 (1)

omit

an insurance policy

substitute

a compulsory insurance policy

Endnotes

7 Uncommenced amendments

36 Section 157 (3), note

substitute

Note A recognised auditor who makes a statement in an auditor's certificate that is false, misleading or incomplete may commit an offence (see Criminal Code, pt 3.4).

37 Section 157 (as amended)

renumber as section 156

38 Information for insurers after end or cancellation of policies Section 158 (2), note

substitute

Note A recognised auditor who makes a statement in an auditor's certificate that is false, misleading or incomplete may commit an offence (see Criminal Code, pt 3.4).

39 Section 158 (as amended)

renumber as section 157

40 Six-monthly information for insurers Section 160 (1), note

substitute

Note An employer who makes a statement in a statutory declaration that is false, misleading or incomplete may commit an offence (see s 162 and Criminal Code, pt 3.4).

41 Section 160 (as amended)

renumber as section 159

42 New sections 160 and 161

insert

160 Certificate of currency

- (1) This section applies if an employer asks an approved insurer, in writing, for a certificate (a *certificate of currency*) for a compulsory insurance policy held by the employer with the insurer.
- (2) Not later than 5 business days after the day the approved insurer receives the request, the insurer must give the employer a certificate of currency if—
 - (a) the employer has not been given a certificate of currency for the policy within the last 6 months; or
 - (b) the employer has been given a certificate of currency for the policy within the last 6 months, but either—
 - (i) the details of the risk covered by the policy have changed since the certificate was issued; or
 - (ii) the employer reasonably requires another certificate.

Example of reasonably requiring another certificate

the previous certificate has been destroyed in a fire

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) The certificate of currency must—
 - (a) state the details given by the employer to the approved insurer under—
 - (i) section 159 (Six-monthly information for insurers); or
 - (ii) if no information has been given by the employer to the insurer under section 159—section 155 (Information for insurers on application for issue or renewal of policies); and

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7 Uncommenced amendments

- (b) state the period for which the employer is insured under the policy; and
 - (c) state the period of not longer than 6 months for which the certificate is current.
- (4) However, the approved insurer need not give the employer a certificate of currency if—
- (a) the employer is in default under the insurance policy held by the employer with the insurer; and
 - (b) the insurer has told the employer, or tells the employer not later than 5 business days after the day the employer asks for the certificate, that the employer is in default under the policy.

161 Requirement to produce certificate of currency

- (1) An employer commits an offence if—
- (a) the employer holds a compulsory insurance policy with an approved insurer; and
 - (b) an authorised person asks to see a certificate of currency for the policy; and
 - (c) the employer does not produce a certificate of currency for the policy for inspection.

Maximum penalty: 50 penalty units.

- (2) It is a defence to a prosecution for an offence against subsection (1) if—
- (a) the defendant has a reasonable excuse for failing to produce the certificate of currency when required to; and
 - (b) either—
 - (i) not later than 7 business days after the day (the *request day*) the defendant is required to produce the certificate, the defendant produces the certificate for inspection at a

place prescribed by regulation for this subsection or at a place directed in writing by the authorised person; or

- (ii) the defendant establishes that the defendant took reasonable steps to produce the certificate to the authorised person not later than 7 business days after the request day.

(3) An offence against this section is a strict liability offence.

(4) In this section:

authorised person, in relation to a certificate of currency for a compulsory insurance policy, means—

- (a) an inspector; or
- (b) the principal of a worker who is, is to be, or could reasonably be expected to be, covered by the policy; or
- (c) an industrial union of workers representing a worker employed by the employer.

certificate of currency—see section 160.

principal, of a worker—if the worker is employed to fulfil a contract the employer has with someone else to do work in the other person's trade or business, the other person is the *principal* of the worker.

**43 Provision of information to Minister
Section 163 (8), definition of *applicable offence*,
paragraph (b)**

substitute

- (b) an offence against the Criminal Code, section 338 (which is about giving false or misleading information) or section 339 (which is about producing false or misleading documents) in relation to a notice that relates to—

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7 Uncommenced amendments

- (i) completing, keeping or giving a document under or in relation to this Act; or
- (ii) a requirement that a document be completed, kept or given under or in relation to this Act.

44 Section 163 (as amended)

renumber as section 164

45 Sections 164 to 175

substitute

Part 8.2 Default insurance fund

Division 8.2.1 Definitions for pt 8.2

165 Definitions for pt 8.2

In this part:

claim for payment—see section 170.

claims manager means an entity appointed as claims manager under section 166F.

Division 8.2.2 Establishment, staff and consultants of DI fund

166 Establishment of DI fund

- (1) The Default Insurance Fund (the *DI fund*) is established.
- (2) The DI fund consists of—
 - (a) amounts received or recovered by or on behalf of the DI fund manager under this Act; and
 - (b) income from the investment of amounts of the fund; and

- (c) amounts borrowed by the Territory for the fund; and
 - (d) other amounts lawfully paid into the fund.
- (3) The DI fund is to be managed by the DI fund manager and money paid into it is taken to be trust money under the *Financial Management Act 1996*.

166A Purpose of DI fund

The DI fund provides a safety net to meet the costs of workers compensation claims made by workers if—

- (a) an employer does not have a compulsory insurance policy; or
- (b) an approved insurer is wound up under the Corporations Act or cannot provide the indemnity required to be provided under a compulsory insurance policy.

166B Payments out of DI fund

- (1) The DI fund manager may pay out of the fund—
- (a) amounts required by this Act to be paid in settlement of a claim made under this Act; and
 - (b) the amount of any costs or fees payable under this Act to the liquidator of an approved insurer; and
 - (c) costs and expenses incurred by a DI fund claims manager in the settlement of claims made under this Act; and
 - (d) any amount payable under section 168B (Refunds of excess DI fund amounts); and
 - (e) repayments of, and interest on, any amount borrowed for, or contributed by the Territory to, the fund; and
 - (f) the amount of any fees, costs and expenses incurred in, or in relation to, the administration of the fund; and

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7 Uncommenced amendments

(g) any other amount that may be paid out of the fund under a territory law.

- (2) The DI fund manager must pay out of the fund any amount the Minister directs be transferred to the terrorism cover temporary reinsurance fund under chapter 15 (Temporary provisions for acts of terrorism).
- (3) Subsection (2) and this subsection expire on 1 October 2009.

166C Appointment of DI fund manager

The chief executive may appoint a public servant as the DI fund manager (the *DI fund manager*) for this Act.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

166D DI fund manager's functions etc

- (1) The DI fund manager manages the DI fund.
- (2) The DI fund manager also exercises any other function given to the manager under this Act or any other territory law.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

- (3) Anything done in the name of, or for, the DI fund by the DI fund manager in exercising a function of the fund is taken to have been done for, and binds, the fund.

166E DI fund staff

The staff of the DI fund must be employed under the *Public Sector Management Act 1994*.

166F DI fund manager may engage consultants including claims manager

- (1) The DI fund manager may engage consultants.
- (2) Without limiting subsection (1), the DI fund manager may engage an entity (a *claims manager*) to manage injuries in relation to which claims may be, or have been, made against the DI fund.

Note The DI fund manager must engage an actuary (see s 166H).

- (3) However, the DI fund manager must not engage an entity under subsection (2) unless satisfied that the entity has the experience and expertise necessary to exercise the functions of a claims manager.
- (4) The conditions of a consultant's appointment are the conditions agreed between the DI fund manager and the consultant.
- (5) To remove any doubt, this section does not give the DI fund manager the power to enter into a contract of employment.

166G Claims manager's functions

- (1) This section applies if the DI fund manager engages a claims manager.
- (2) A claims manager may do the following in relation to a claim that the claims manager was engaged to manage:
 - (a) investigate the claim;
 - (b) negotiate the terms of settlement of the claim, either by payment of a lump sum or by weekly payments in accordance with this Act;

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- (c) if the injured worker was covered at the time of injury by a compulsory insurance policy issued by an approved insurer—exercise any right of the insurer arising from or in relation to the policy;
 - (d) anything prescribed by regulation.
- (3) Subsection (2) does not authorise a claims manager to—
- (a) pay an amount to satisfy a claim; or
 - (b) recover an amount owed to an approved insurer against whom a claim is made under this Act.
- (4) A claims manager may also exercise any other function given to the claims manager under this Act or any other territory law.

Note 1 A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see Legislation Act, s 104).

Note 2 A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

166H Engagement of DI fund actuary

- (1) The DI fund manager must engage an actuary as the DI fund actuary.
- (2) However, the DI fund manager must not engage a person under subsection (1) unless satisfied that the person has the experience and expertise necessary to exercise the functions of the DI fund actuary.
- (3) The conditions of the DI fund actuary's appointment are the conditions agreed between the DI fund manager and the actuary.

166l Delegation by DI fund manager

The DI fund manager may delegate the manager's functions under this Act or any other territory law to a public servant or a consultant engaged under this Act (including a claims manager and the DI fund actuary).

