



Australian Capital Territory

Workers Compensation Amendment Act 2001

2001 No 81

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Australian Capital Territory

Workers Compensation Amendment Act 2001

2001 No 81

An Act to amend the *Workers' Compensation Act 1951*, to amend other Acts and for other purposes

*Notified under the Legislation Act 2001 on 28 September 2001
(see www.legislation.act.gov.au)*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

Unauthorised version prepared by ACT Parliamentary Counsel's Office

Authorised by the ACT Parliamentary Counsel—also accessible at www.legislation.act.gov.au

1 Name of Act

This Act is the *Workers Compensation Amendment Act 2001*.

2 Commencement

- (1) This Act (other than new section 80A, as inserted by section 11, and schedule 2) commences on 1 July 2002.

Note The naming and commencement provisions automatically commence on the notification day (see *Legislation Act 2001*, s 75).

- (2) The following provisions commence on the day this Act is notified in the Gazette:
- (a) new section 80A (Back, neck and pelvis impairments—Legislative Assembly endorsement for inclusion in sch 1), as inserted by section 11;
 - (b) schedule 2 (Minor amendments).

3 Acts amended

- (1) This Act (other than sections 35 and 36) amends the *Workers' Compensation Act 1951*.

Note The *Workers' Compensation Act 1951* is amended in the body of this Act and in sch 1 and sch 2.

- (2) Section 35 amends the *Limitation Act 1985*.
- (3) Section 36 amends the *Magistrates Court (Civil Jurisdiction) Act 1982*.

4 Part 1, heading

substitute

Chapter 1 Preliminary

5 Section 1

substitute

1 Name of Act

This Act is the *Workers Compensation Act 1951*.

Chapter 2 Interpretation generally

1A 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 2A (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 2001*, s 155 and s 156 (1)).

2 Notes

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

Note See *Legislation Act 2001*, s 127 (1), (4) and (5) for the legal status of notes.

(2) In this section:

note includes material enclosed in brackets in section headings.

Note For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following:

- ACT WCA: *Workers' Compensation Act 1951*, as in force immediately before the commencement of the *Workers Compensation Amendment Act 2001*, s 2.
- ACT WC Regs: *Workers' Compensation Regulations*, as in force immediately before the commencement of the *Workers Compensation Amendment Act 2001*, s 2.
- CW WRR: *Workplace Relations Regulations* (Cwlth).
- NSW WIMWCA: *Workplace Injury Management and Workers Compensation Act 1998* (NSW).
- NSW WCA: *Workers Compensation Act 1987* (NSW).

- (3) Subsection (2), this subsection, and the material enclosed in brackets in section headings, expire 2 years after this section commences.

2A Meaning of *injury* (ACT WCA s 6 (1) and (1A))

- (1) For this Act:

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

- (2) For 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.

3 Meaning of *employer* (ACT WCA s 6 (1))

For 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.

3A 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 7C (When is a worker taken to be totally incapacitated?).