Note For the making of delegations and the exercise of delegated functions, see the Legislation Act, pt 19.4.

Division 8.2.3 Administration of DI fund**167 Accounts for DI fund**

- (1) The DI fund manager must keep a separate account in the DI fund for—
 - (a) claims made against employers without compulsory insurance policies; and
 - (b) an approved insurer if—
 - (i) a claim is, or has been, made against a compulsory insurance policy issued by the insurer; and
 - (ii) the insurer cannot provide the indemnity required to be provided under the policy.
- (2) The DI fund manager must keep accounts for—
 - (a) amounts paid into the DI fund under division 8.2.4 (Contributions to DI fund); and
 - (b) amounts withdrawn from the fund.
- (3) Accounts kept of amounts withdrawn from the fund must show the reason why each amount is withdrawn.

167A Investments of amounts of DI fund

The DI fund manager must invest amounts of the DI fund that are, in the manager's opinion, not immediately needed to make payments out of the fund under this Act.

167B Borrowing for DI fund

- (1) The Treasurer may, on the conditions the Treasurer considers appropriate—
 - (a) borrow money for the DI fund; or
 - (b) lend public money to the DI fund.
- (2) The Treasurer may borrow money for the DI fund or lend money to the DI fund to meet the costs of claims against the DI fund only if—
 - (a) the costs, or the amount of the costs, are unexpected; and
 - (b) either—
 - (i) the costs cannot be met through the apportionment of liability under section 168A; or
 - (ii) the Treasurer is satisfied that it is not appropriate to meet the costs through the apportionment of liability under section 168A.
- (3) Borrowing for the DI fund may be secured by the DI fund's assets that are approved in writing by the Treasurer.
- (4) The DI fund manager may only arrange an overdraft or credit facility for the DI fund with the Treasurer's written approval.
- (5) A loan under subsection (1) (b) may be made only from—
 - (a) money appropriated for the loan; or
 - (b) money appropriated for purposes that include making the loan.

167C Audit of DI fund

- (1) The DI fund manager must have the accounts for the DI fund for a financial year audited by a recognised auditor as soon as practicable after the end of the financial year.
- (2) The DI fund manager must give the recognised auditor's report and the audited accounts to the chief executive as soon as practicable after the end of the financial year to which the report relates.

167D Information and assistance by employer to DI fund manager

- (1) The DI fund manager may, by written notice given to an employer, require the employer to do 1 or more of the following:
 - (a) give the manager stated information and assistance that the manager reasonably considers necessary for the exercise of the manager's functions;
 - (b) give the manager stated documents in the employer's possession or control that the manager reasonably considers necessary for the exercise of the manager's functions;
 - (c) execute stated documents that the manager reasonably considers necessary for the employer to execute for the exercise of the manager's functions;
 - (d) allow the manager or a person authorised by the manager, at a stated reasonable time, to inspect any plant, works, machinery and appliances used in the employer's business that the manager reasonably considers necessary for the exercise of the manager's functions.

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- (2) An employer must take all reasonable steps to comply with a requirement of the DI fund manager under subsection (1).

Maximum penalty: 50 penalty units.

Note The Legislation Act, s 170 deals with the application of the privilege against selfincrimination.

- (3) An offence against this section is a strict liability offence.

Division 8.2.4 Contributions to DI fund

168 Approved insurers must give information

- (1) The DI fund manager may, by written notice given to an approved insurer, require the insurer to give the manager, within a stated reasonable time, the following for a quarter:
- (a) a written statement of the insurer's earned premium;
 - (b) any other stated information in relation to the amounts paid or earned by the insurer in relation to compulsory insurance policies.
- (2) The approved insurer must comply with the notice.

168A Contributions to DI fund by approved insurers and self-insurers

- (1) The DI fund manager must get the DI fund advisory committee's written advice on the DI fund's existing and expected liabilities for each quarter.
- (2) The DI fund manager—
- (a) must decide the DI fund's liability for a quarter, taking into account the DI fund advisory committee's advice in relation to the quarter; and

-
- (b) may apportion the DI fund's liability for the quarter among the entities that were approved insurers and self-insurers during the quarter.
- (3) In making an apportionment under subsection (2) for a quarter, the DI fund manager must take into account—
- (a) the earned premium of each approved insurer in relation to the quarter; and
 - (b) the premium that would have been payable by each self-insurer for the quarter if the self-insurer had obtained a compulsory insurance policy for the quarter (or the part of the quarter for which the self-insurer was a self-insurer).
- (4) If the DI fund manager makes an apportionment for a quarter, the manager must give each approved insurer and self-insurer a written notice that—
- (a) sets out details of the apportionment; and
 - (b) requires the insurer or self-insurer to pay to the DI fund the amount apportioned to the insurer or self-insurer within the time for payment stated in the notice.
- Note* An insurer issuing a compulsory insurance policy to an employer must include information about the proportion of the premium that is to offset an amount paid by the insurer to the DI fund for the policy (see *Workers Compensation Regulation 2002*, s 62A).
- (5) The time stated for payment in the notice must not be shorter than 30 days after the day the approved insurer or self-insurer receives the notice.
- (6) The DI fund manager may amend or revoke a notice given under this section.
- (7) If an amount apportioned to the insurer or self-insurer is not paid within the time stated for payment in the notice, the amount is a debt owing to the DI fund by the insurer or self-insurer.

Endnotes

7 Uncommenced amendments

- (8) The DI fund manager must pay into the DI fund each amount received or recovered under this section from an approved insurer or self-insurer.

168B Refunds of excess DI fund amounts

- (1) This section applies if—
- (a) an approved insurer or self-insurer contributed an amount to the DI fund during a period (the *refund period*); and
 - (b) after taking into account the advice of the DI fund advisory committee, the DI fund manager is satisfied that—
 - (i) the DI fund can more than cover its current and expected liabilities; and
 - (ii) it is reasonable to refund the excess in the DI fund.
- (2) The DI fund manager may refund the amount in the DI fund decided by the DI fund manager to be in excess of the fund's needs.
- (3) The refund must be made—
- (a) to each approved insurer and self-insurer who contributed to the DI fund during the refund period; and
 - (b) on the basis of the approved insurer's or self-insurer's contribution as a proportion of the total contributions made to the DI fund in that period.
- (4) If an amount is refunded to an approved insurer under this section, the amount must be given to employers who take out compulsory insurance policies with the insurer in the form of credits offset against their premiums.

Division 8.2.5 **DI fund's relationship with liquidators of approved insurers**

169 Displacement of liquidator's Corporations Act obligation

- (1) The recovery of amounts by the DI fund from liquidators of approved insurers is declared to be an excluded matter for the purposes of the Corporations Act, section 5F in relation to the Corporations Act, section 477, other than to the extent stated in subsection (2), section 169A and section 169B.

Note The Corporations Act, s 5F provides that, if a law of a State or Territory declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, the provisions that are the subject of the declaration will not apply in relation to that matter in the State or Territory that made the declaration.

- (2) The liquidator of an approved insurer may exercise his or her powers under the Corporations Act, section 477 in relation to a claim, judgment, order or award arising out of or in relation to a compulsory insurance policy issued by the insurer, subject to the following changes:
- (a) the reference in section 477 to the approval of the court or the committee of inspection or of a resolution of the creditors is taken to be a reference to the approval of the DI fund manager;
 - (b) the words 'subject to the provisions of section 556,' is omitted from subsection (1) (b);
 - (c) any other necessary changes are taken to have been made;
 - (d) any other changes prescribed by regulation are taken to have been made.

169A Payment to DI fund of amounts recovered by liquidator from reinsurer

- (1) This section applies if—
 - (a) an approved insurer is, under a contract of reinsurance, insured against liability in relation to compulsory insurance policies issued by the insurer and liability in relation to them is incurred by the insurer; and
 - (b) any part of the liability is met by an amount paid out of the DI fund under this Act; and
 - (c) an amount in relation to that part of the liability of the insurer is received by a liquidator of the insurer from the reinsurer.
- (2) The liquidator must pay the amount to the DI fund, in priority to all payments in relation to debts mentioned in the Corporations Act, section 556.
- (3) However, the liquidator may deduct from the amount the reasonable expenses of or incidental to recovering the amount.
- (4) This section has effect despite any agreement to the contrary.

169B Payment to DI fund of amounts recovered by liquidator using fund amounts

- (1) This section applies if—
 - (a) the liquidator of an approved insurer recovers an amount owed to the insurer; and
 - (b) the amount is recovered because of the payment of an amount out of the DI fund of part of a claim, judgment, order or award arising out of or in relation to a compulsory insurance policy issued by the insurer.
- (2) The liquidator must pay the amount to the DI fund, in priority to all payments in relation to debts mentioned in the Corporations Act, section 556.

- (3) However, the liquidator may deduct from the amount the reasonable expenses of or incidental to recovering the amount.
- (4) This section has effect despite any agreement to the contrary.

169C Rights of DI fund manager against approved insurer

- (1) This section applies if—
 - (a) an approved insurer cannot provide to an employer the indemnity required to be provided by a compulsory insurance policy issued by the insurer to the employer; and
 - (b) any part of the employer's liability is met by an amount paid out of the DI fund under this Act; and
 - (c) all or part of the amount (the *unrecovered amount*) is not recovered by the DI fund manager under section 169A or section 169B.
- (2) The DI fund manager has the same rights against the insurer as the employer in relation to the unrecovered amount.

169D Liquidator to notify DI fund manager of dissolution

If the liquidator of an approved insurer applies to a court for an order that the insurer be dissolved under the Corporations Act, the liquidator must as soon as practicable—

- (a) tell the DI fund manager in writing about the application; and
- (b) give the fund manager a copy of any order made by the court on the application.

Division 8.2.6 Making claims for payment

170 Who may make claim for payment

A person may make a claim for payment under this division (a *claim for payment*) if the person is eligible to make the claim under 1 of the following provisions:

- (a) section 170E (Claim for payment if employer to pay and liability not covered by compulsory insurance policy etc);
- (b) section 170F (Claim for payment if final judgment etc and liability not covered by compulsory insurance policy);
- (c) section 170G (Claim for payment if agreement to discharge liability at common law and liability not covered by compulsory insurance policy);
- (d) section 170H (Claim for payment if final judgment etc and liability covered by compulsory insurance policy);
- (e) section 170I (Claim for payment if entitlement to claim compensation and liability covered by compulsory insurance policy).

170A When must claim for payment be made

A claim for payment by a person must be made not later than—

- (a) 1 month after the day the person becomes eligible to make the claim; or
- (b) any further time that the DI fund manager, on application, allows.

170B How claim for payment made if no insurer

- (1) This section applies to a claim for payment in relation to a workers compensation liability if—
 - (a) the claim is made against the employer; and
 - (b) the liability of the employer to pay the compensation is not covered by a compulsory insurance policy; and
 - (c) either—
 - (i) the employer has been wound up; or
 - (ii) a liquidator has been appointed for the employer but the employer has not been wound up; or
 - (iii) the liability of the employer to pay the compensation remains unpaid for at least 1 month.
- (2) The claim for payment must be—
 - (a) in writing; and
 - (b) given to the DI fund manager with a copy of any judgment, order or award relating to the claim.

Note If a form is approved under s 222 for this provision, the form must be used.

170C How claim for payment made if insurer not wound up

- (1) This section applies to a claim for payment in relation to a workers compensation liability if—
 - (a) the claim is made against the employer; and
 - (b) the liability of the employer to pay the compensation is covered by a compulsory insurance policy; and
 - (c) a liquidator has been appointed for the insurer but the insurer has not been wound up.

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- (2) The claim for payment must be—
 - (a) in writing; and
 - (b) given to the liquidator of the insurer, with a copy of any judgment, order or award relating to the claim.

Note If a form is approved under s 222 for this provision, the form must be used.

170D How claim for payment made if insurer wound up

- (1) This section applies to a claim for payment in relation to a workers compensation liability if—
 - (a) the claim is made against the employer; and
 - (b) the liability of the employer to pay the compensation is covered by a compulsory insurance policy; and
 - (c) the insurer has been wound up.
- (2) The claim for payment must be—
 - (a) in writing; and
 - (b) given to the DI fund manager with a copy of any judgment, order or award relating to the claim.

Note If a form is approved under s 222 for this provision, the form must be used.

170E Claim for payment if employer to pay and liability not covered by compulsory insurance policy etc

- (1) This section applies if—
 - (a) a person has made a claim against an employer for compensation under this Act; and
 - (b) the employer is not a self-insurer; and

- (c) either—
 - (i) the employer has agreed to pay compensation; or
 - (ii) the liability of the employer to pay compensation has been established; and
 - (d) the liability of the employer to pay the compensation is not covered by a compulsory insurance policy; and
 - (e) at the end of 1 month after the day the compensation becomes payable, the compensation (or any part of it) has not been paid to the person.
- (2) The person is eligible to make a claim for payment against the DI fund for payment of the amount of the compensation that remains unpaid.
- (3) In this section:
- compensation* includes—
- (a) an amount in settlement of a claim for compensation; and
 - (b) costs payable to a worker by an employer in relation to a claim for compensation.

170F Claim for payment if final judgment etc and liability not covered by compulsory insurance policy

- (1) This section applies if—
- (a) a person has obtained a final judgment against an employer; and
 - (b) the employer is not a self-insurer; and
 - (c) the judgment relates to the employer's liability independently of this Act in relation to an injury to, or the death of, a territory worker of the employer; and
 - (d) execution of the judgment has not been stayed; and

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- (e) the liability of the employer under the judgment, order or award is not covered by a compulsory insurance policy; and
 - (f) the judgment has remained completely or partly unsatisfied for at least 1 month.
- (2) The person is eligible to make a claim for payment against the DI fund of the amount of the judgment that remains unsatisfied.

Note See s 170 for def *claim for payment*.

170G Claim for payment if agreement to discharge liability at common law and liability not covered by compulsory insurance policy

- (1) This section applies if—
- (a) an employer has agreed with a person to pay an amount to discharge the employer's liability independently of this Act in relation to an injury to, or the death of, a territory worker of the employer; and
 - (b) the employer is not a self-insurer; and
 - (c) the liability of the employer under the agreement is not covered, or is not completely covered, by a compulsory insurance policy; and
 - (d) at the end of 1 month after the day the amount is payable, the amount (or any part of it) has not been paid to the person.
- (2) The person is eligible to make a claim for payment against the DI fund of the amount that remains unpaid.

170H Claim for payment if final judgment etc and liability covered by compulsory insurance policy

- (1) This section applies if—
 - (a) a person has obtained a final judgment, or an order or award has been made against an employer; and
 - (b) the judgment, order or award relates to the employer's liability independently of this Act in relation to, or the death of, a territory worker of the employer; and
 - (c) the liability of the employer under the judgment, order or award is covered by a compulsory insurance policy; and
 - (d) the approved insurer is wound up or cannot provide the indemnity required by the policy to be provided.
- (2) The person is eligible to make a claim for payment against the DI fund of the amount of the judgment, order or award that remains unsatisfied.

170I Claim for payment if entitlement to claim compensation and liability covered by compulsory insurance policy

- (1) This section applies if—
 - (a) a person is entitled to claim against an employer for compensation under this Act for an injury to, or the death of, a territory worker employed by the employer; and
 - (b) the liability of the employer to pay the compensation is covered by a compulsory insurance policy; and
 - (c) the approved insurer is wound up or cannot provide the indemnity required by the policy to be provided.
- (2) The person is eligible to make a claim for payment against the DI fund of the amount.

170J Liquidator to forward claims to DI fund manager

The liquidator of an approved insurer who receives a claim for payment must—

- (a) give a copy of the claim to the DI fund manager; and
- (b) give the manager all the information, and a copy of all the documents (including a copy of any judgment, order or award) that the liquidator has relating to the claim.

170K Power of Supreme Court to set aside agreements

- (1) If a claim for payment is made against the DI fund by someone eligible to make the claim under section 170G (Claim for payment if agreement to discharge liability at common law and liability not covered by compulsory insurance policy), the DI fund manager may apply to the Supreme Court for an order setting aside the agreement to which the claim relates.
- (2) The Supreme Court may set aside the agreement if satisfied that there are reasonable grounds for believing that the employer has not honestly tried to protect the employer's own interests and taken all reasonable steps to protect the employer's own interests.
- (3) If the Supreme Court sets the agreement aside, the costs of the respondent in relation to the application are to be paid by the DI fund, unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make an order about costs under subsection (3) only if satisfied that it is appropriate to make the order because of the special circumstances surrounding the making of the agreement.

170L Treatment of set aside agreement

- (1) If an agreement is set aside under section 170K—
 - (a) the agreement is taken never to have had effect for the purpose of any proceeding in a court; and
 - (b) evidence of a statement or communication, or a part of a statement or communication, tending to establish the existence of the agreement is not admissible in any proceeding in a court, unless the Supreme Court orders otherwise.
- (2) The Supreme Court may make an order under subsection (1) (b) only if satisfied that the admission of the evidence is necessary to avoid injustice to a party to the proceeding.

170M Time-barred rights after agreement set aside

- (1) This section applies if—
 - (a) an agreement is set aside under section 170K; and
 - (b) apart from this section, a proceeding by a party to the agreement to recover damages in relation to a liability to which the agreement related would be barred when the agreement is set aside, or would become barred not later than 3 months after the day the agreement is set aside, by the *Limitation Act 1985* or another territory law (the *limitations law*).
- (2) The proceeding may be started at any time not later than 3 months after the day the agreement was set aside, despite the limitations law.