4 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—

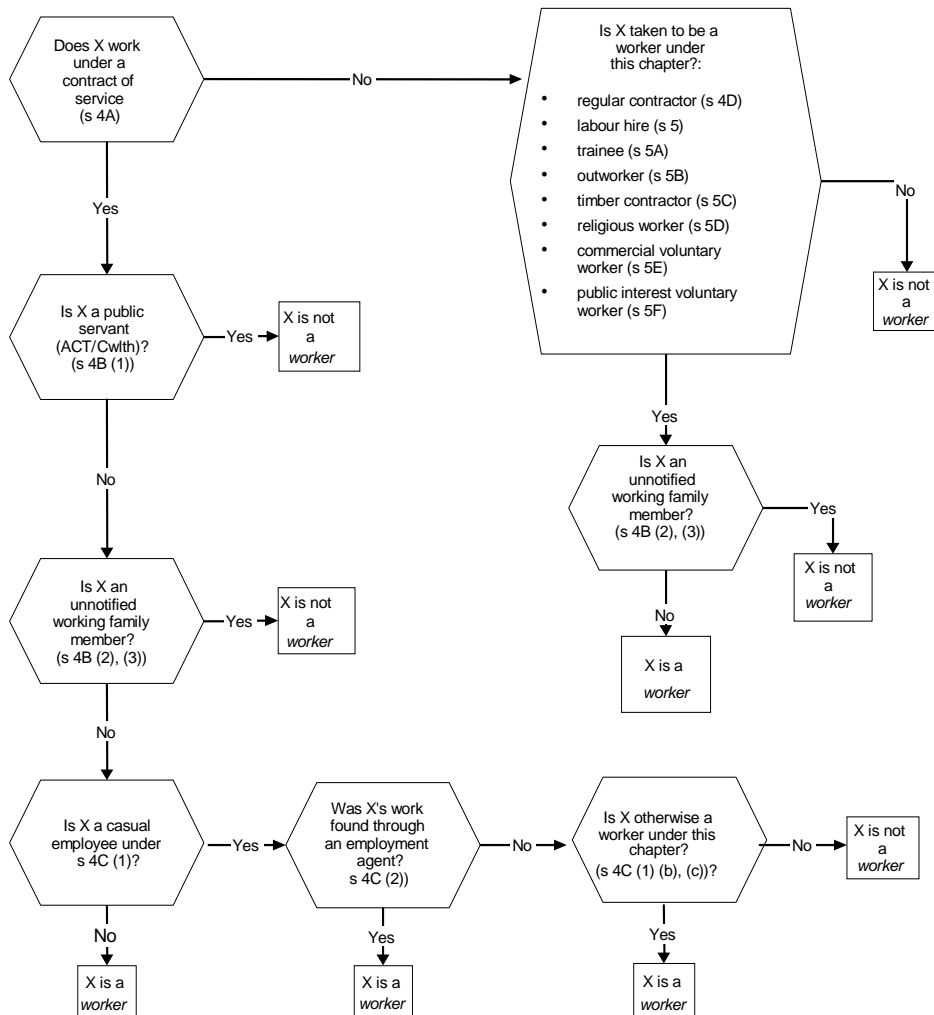
- (a) cannot do all the work the worker could do before the injury; and
- (b) is not totally incapacitated.

Chapter 3 Meaning of worker

Notes about chapter 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 5A (Trainees), s 5D (Religious workers), s 5E (Commercial voluntary workers) and s 5F (Public interest voluntary workers). Trainees and religious workers may or may not be paid for their labour. Voluntary workers (under s 5E and s 5F) are those that are paid only for expenses (if that).

Note 3 Subcontracting and labour hire (effect of s 14)

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 14, 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 5). 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 5) 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 14 (2) and (4)). If the principal pays compensation to the worker, the principal may claim repayment from the employer (see s 14 (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.

4A Who is a worker? (ACT WCA s 6 (1) (def of **worker**), (7), s 6B)

(1) For 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:

- section 18 (b) (i) (Information for insurers before renewal)

- section 18AA (b) (i) (Information for insurers after end of policy)
- section 18AB (1) (a) (Information for insurers about reporting period)
- section 23F (1) (b) (i) (Provision of information to inspectors).

(4) A determination is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.

4B Who is not a *worker*? (ACT WCA s 6 (1) (def of *worker*), (2))

- (1) For 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) For 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.

4C Casuals not employed for trade or business (ACT WCA s 6 (1) (def of *worker*, par (a)) and (3C))

- (1) For 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 4D (Regular contractors and casuals);
 - (c) section 5D (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 irregularly 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 agency. The babysitter is taken to be a **worker** employed by the agency 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 4D (Regular contractors and casuals)—see s (1) (b).

4D Regular contractors and casuals (CW WRR r 30BA (3))

- (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 4C (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 4C (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 4C (2).)

5 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 14 (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 14 (3)). See also note 3 at the beginning of this part.

5A 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.

5B Outworkers (ACT WCA s 6 (3))

- (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 4D (Regular contractors and casuals); or
 - (b) the outworker is taken to be a worker employed by the principal under section 5 (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.

5C Timber contractors (ACT WCA s 6 (3A), (3B))

- (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.

5D Religious workers (ACT WCA s 6A)

- (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 2001*.

5E Commercial voluntary workers

- (1) This section applies if individuals (*commercial volunteers*) are engaged under an arrangement by which the commercial volunteers—
 - (a) perform work that is for (or incidental to) the trade or business of someone else (the *principal*); and
 - (b) receive no payment for the work (apart from any payment for expenses).
- (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 2001*.

5F Public interest voluntary workers

- (1) The Minister may make a declaration for this section in relation to work (*public interest voluntary work*) undertaken by volunteers for a stated entity that the Minister considers necessary or desirable in the public interest.
- (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 2001*.

6 Part 2, heading

substitute

Chapter 4 Entitlement to compensation

7 New part 4.1

insert

Part 4.1 Important concepts

5G 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 ABS.

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* and *ABS* are 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.