170N Proceeding after agreement set aside

- (1) A person commits an offence if—
 - (a) an agreement is set aside under section 170K; and
 - (b) the person was a party to the agreement; and
 - (c) the person brings a proceeding to recover damages in relation to a liability under the agreement; and
 - (d) at the end of 7 days after the day the proceeding is started, the person has not given the DI fund manager written notice of the proceeding.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.
- (3) If notice is given to the DI fund manager under subsection (1) (d), the fund manager—
 - (a) may, on behalf of the employer sued in the proceeding, conduct the defence of the proceeding in the name of the employer and in the way the fund manager considers appropriate; and
 - (b) must indemnify the employer against all costs and expenses in relation to the proceeding.

170O DI fund manager not to consent to judgment etc unless defendant agrees

This division does not authorise the DI fund manager—

- (a) to consent to judgment in a proceeding against a defendant in the proceeding, unless the defendant agrees; or
- (b) to compromise a proceeding against a defendant in the proceeding, unless the defendant agrees.

Division 8.2.7 Payment of claims**171 Payments out of DI fund**

- (1) A claim for payment may only be paid if the terms of settlement of the claim are approved.
- (2) The terms of settlement of a claim for payment may be approved by—
 - (a) if they provide for payment of a lump sum to the claimant—the Magistrates Court; or
 - (b) in any other case—the DI fund manager.

171A Reopening of agreements and awards

- (1) This section applies if a claim for payment is made against the DI fund under section 170E (Claim for payment if employer to pay and liability not covered by compulsory insurance policy etc).
- (2) The DI fund manager may apply to the Magistrates Court for an order directing that the agreement or award under which the compensation under the claim is payable be reopened on the ground that—
 - (a) there is reason to believe that the employer has not honestly endeavoured to protect the employer's own interests; and
 - (b) the employer has not taken all reasonable steps to protect the employer's own interests.
- (3) The Magistrates Court may order that the agreement or award be reopened.

171B Deciding or re-deciding claim

- (1) If the Magistrates Court makes an order under section 171A, the court must decide or re-decide the claim for compensation by arbitration.

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- (2) The DI fund manager is a party to the arbitration.
- (3) In an award made by the Magistrates Court under this section, the court may set aside the previous agreement or award.
- (4) An agreement by a person to accept, in settlement of a claim for payment against the DI fund, an amount less than the amount payable according to an agreement or award has no effect unless approved by the Magistrates Court.

171C Approval of terms of settlement by court

- (1) This section applies if proposed terms of settlement of a claim for payment provide for payment of a lump sum to the claimant.
- (2) The DI fund manager may apply to the Magistrates Court for approval of the terms of settlement.
- (3) The Magistrates Court may approve the terms of settlement if satisfied that they are just.

171D DI fund paying claims for payment if liability not completely covered by a compulsory insurance policy and settlement approved

- (1) This section applies to a claim for payment if—
 - (a) the claim was made by a person eligible to make the claim under section 170E, section 170F or section 170G; and
Note Under s 170E, s 170F and s 170G, the employer's liability is not covered by a compulsory insurance policy.
 - (b) the terms of settlement of the claim are approved by the Magistrates Court or DI fund manager under this division.
- (2) The DI fund manager must pay the claimant out of the DI fund the amount necessary to satisfy the claim in accordance with the terms of settlement.

171E DI fund paying claims for payment against approved insurers settlement approved

- (1) This section applies to a claim for payment if—
 - (a) the claim was made by a person eligible to make the claim under section 170H or section 170I; and

Note Under s 170H and s 170I, the employer's liability is covered by a compulsory insurance policy but the insurer has been wound up or cannot provide the indemnity required to be provided under the policy.
 - (b) the terms of settlement of the claim are approved by the Magistrates Court or DI fund manager under this division.
- (2) The DI fund manager must—
 - (a) pay the liquidator out of the DI fund—
 - (i) the amount necessary for the liquidator to satisfy the claim in accordance with the terms of settlement; and
 - (ii) any further amount agreed to between the manager and liquidator for the liquidator's costs in satisfying the claim; and
 - (b) give the liquidator copies of all documents the fund manager has that relate to the claim.
- (3) The liquidator must pay the amount mentioned in subsection (2) (a) (i) to the claimant in satisfaction of the claim in accordance with the terms of settlement.
- (4) However, if the approved insurer has been wound up under the Corporations Act before the DI fund manager makes a payment to the liquidator under subsection (2), the fund manager may directly pay the claimant the amount necessary to satisfy the claim in accordance with the terms of settlement.

171F Liquidators to account to DI fund manager

- (1) This section applies if a liquidator receives an amount (the *settlement amount*) under section 171E (2) (a) (i).
- (2) For each prescribed period, the liquidator must give the DI fund manager a written statement setting out the payments made by the liquidator out of the settlement amount during the period.
- (3) A statement under subsection (2) must—
 - (a) be given to the DI fund manager not later than 2 weeks after the end of the prescribed period to which it relates; and
 - (b) be certified as correct by an auditor.
- (4) In this section:

prescribed period, in relation to a settlement amount, means—

 - (a) the period of 3 months starting the day after the settlement amount is received; and
 - (b) each following period of 3 months, ending at the end of the 3-month period when the liquidator pays the last amount to the claimant out of the settlement amount.

171G Intervention by DI fund manager

- (1) A person commits an offence if—
 - (a) a claim for compensation has been made against the person; and
 - (b) the person is not a self-insurer; and
 - (c) the person's liability to pay compensation is not covered by a compulsory insurance policy; and

- (d) the person does not give the DI fund manager a copy of the claim within 48 hours after the claim is made.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
 - (a) a claim for compensation has been made against the person; and
 - (b) the person is not a self-insurer; and
 - (c) the person's liability to pay compensation is not covered by a compulsory insurance policy; and
 - (d) the person makes an agreement or admission in relation to the claim.

Maximum penalty: 20 penalty units.

- (3) Subsection (2) does not apply to an admission or agreement if the DI fund manager consents to the admission or agreement.
- (4) The DI fund manager is entitled to intervene in any arbitration proceeding on the claim as a party.
- (5) The DI fund manager has the same right of objection to arbitration by a committee as the employer has under the regulations.
- (6) An offence against this section is a strict liability offence.

171H DI fund manager may act

- (1) This section applies to a claim for payment if the claim was made by a person eligible to make the claim under section 170E, section 170F or section 170G.

Note Under s 170E, s 170F and s 170G, the employer's liability is not covered by a compulsory insurance policy.

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- (2) The DI fund manager may treat the claim for payment as having been made against the DI fund if—
 - (a) the manager receives a copy of the claim under section 171G; or
 - (b) the manager is otherwise satisfied that it is reasonably likely that there is no compulsory insurance policy in force that applies to the claim.

1711 Effect of payment of claims

- (1) If an amount is paid to a claimant under this division in settlement of a claim made under this Act in relation to a liability of an employer—
 - (a) the payment operates to discharge the liability of the DI fund in relation to the claim; and
 - (b) the payment operates to discharge the liability of the employer; and
 - (c) an amount equal to 3 times the amount of the payment is a debt owing by the employer to the DI fund; and
 - (d) the DI fund has the right of subrogation for any right that the employer has against anyone in relation to the matter that is the subject of the claim that caused the liability of the employer.
- (2) Subsection (1) (c) does not apply in relation to a non-business employer.

Division 8.2.8 Miscellaneous

172 Proceedings to be in the name of ‘Workers Compensation Default Insurance Fund Manager’

Any proceeding by or against the DI fund may be taken in the name of ‘Workers Compensation Default Insurance Fund Manager’.

173 DI fund manager not personally liable

- (1) The DI fund manager is not personally liable to pay an amount payable in satisfaction of any claim made or judgment obtained against the DI fund manager or the amount of any costs or expenses of the DI fund manager in relation to such a claim or judgment.
- (2) An amount mentioned in subsection (1) is to be paid by the DI fund manager out of the DI fund.

46 Section 182

substitute

182 Payments by DI fund manager

- (1) If the DI fund manager pays compensation in relation to an injury to a worker, this chapter applies as if a reference to the worker's employer were a reference to the DI fund.
- (2) If the DI fund manager and an employer both pay compensation in relation to an injury suffered by a worker, the rights of the DI fund under this chapter in relation to the payment have priority over the rights of the employer.

**47 No compensation if damages received
Section 184 (1) and (2)**

substitute

- (1) Compensation under this Act (***ACT compensation***) is not payable in relation to a worker's injury or the death of a worker to the extent that, independently of this Act, a judgment or agreement for damages (***independent damages***) has been obtained in relation to the injury or death.
- (2) If a person receives ACT compensation from an employer in relation to a worker's injury or the death of a worker and later receives independent damages in relation to the injury or death, the

employer is entitled to recover from the person the recoverable amount.