5H Working out average pre-incapacity weekly earnings for non-contractor (SA WRC s 4)

- (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.

5I Working out average pre-incapacity weekly earnings for contractor (SA WRC s 4)

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.

5J 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.

5K 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.

5L 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.

5M 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.

8 Section 7

substitute

Part 4.2 Compensation for personal injury

6C General entitlement to compensation for personal injury (ACT WCA s 7 (1))

- (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.

- (4) Further, this section is subject to the following provisions:
- (a) section 7A (Compensation limited to Territory workers);
 - (b) section 7B (Injury outside Australia);
 - (c) part 4.8 (Exceptions to entitlements to compensation);
 - (d) in relation to the entitlement to weekly compensation—
 - (i) section 8A (What if the worker is dead?);
 - (ii) section 10ZI (Compliance by workers).

6D Amounts of compensation under Act cumulative (ACT WCA s 7 (5))

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.

6E 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.

**9 Compensation limited to Territory workers
Section 7A (3)**

substitute

- (3) A worker is taken to be a worker of a particular Territory or State (the *home jurisdiction*) if the worker carries out the work of the worker's employer outside the home jurisdiction (whether within or outside Australia) only if—
- (a) the worker usually carries out the work of the worker's employer in the home jurisdiction; and
 - (b) the worker carries out the work elsewhere because of an arrangement (that is part of the worker's employment) for the worker to carry out the work of the employment outside the home jurisdiction for a period that may reasonably be thought likely to be less than 6 continuous months in any 12 month period.

10 Section 8

substitute

8 Journey claims (NSW WCA s 10)

- (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 6C (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) For 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.

11 New parts 4.3 to 4.8

insert

Part 4.3 Weekly compensation

8A 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.

8B When do weekly compensation payments begin?

If the worker is 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 entitled to weekly compensation from the date of the injury.

8C 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.

8D 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.

8E 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.

8F Stopping of payments for partial incapacity

A worker stops being entitled to payments under section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (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 8C (Totally incapacitated workers), 8D or 8E, whichever is earliest;
- (d) when the worker dies.

8G 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 8C (Totally incapacitated workers), section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (Partially incapacitated workers after 26 weeks after incapacity date) but the payment of the compensation has been stopped under section 10F (No compensation while imprisoned) or section 10ZI (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 sections 8C, 8D and 8E.

8H Living outside Australia (ACT WCA sch 1 cl 14)

- (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.

8I Effect of living outside Australia if compensation still payable (ACT WCA sch 1 cl 14)

- (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 8H (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.
- (4) In this section:

quarter means a period of 3 months beginning on 1 July, 1 October, 1 December or 1 April.

8J 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 Territory otherwise applies.

Examples of benefits not affected

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

8K No assignment etc of weekly compensation (ACT WCA sch 4, cl 13)

Weekly compensation (including compensation payable under section 8I (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

8L Meaning of *loss* (NSW WCA s 65)

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).

8M Meaning of *single loss amount*

In this part:

single loss amount means \$100 000 cpi indexed.

8N Meaning of *maximum loss amount*

In this part:

maximum loss amount means \$150 000 cpi indexed.

**8O Compensation for permanent injuries generally
(ACT WCA s 10D and s 10F, NSW WCA s 66)**

- (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.

80A Actuarial review and back, neck and pelvis impairments

- (1) This section applies to the following items in schedule 1 (the *disallowable items*):
 - (a) item 46—permanent impairment of back;
 - (b) item 47—permanent impairment of neck;
 - (c) item 48—permanent impairment of pelvis.
- (2) As soon as practicable after the *Workers Compensation Amendment Act 2001* is notified, the Minister must commission a report from an actuary who has expertise in workers compensation insurance about the actuarial effect of the amendments made by that Act to this Act and, in particular, the actuarial effect of the inclusion of the disallowable items in schedule 1.

Note This section also commences on the day the *Workers Compensation Amendment Act 2001* is notified. Schedule 1 commences later, on 1 July 2002. See that Act, s 2.

- (3) A copy of the report must be presented to the Legislative Assembly on or before the first sitting day after 1 February 2002.

- (4) Notice of motion to disallow any of the disallowable items (a *notified item*) may be given to the Legislative Assembly within 6 sitting days after the report is presented to the Assembly.
- (5) If the Legislative Assembly passes a resolution to disallow a notified item, schedule 1 is taken to be amended by omitting the item.
- (6) For this section, the Legislative Assembly is taken to have passed a resolution to disallow a notified item if, at the end of 6 sitting days after notice is given—
 - (a) the notice has not been withdrawn and the motion has not been called on; or
 - (b) the motion has been called on and moved, but has not been withdrawn or otherwise disposed of.
- (7) If the Legislative Assembly passes a resolution to disallow a notified item, the Minister must prepare a written notice stating that, because of a resolution passed by the Legislative Assembly, schedule 1 is taken to be amended by omitting the item.
- (8) The notice is a notifiable instrument.