48 Section 189

substitute

189 Identity cards

- (1) The chief executive must give an inspector an identity card stating the person's name and that the person is an inspector.
- (2) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
 - (a) the person stops being an inspector; and
 - (b) the person does not return the person's identity card to the chief executive as soon as practicable, but no later than 7 days after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.
- (5) Subsection (2) applies only in relation to a card given by the chief executive after the commencement of this section.
- (6) Subsection (5) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (7) Subsections (5) and (6) and this subsection expire on the day this section commences.

**49 Provision of information to inspectors
Section 190 (3), note**

substitute

Note A recognised auditor who makes a statement in an auditor's certificate that is false, misleading or incomplete may commit an offence (see Criminal Code, pt 3.4).

**50 Obstruction or hindrance of inspector
Section 194**

omit

**51 Admissibility of statements by injured workers
Section 196 (2), definition of *insurer*, paragraph (b)**

substitute

(b) the DI fund.

**52 On-the-spot fines
Chapter 12**

omit

53 New sections 204 and 205

insert

204 Court-directed publicity for offences

If an employer is convicted or found guilty of an offence against this Act, the court may direct the employer to publish a statement in relation to the offence.

205 Publication by chief executive of convictions etc

- (1) This section applies if a person, or a representative of a person, is convicted or found guilty of an offence against this Act and—

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- (a) the time for making an appeal against the conviction or finding of guilt ends without an appeal being made; or
- (b) if an appeal is made against the conviction or finding of guilt—
 - (i) the conviction or finding is confirmed on appeal, and the time for making any further appeal in relation to the conviction or finding ends without an appeal being made; or
 - (ii) the appeal is withdrawn, struck out or discontinued or lapses; or
- (c) if a retrial has been ordered—the time for making an appeal on the retrial ends in accordance with paragraph (a) or (b).

Note For the meaning of *found guilty*, see the Legislation Act, dict, pt 1.

- (2) The chief executive may publish the following information in relation to the conviction or finding of guilt in a way that the chief executive considers appropriate:
 - (a) particulars that allow the public to identify the person;
 - (b) details of the offence;
 - (c) the decision of the court and the penalty imposed on the person or a representative of the person (including the forfeiture of anything under this Act).

Examples of publication

- 1 a press release
- 2 an article in a document published by the Territory or a territory authority
- 3 an advertisement in a newspaper circulating generally in the ACT

Examples for par (a)

- 1 the employer's name and ACN (if any)
- 2 any name (and, if relevant, ACN) used in the past by the employer

3 the employer's current and previous business addresses

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the conviction or finding of guilt is quashed or set aside on appeal, the information must not be published.
- (4) If the penalty is changed on appeal, this section applies in relation to the penalty as changed.
- (5) In this section:
representative, of a person, means—
 - (a) if the person is an individual—an employee or agent of the person; or
 - (b) if the person is a corporation—an employee, agent or executive officer of the person.

54 Section 210

substitute

200 Secrecy

- (1) In this section:
court includes a tribunal, authority or person having power to require the production of documents or the answering of questions.
divulge includes communicate.
person to whom this section applies means a person who exercises, or has exercised, a function under this Act.
produce includes allow access to.

protected information means information about a person that is disclosed to, or obtained by, a person to whom this section applies because of the exercise of a function under this Act by the person or someone else.

- (2) A person to whom this section applies commits an offence if—
- (a) the person—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about someone else; or
 - (b) the person—
 - (i) does something that divulges protected information about someone else; and
 - (ii) is reckless about whether—
 - (A) the information is protected information about someone else; and
 - (B) doing the thing would result in the information being divulged to another person.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsection (2) does not apply if the record is made, or the information is divulged—
- (a) under this Act or another territory law; or
 - (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.
- (4) Subsection (2) does not apply to the divulging protected information about someone with the person's consent.

- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

**55 False information etc
Section 213**

omit

**56 Criminal liability of executive officers
Section 214 (1)**

substitute

- (1) An executive officer of a corporation commits an offence if—
- (a) the corporation commits an offence (a ***relevant offence***) by contravening a defined provision of this Act; and
- Note* See s (6) for the ***defined provisions*** to which this par applies.
- (b) the officer was reckless about whether the contravention would happen; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
 - (d) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: the maximum penalty that may be imposed for the commission of the relevant offence by an individual.

57 Section 214 (6)

substitute

(6) In this section:

defined provision, of this Act, means—

- (a) any of the following provisions:
 - (i) section 92 (3) (Register of injuries);
 - (ii) section 126 (Action by employer in relation to claims);
 - (iii) section 142 (Vocational rehabilitation);
 - (iv) section 147 (Compulsory insurance—employers);
 - (v) section 152 (Compulsory insurance—insurers);
 - (vi) section 155 (Information for insurers on application for issue or renewal of policies);
 - (vii) section 156 (Information for insurers after renewal of policies);
 - (viii) section 157 (Information for insurers after end or cancellation of policies);
 - (ix) section 158 (Information for new insurers after change of insurers);
 - (x) section 159 (Six-monthly information for insurers);
 - (xi) section 162 (Statutory declarations—false information etc);
 - (xii) section 163 (Employment after 2nd offence);
 - (xiii) section 164 (Provision of information to Minister);
 - (xiv) section 176 (Premiums—maximum rates);
 - (xv) section 190 (Provision of information to inspectors);

- (xvi) section 191 (Entry and inspection of premises);
- (xvii) section 200 (Secrecy); and
- (b) includes an offence against the Criminal Code that relates to—
 - (i) completing, keeping or giving a document under or in relation to this Act; or
 - (ii) a requirement that a document be completed, kept or given, under or in relation to this Act.

58 Section 214 (as amended)

renumber as section 203

59 Sections 219 and 220

substitute

209 References to Workers' Compensation Act etc

In any Act, statutory instrument or document—

- (a) a reference to the *Workers' Compensation Act 1951* or the *Workers Compensation Supplementation Fund Act 1980* is a reference to this Act; and
- (b) a reference to the *nominal insurer* is a reference to the DI fund manager; and
- (c) a reference to the *workers compensation supplementation fund* is a reference to the DI fund.

210 Apportionment of costs of administration of Act

- (1) Liability for the costs of administration of this Act for a financial year may be apportioned by the Minister among the entities that were approved insurers or self-insurers during the year.

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- (2) In making an apportionment under subsection (1) for a financial year, the Minister must, as far as practicable, take into account the costs of administering this Act that are attributable to each insurer and self-insurer during the year.
- (3) If the Minister makes an apportionment under this section, the Minister must give each approved insurer and self-insurer a written notice that—
 - (a) sets out details of the apportionment; and
 - (b) requires the insurer or self-insurer to pay to the Territory the amount apportioned to the insurer or self-insurer within the time for payment stated in the notice.
- (4) The time stated for payment in the notice must not be shorter than 30 days after the day the approved insurer or self-insurer receives the notice.
- (5) The Minister may amend or revoke a notice given under this section.
- (6) If an amount apportioned to the insurer or self-insurer is not paid within the time stated for payment in the notice, the amount is a debt owing to the Territory by the insurer or self-insurer.
- (7) An amount received because of an apportionment under this section must be paid into a departmental bank account maintained by the chief executive in accordance with the *Financial Management Act 1996*, section 34 (2).
- (8) To remove any doubt, the *costs of administration of this Act* include costs incurred by the Magistrates Court in relation to this Act.

211 Amounts for administration of Act

- (1) The costs of administration of this Act may be paid out of amounts received by the Territory under section 210 and any other amounts received by the Territory under this Act.

- (2) To remove any doubt, costs incurred by the Magistrates Court in relation to this Act may be paid out of amounts mentioned in subsection (1).

**60 Terrorism cover temporary reinsurance fund
Section 227 (2) (d)**

substitute

- (d) any amount paid to the fund by the DI fund manager under section 166B (2); and

61 New chapter 19

insert

Chapter 19 Transitional—Workers Compensation Amendment Act 2006

255 Definitions—ch 19

In this chapter:

commencement day means the day this section commences.

nominal insurer means the nominal insurer under this Act, as in force before commencement day.

WCSF Act means the *Workers Compensation Supplementation Fund Act 1980*.

workers compensation supplementation fund means the workers compensation supplementation fund under the WCSF Act.

256 Transfer of nominal insurer's assets and liabilities

- (1) This section applies to the assets and liabilities of the nominal insurer immediately before commencement day.
- (2) The assets and liabilities are taken to be the assets and liabilities of the DI fund.
- (3) The DI fund manager must—
 - (a) pay any asset that is an amount into the DI fund account that relates to claims made against employers without compulsory insurance policies; and
 - (b) attribute any liability that is an amount owed or deficit in the account kept by the nominal insurer to that account.

257 Amounts in workers compensation supplementation fund

- (1) This section applies to the amount (if any) in the workers compensation supplementation fund under the WCSF Act immediately before commencement day.
- (2) The DI fund manager must transfer the amount to the accounts in the DI fund that relate to claims made against compulsory insurance policies issued by insurers that have been wound up or cannot provide the indemnity required by the policies to be provided.
- (3) The Minister may give directions to the DI fund manager about the amount that must be transferred to each of the accounts.

258 Amounts to be paid

- (1) If, immediately before commencement day, an amount was required to be, or was to be, paid to the nominal insurer or workers compensation supplementation fund, the amount must be paid to the DI fund.

- (2) If, immediately before commencement day, an amount was required to be, or was to be, paid by the nominal insurer or from the workers compensation supplementation fund, the amount must be paid from the DI fund.

259 Proceedings and evidence in relation to previous entities

- (1) In this section:
- proceeding* means—
- (a) a civil or administrative proceeding to which the previous entity was a party immediately before commencement day; and
 - (b) includes a right of appeal or review (including a right of review under the *Ombudsman Act 1989*).
- previous entity* means—
- (a) the nominal insurer; or
 - (b) the workers compensation supplementation fund.
- (2) For a proceeding started before commencement day, the DI fund manager is substituted for the previous entity as a party to the proceeding.
- (3) A proceeding that was not started before commencement day and that apart from this Act could, after that day, be brought by or against the previous entity may be started by or against the DI fund manager.
- (4) A court, tribunal, commission or other entity in which a proceeding may be or has been started or continued under this section may give directions in relation to the starting or continuation of the proceeding.
- (5) Any evidence that, apart from this section, would have been admissible for or against the previous entity is admissible for or against the DI fund manager.

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- (6) An order made in a proceeding by or against the previous entity before commencement day may, after that day, be enforced by or against the DI fund manager.

260 Claims made against nominal insurer

- (1) This section applies if—
- (a) a claim was made against the nominal insurer under section 165 (Claims for payment by nominal insurer), as in force at any time before commencement day; and
 - (b) liability for the claim had not been discharged before commencement day.
- (2) The claim is taken—
- (a) if the claim was made under section 165 (1)—to be a claim the person made under section 170E; or
 - (b) if the claim was made under section 165 (2)—to be a claim the person made under section 170F; or
 - (c) if the claim was made under section 165 (3)—to be a claim the person made under section 170G.
- (3) Also, the claim is taken to have been made when it was made under section 165.
- (4) Anything done in relation to the claim under this Act before commencement day is taken to have been done—
- (a) under this Act as in force after commencement day; and
 - (b) when it was done under this Act before commencement day.

261 Claims made under WCSF Act before commencement day

- (1) This section applies if—
 - (a) a claim was made under the WCSF Act, part 5 (Payment of claims) at any time before commencement day; and
 - (b) liability for the claim had not been discharged before commencement day.
- (2) The claim is taken—
 - (a) if the claim was made under the WCSF Act, section 26 (1)—to be a claim the person made under section 170H; or
 - (b) if the claim was made under the WCSF Act, section 26 (2)—to be a claim the person made under section 170I.
- (3) Also, the claim is taken to have been made when it was made under the WCSF Act.
- (4) Anything done in relation to the claim under the WCSF Act is taken to have been done—
 - (a) under this Act as in force after commencement day; and
 - (b) when it was done under the WCSF Act.

262 Claims for weekly payments

Neither section 260 nor section 261 requires the DI fund to pay weekly compensation to an injured worker entitled to weekly compensation for an injury if—

- (a) the injury happened before commencement day; and
- (b) the nominal insurer had been given an injury notice for the injury or was otherwise aware, immediately before commencement day, that—

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- (i) there was no compulsory insurance policy that covered the worker in relation to the injury and the worker's employer was not a self-insurer; or
- (ii) the compulsory insurance policy that covered the worker in relation to the injury was issued by an insurer that could not provide the indemnity required to be provided under the policy.

263 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.
- (2) A regulation may modify this chapter (including its operation in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

264 Expiry of ch 19

- (1) This chapter expires 2 years after the day it commences.
- (2) This chapter is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

62 New schedule 3

insert

Schedule 3 DI fund advisory committee

3.1 Definitions—sch 3

In this schedule:

chair means the chair of the committee.

committee means the DI fund advisory committee.

member means a member of the committee.

3.2 Establishment of DI fund advisory committee

The DI fund advisory committee is established.

3.3 Functions of committee

- (1) The committee has the following functions:
 - (a) monitoring the operations of the DI fund;
 - (b) advising the Minister or DI fund manager on matters in relation to part 8.2 if asked.
- (2) The committee may exercise any other function given to it under this Act or any other territory law.

Note A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see Legislation Act, s 196 and dict, pt 1, def *entity*).

3.4 Membership of committee

- (1) The committee consists of—
 - (a) the DI fund manager; and
 - (b) the DI fund actuary; and
 - (c) 6 members appointed by the Minister.

Note 1 For the making of appointments (including acting appointments), see the Legislation Act, pt 19.3.

Note 2 In particular, an appointment may be made by naming a person or nominating the occupant of a position (see Legislation Act, s 207).

Note 3 Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see Legislation Act, div 19.3.3).

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- (2) The Minister must appoint the following members:
 - (a) 2 members nominated by a group the Minister is satisfied represents employer interests;
 - (b) 2 members nominated by a group the Minister is satisfied represents employee interests;
 - (c) 2 members nominated by a majority of approved insurers.
- (3) An appointment under subsection (2) must not be for longer than 3 years.

3.5 When DI fund manager not member of committee

The DI fund manager is not a member of the committee if it is considering the manager's conduct under this Act.

3.6 Ending of members' appointments

The Minister may end the appointment of a member (other than the DI fund manager or DI fund actuary)—

- (a) if the member contravenes a territory law; or
- (b) for misbehaviour; or
- (c) if the member becomes bankrupt or executes a personal insolvency agreement; or
- (d) if the member is convicted, or found guilty, in Australia of an offence punishable by imprisonment for at least 1 year; or
- (e) if the member is convicted, or found guilty, outside Australia of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year; or
- (f) if the member exercises the member's functions other than in accordance with section 3.8 (Honesty, care and diligence of members); or

- (g) if the member fails to take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions; or
- (h) if the member contravenes section 3.11 (Disclosure of interests by members); or
- (i) if the member is absent, other than on leave approved by the Minister, from 3 consecutive meetings of the committee; or
- (j) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

Note A person's appointment also ends if the person resigns (see Legislation Act, s 210).

3.7 Committee chair

The members must elect a member (other than the DI fund actuary) as chair.

3.8 Honesty, care and diligence of members

In exercising the functions of a member, a member must exercise the degree of honesty, care and diligence required to be exercised by a director of a corporation in relation to the affairs of the corporation.

3.9 Conflicts of interest by members

A member must take all reasonable steps to avoid being placed in a position where a conflict of interest arises during the exercise of the member's functions.

3.10 Agenda to require disclosure of interest item

- (1) The agenda for each meeting of the committee must include an item requiring any material interest in an issue to be considered at the meeting to be disclosed to the meeting.

- (2) In this section:
material interest—see section 3.11 (4).

3.11 Disclosure of interests by members

- (1) If a member has a material interest in an issue being considered, or about to be considered, by the committee, the member must disclose the nature of the interest at a committee meeting as soon as practicable after the relevant facts come to the member's knowledge.

Note *Material interest* is defined in s (4). The definition of *indirect interest* in s (4) applies to the definition of *material interest*.

- (2) The disclosure must be recorded in the committee's minutes and, unless the committee otherwise decides, the member must not—
- (a) be present when the committee considers the issue; or
 - (b) take part in a decision of the committee on the issue.

Example

Jane, Jerome and Kimberley are members of the committee. They have an interest in an issue being considered at a committee meeting and they disclose the interest as soon as they become aware of it. Jerome's and Kimberley's interests are minor but Jane has a direct financial interest in the issue.

The committee considers the disclosures and decides that because of the nature of the interests:

- Jerome may be present when the committee considers the issue but not take part in the decision
- Kimberley may be present for the consideration and take part in the decision.

The committee does not make a decision allowing Jane to be present or take part in the committee's decision. Accordingly, because Jane has a material interest, she cannot be present for the consideration of the issue or take part in the decision.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

(3) Any other member who also has a material interest in the issue must not be present when the committee is considering its decision under subsection (2).

(4) In this section:

associate, of a person, means—

- (a) the person's business partner; or
- (b) a close friend of the person; or
- (c) a family member of the person.

executive officer, of a corporation, means a person (however described) who is concerned with, or takes part in, the corporation's management, whether or not the person is a director of the corporation.

indirect interest—without limiting the kinds of indirect interests a person may have, a person has an *indirect interest* in an issue if any of the following has an interest in the issue:

- (a) an associate of the person;
- (b) a corporation if the corporation has not more than 100 members and the person, or an associate of the person, is a member of the corporation;
- (c) a subsidiary of a corporation mentioned in paragraph (b);
- (d) a corporation if the person, or an associate of the person, is an executive officer of the corporation;
- (e) the trustee of a trust if the person, or an associate of the person, is a beneficiary of the trust;
- (f) a member of a firm or partnership if the person, or an associate of the person, is a member of the firm or partnership;

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- (g) someone else carrying on a business if the person, or an associate of the person, has a direct or indirect right to participate in the profits of the business.

material interest—a member has a **material interest** in an issue if the member has—

- (a) a direct or indirect financial interest in the issue; or
- (b) a direct or indirect interest of any other kind if the interest could conflict with the proper exercise of the member's functions in relation to the committee's consideration of the issue.

3.12 Reporting of disclosed committee interests to Minister

- (1) Not later than 3 months after the day a material interest is disclosed under section 3.11 (1), the committee chair must report to the Minister in writing about—
 - (a) the disclosure; and
 - (b) the nature of the interest disclosed; and
 - (c) any decision by the committee under section 3.11 (2).
- (2) The chair must also give the Minister, not later than 31 days after the end of each financial year, a statement that sets out the information given to the Minister in reports under subsection (1) that relate to disclosures made during the previous financial year.
- (3) The Minister must give a copy of the statement to the relevant committee of the Legislative Assembly not later than 31 days after the day the Minister receives the statement.
- (4) In this section:

material interest means—see section 3.11 (4).

relevant committee means—

- (a) a standing committee of the Legislative Assembly nominated by the Speaker for subsection (3); or
- (b) if no nomination under paragraph (a) is in effect—the standing committee of the Legislative Assembly responsible for public accounts.

3.13 Protection of members from liability

- (1) A member is not civilly liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the act or omission was in the exercise of a function under this Act.
- (2) Any liability that would, apart from subsection (2), attach to a member attaches instead to the Territory.

3.14 Time and place of committee meetings

- (1) The committee is to meet when and where it decides.
- (2) However, the committee must meet at least once every 3 months.
- (3) The chair—
 - (a) may at any time call a meeting of the committee; and
 - (b) must call a meeting if asked by the Minister, DI fund manager, DI fund actuary or at least 2 members.
- (4) If, for any reason, there is no committee chair, the chief executive—
 - (a) may at any time call a meeting of the committee; and
 - (b) must call a meeting if asked by the Minister, DI fund manager, DI fund actuary or at least 2 members.
- (5) The chair or chief executive must give the members reasonable notice of the time and place of a meeting called by the chair or chief executive.

3.15 Presiding member at committee meetings

- (1) The chair presides at all meetings of the committee at which the chair is present.
- (2) If the chair is absent, the member chosen by the members present presides.
- (3) However, the members must not choose the DI fund actuary to preside.

3.16 Quorum at committee meetings

Business may be carried on at a meeting of the committee only if at least 3 members appointed by the Minister are present.

3.17 Voting at committee meetings

- (1) At a meeting of the committee each member (other than the DI fund manager and DI fund actuary) has a vote on each question to be decided.
- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a deciding vote.

3.18 Conduct of committee meetings etc

- (1) The committee may conduct proceedings (including its meetings) as it considers appropriate.
- (2) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a committee member taking part to hear what each other member taking part says without the members being in each other's presence.

Examples

a phone link, a satellite link

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.
- (4) A resolution is a valid resolution of the committee, even if it is not passed at a meeting of the committee, if all members agree to the proposed resolution in writing or by electronic communication.

Example of electronic communication

email

- (5) The committee must keep minutes of its meetings.

63 Dictionary, new notes

insert

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACT
- chief executive (see s 163)
- contravene
- doctor
- fail
- financial year
- in relation to
- law, of the Territory
- Magistrates Court
- penalty unit (see s 133)
- proceeding
- public servant
- quarter
- territory law
- under
- year.

64 Dictionary, new definitions

insert

auditor means any of the following:

- (a) an auditor registered under the Corporations Act;
- (b) a member of the Institute of Chartered Accountants in Australia;
- (c) a member of CPA Australia;
- (d) a member of the National Institute of Accountants.

chair, for schedule 3 (DI fund advisory committee)—see schedule 3, section 3.1.

claim for payment, by a person, for part 8.2 (Default insurance fund)—see section 170.

claims manager, for part 8.2 (Default insurance fund)—see section 165.

committee, for schedule 3 (DI fund advisory committee)—see schedule 3, section 3.1.

DI fund means the Default Insurance Fund established under section 166.

DI fund actuary means the actuary engaged as DI fund actuary under section 166H.

DI fund advisory committee means the DI fund advisory committee established under schedule 3, section 3.2.

DI fund manager means the DI fund manager appointed under section 166C.

earned premium, for a period, means the total billed underwritten premium for compulsory insurance policies for the period.

65 Dictionary, definition of *incapacity date*

omit

66 Dictionary, new definition of *initial incapacity date*

insert

initial incapacity date, for a worker in relation to an injury that causes incapacity or death, for part 4.3 (Weekly compensation)—see section 36G.

67 Dictionary, definition of *insurer*

substitute

insurer—

- (a) for chapter 5 (Injury management process)—
 - (i) see section 86A; and
 - (ii) if there is more than 1 employer of the worker—see section 87; and
- (b) for part 6.2 (Time for accepting or rejecting claims)—see section 127 (1).

68 Dictionary, new definitions

insert

liquidator, of an insurer, includes—

- (a) the official manager of the insurer; or
- (b) the receiver of the insurer's property; or
- (c) the receiver and manager of the insurer's property; or
- (d) the managing controller of the insurer's property.

managing controller—see the Corporations Act, section 9 (Dictionary).

Endnotes

7 Uncommenced amendments

member, for schedule 3 (DI fund advisory committee)—see schedule 3, section 3.1

69 Dictionary, definition of *nominal insurer*

omit

70 Dictionary, new definitions

insert

official manager—see the Corporations Act, section 9 (Dictionary).

receiver and manager—see the Corporations Act, section 9 (Dictionary).

71 Dictionary, definition of *recognised auditor*

substitute

recognised auditor means—

- (a) for a certificate provided, or to be provided, for an employer for this Act—an auditor who is not the employer or an employee or executive officer of the employer; and
- (b) for the DI fund—an auditor who is not employed or engaged by the DI fund.

72 Dictionary, definition of *rules*

omit

73 Dictionary, definition of *weekly compensation*

substitute

weekly compensation, for a worker, for part 4.3 (Weekly Compensation)—see section 36G.

Schedule 1 Further amendments

(see s 3)

[1.1] Section 8 (3) (a) and (b)

substitute

- (a) section 155 (6), definition of *employer's estimate*, paragraphs (a) and (b) (Information for insurers on application for issue or renewal of policies);
- (b) section 159 (1) (a) and (b) (Six-monthly information for insurers);

[1.2] Sections 30 to 32

renumber as sections 31 to 33

[1.3] Section 36 (1), note

substitute

Note Compensation may be payable for an injury arising out of, or in the course of, employment under s 31 (General entitlements to compensation for personal injury).

[1.4] Section 144 (2)

substitute

- (2) Subject to section 147 (7) (Compulsory insurance—employers) and section 154 (Cover notes), a cover note may be a compulsory insurance policy.

[1.5] Sections 151 to 155

renumber as sections 150 to 154

Endnotes

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[1.6] Section 159 (2) and (3)

omit

section 158 (2)

substitute

section 157 (2)

[1.7] Section 159 (as amended)

renumber as section 158

[1.8] Section 161 (5), definition of *relevant statutory declaration*

substitute

relevant statutory declaration means a statutory declaration provided by an employer for either of the following provisions:

- section 155 (2) (Information for insurers on application for issue or renewal of policies)
- section 159 (1) (Six-monthly information for insurers).

[1.9] Section 161

renumber as section 162

[1.10] Section 162 (1) and (2)

substitute

- (1) For this section, an employer has been *convicted of an offence* if the employer has been convicted of a 2nd or subsequent offence against any of the following sections:
 - section 147 (Compulsory insurance—employers)
 - section 155 (Information for insurers on application for issue or renewal of policies)
 - section 156 (Information for insurers after renewal of policies)

- section 157 (Information for insurers after end or cancellation of policies)
 - section 158 (Information for new insurers after change of insurers)
 - section 159 (Six-monthly information for insurers)
 - section 203 (Criminal liability of executive officers).
- (2) Subsection (1) only applies to an offence against section 203 if the offence relates to the contravention by a corporation of another section mentioned in subsection (1).

[1.11] Section 162 (as amended)

renumber as section 163

[1.12] Chapter 13

renumber as chapter 12

[1.13] Sections 208 and 209

renumber as sections 198 and 199

[1.14] Chapter 14

renumber as chapter 13

[1.15] Section 211

renumber as section 201

[1.16] Section 212 (1) and (2)

substitute

- (1) A prosecution for an offence against any of the following sections must be started not later than 5 years after the day, or the last day, the offence is committed:
- section 147 (Compulsory insurance—employers)
 - section 155 (Information for insurers on application for issue or renewal of policies)

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- section 156 (Information for insurers after renewal of policies)
 - section 157 (Information for insurers after end or cancellation of policies)
 - section 158 (Information for new insurers after change of insurers)
 - section 159 (Six-monthly information for insurers)
 - section 203 (Criminal liability of executive officers).
- (2) Subsection (1) only applies to an offence against section 203 if the offence relates to the contravention by a corporation of another section mentioned in subsection (1).

[1.17] Sections 212 (as amended)

renumber as sections 202

[1.18] Sections 216 to 218

renumber as sections 206 to 208

[1.19] Section 224 (3), definition of *insurer's market share*

substitute

insurer's market share means the proportion (expressed as a percentage) of the administrative costs of the Act apportioned by the Minister to the insurer under section 210 (1) (Apportionment of costs of administration of Act) in relation to the financial year before the act of terror happens.

[1.20] Dictionary, definition of *medical referee*

substitute

medical referee means a medical referee appointed under section 201.

[1.21] Dictionary, definition of *reviewable decision*

substitute

reviewable decision, for chapter 12 (Review of decisions by administrative appeals tribunal)—see section 198 (Notice of reviewable decisions to be given to affected people).

[1.22] Dictionary, definition of *self-insurer*

substitute

self-insurer means an employer who is exempted under section 151 (Self-insurers).

**Workers Compensation Amendment Act 2006 (No 2)
A2006-8****4 Meaning of worker
Chapter 3 heading, note 1**

omit

- religious worker (s 17)

substitute

- family day care carer (s 16A)
- religious worker (s 17)

5 Chapter 3 heading, note 2

before

s 17 (Religious workers)

insert

s 16A (Family day care carers),

6 New section 16A

insert

16A Family day care carers

- (1) The Minister may make a declaration for this section in accordance with a request by—
 - (a) an approved family day care service; or
 - (b) an approved in-home care service.
- (2) The Minister may, on the Minister's own initiative, make a declaration for this section if the Minister considers that people engaged by an approved family day care service or an approved in-home care service should be treated as workers of the service.
- (3) For this Act—
 - (a) an individual included in a class of individuals declared by the Minister is taken to be a **worker** employed by the person stated in the declaration to be the employer of individuals in that class; and
 - (b) the individual's employment is taken to be as stated in the declaration for individuals in the class.
- (4) A declaration is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (5) In this section:

approved family day care service—see the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cwlth), section 3 (1).

approved in-home care service—see the *A New Tax System (Family Assistance) (Administration) Act 1999* (Cwlth), section 3 (1).

**7 Religious workers
Section 17 (1)**

omit

, in writing,

**8 Compensation for death or incapacity through disease
Section 27 (2)**

substitute

- (2) If the worker dies or is totally or partially incapacitated for work as a result of the disease, or the worker received medical treatment in relation to the disease, then, for this Act, unless the contrary intention appears—
- (a) the contraction of the disease, or the aggravation, acceleration or recurrence of the disease is a personal injury to the worker arising out of the employment of the worker by the worker's employer; and
 - (b) the date of the injury is the earliest of the following:
 - (i) the date of the death;
 - (ii) the date of the start of the incapacity;
 - (iii) the date when the medical treatment was first received.

**9 Entitlement to weekly compensation for first 26 weeks of incapacity
Section 39 (3)**

omit

pension age

substitute

65

Endnotes

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10 Entitlement to weekly compensation after first 26 weeks of incapacity Section 40 (4)

omit

pension age

substitute

65

11 Entitlement to weekly compensation after 26 weeks of partial incapacity Section 42 (1)

after

the weekly amount the worker is being paid for working

insert

or could earn in reasonably available suitable employment

12 Section 42 (3)

substitute

(3) For this section, in working out the average weekly amount the worker could earn, consideration may be given to the following:

- (a) suitable employment that the worker unreasonably rejects;
- (b) suitable employment that the worker obtains but unreasonably discontinues.

(4) In this section:

statutory ceiling, in relation to an amount, means 150% of AWE at the time the amount is to be paid.

13 Section 70

substitute

70 Employer liability for medical treatment etc

- (1) The employer is liable to pay—
 - (a) in relation to the cost of medical treatment reasonably received in relation to the injury—an amount of compensation appropriate for the provision of the medical treatment, having regard to the charges customarily made for similar medical treatment where the treatment is received; and
 - (b) in relation to the cost of rehabilitation services received by the worker in relation to the injury under the worker's personal injury plan—the cost of the services in accordance with the plan; and
 - (c) in relation to any damage to, or loss of, the worker's clothing sustained in association with the injury—compensation of a reasonable amount for the repair or replacement of the damaged or lost clothing.

Note 1 Rehabilitation services include training and retraining services—see the dictionary, def *rehabilitation services*.

Note 2 Ch 5 deals with personal injury plans.

- (2) However, the total amount payable under subsection (1) for each of the following must not be more than the maximum amount:
 - (a) for the cost of medical treatment consisting of the repair or replacement of a worker's contact lenses, crutches, prosthesis, spectacles or other artificial aid;
 - (b) for damage to or loss of a worker's clothing.
- (3) In subsection (2):

maximum amount, for medical treatment, damage or loss, means—

 - (a) if an amount has been agreed between the worker and employer—that amount; or
 - (b) in any other case—\$500 cpi indexed.

Endnotes

7 Uncommenced amendments

- (4) For this section, the cost of medical treatment or rehabilitation services is taken to include—
- (a) the amount of wages lost by the worker because of the worker's attendance at a place (the *relevant place*) to receive the treatment or services; and
 - (b) the cost of taking the worker (whether the worker or someone else does the taking) to and from the relevant place worked out under either—
 - (i) section 74 (Transport costs other than private car); or
 - (ii) section 75 (Working out transport costs for private cars); and
 - (c) the cost of any accommodation (including the cost of meals required by the worker because of the worker's attendance at the relevant place worked out under section 76 (Costs of accommodation and meals)).

**14 Claim for compensation for pt 4.5
Section 71 (1)**

omit

A worker

substitute

The worker

15 Section 73 heading

substitute

73 Payments for medical treatment received from hospital

**16 Transport costs other than private car
Section 74 (1)**

omit

to undergo medical treatment

substitute

to receive medical treatment or rehabilitation services

**17 Working out transport costs for private cars
Section 75 (1)**

omit

to undergo medical treatment

substitute

to receive medical treatment or rehabilitation services

**18 Costs of accommodation and meals
Section 76 (1), note**

omit

19 Section 76 (3)

substitute

- (3) The worker is not entitled to payment for a meal unless the meal is eaten while the worker—
- (a) is travelling to or from a place to receive medical treatment or rehabilitation services for which compensation is payable; or
 - (b) is at a place to receive medical treatment or rehabilitation services for which compensation is payable; or
 - (c) is staying at accommodation for which compensation is payable under this part.

20 Section 86

substitute

86 Definitions for ch 5

- (1) In this Act:

personal injury plan, for a worker, means a plan for coordinating and managing the aspects of injury management that relate to medical treatment and rehabilitation services for the worker to achieve a timely, safe and durable return to work for the worker.

- (2) In this chapter:

injured worker means a worker who has received a workplace injury.

injury management means the process that consists of activities and procedures that are carried out or established to achieve a timely, safe and durable return to work for injured workers.

injury management program means a coordinated and managed program that integrates all aspects of injury management (including medical treatment, rehabilitation services, claims management and employment management practices) to achieve the best results for a timely, safe and durable return to work of injured workers.

injury notice—see section 93 (2) (Early notification of workplace injury).

nominated treating doctor, for an injured worker, means the doctor or medical practice nominated under section 102 (Nomination of doctor for personal injury plan).

workplace injury means an injury in relation to which compensation is or may be payable under this Act.

**21 Worker's personal injury plan obligations
Section 101 (2)**

substitute

- (2) The injured worker must comply with reasonable obligations imposed on the worker under the worker's personal injury plan,

including any obligation to receive medical treatment or rehabilitation services.

22 Section 107

omit everything before subsection (2), substitute

107 Payment of cost of medical treatment and rehabilitation services for injured worker

- (1) The worker's personal injury plan may provide for the insurer to pay the following costs:
 - (a) the cost of any medical treatment for the workplace injury provided to the worker by the nominated treating doctor if the nominated treating doctor is prepared to take part in the arrangements under the plan;
 - (b) the cost of other medical treatment described in the plan that is provided to the worker for the workplace injury;
 - (c) the cost of any rehabilitation services (including, if necessary, vocational rehabilitation) provided to the worker under the plan.

Examples of other medical treatment for par (b)

Treatment may be identified by reference to factors like the kind of medical treatment, the identity of the health care professional who provides the medical treatment, and the circumstances in which the medical treatment is provided.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

Endnotes

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**23 Liability not affected
Section 115 (b)**

omit

rehabilitation, retraining

substitute

rehabilitation services

**24 Regulation-making power
Section 223 (2) (f) (iii)**

substitute

(iii) rehabilitation services;

25 Dictionary, definition of *pension age*

omit

26 Dictionary, new definition of *rehabilitation services*

insert

rehabilitation services includes training and retraining services.

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