Note A notifiable instrument must be notified under the *Legislation Act 2001*.
- (9) The Minister must ensure that the notice is notified within 7 days after the Legislative Assembly passes the resolution.
- (10) This section expires on 1 July 2002.

8P 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.

8Q 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.

8R 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.

8S 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.

8T 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%.

8U 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.

8V Proportionate loss of use (NSW WCA s 68)

- (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 8O (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 arbitration under this Act.

8W Special provisions for HIV/AIDS (NSW WCA s 67A)

- (1) Compensation is not payable under section 8O (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 8V 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.

8X Deduction for previous injury or pre-existing condition (NSW WC s 68A (1), (2), (6) and (8))

- (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%).

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- (4) However, section 8Z must be used to work out how much (if any) of a worker's hearing loss is caused by age.

8Y Further loss and deductible proportions
(NSW WC s 68A (3) and (4))

- (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.

8Z Loss of hearing because of age (NSW WC s 70)

- (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) For this section, the *prescribed age* is—
- (a) for a male—55 years old; or
 - (b) for a female—65 years old.

9 No compensation for less than 6% hearing loss
(NSW WCA s 69A (1), (3), (4), (5), (6))

- (1) A worker is not entitled to compensation under section 80 (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 80 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 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.

- (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.

9A Presumption to be drawn from refusal to submit to hearing examination (NSW WCA s 69A (7))

- (1) This section applies to a worker with a claim for which no compensation is payable because of section 9.
- (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.

9B Employer's responsibility to pay for hearing loss tests (NSW WCA s 69B)

- (1) If an employer would, apart from section 9 (No compensation for less than 6% hearing loss), be liable to pay compensation under section 8O (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.

9C Reimbursement for costs of medical certificate and examination (NSW WCA s 73)

- (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 of a doctor 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.

9D Limited entitlement if death happens within 3 months (ACT WCA s 10F)

- (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

9E Application of pt 4.5 (ACT WCA s 11 (1))

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 9 (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 10F); or
 - (iii) weekly compensation has been suspended under section 10ZI (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 regulations (see *Legislation Act 2001*, s 104).

9F Employer liability for medical treatment and damage
(ACT WCA s 11 (2), (3), (3A))

- (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) In 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 9J (Transport costs other than private car) or section 9K (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 9L (Costs of accommodation and meals).

9G Claim for compensation for pt 4.5 (ACT WCA s 11 (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.

9H Second opinions (ACT WCA s 11 (6))

- (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 examined by a doctor, or other person, chosen by the employer.

9I Payments for treatment received from hospital (ACT WCA s 11 (7))

- (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.

9J Transport costs other than private car (ACT WC Regs r 14)

- (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 bus—see the *Road Transport (Public Passenger Services) Act 2001*, dictionary.

public transport means a public bus, a taxi or a restricted taxi.

restricted taxi—see the *Road Transport (General) Act 1999*, section 100.

taxi—see the *Road Transport (General) Act 1999*, section 100.

9K 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.

9L Costs of accommodation and meals (ACT WC Regs r 15)

- (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

10 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) Compensation under subsection (2) (b) is payable only while the person receiving it is a child.

10A Payment into court of lump sum death benefits
(ACT WCA sch 1 cl 6)

- (1) A payment mentioned in section 10 (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

10B Registration of agreements for compensation
(NSW WCA s 66A (3), (4), (4A), (10))

- (1) If the worker agrees to receive an amount of compensation under section 8O (Compensation for permanent injuries generally) for a loss or under section 12J (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 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.

10C Effect of registration of agreements

(NSW WCA s 66A (1), (2), (7))

- (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.

10D 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

10E **When is compensation under Act generally not payable?** (ACT WCA s 7 (3) and (4))

- (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.

10F **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.

**12 Compensation for death or incapacity through disease
Section 9 (1) (b)**

before

contributing

insert

substantial

**13 Compensation for disease
Section 9B (1) and (2)**

before

contributing

insert

substantial

14 Section 9B (3) and (4)

before

contributed

insert

substantially

15 Sections 10 to 10F

omit

16 New chapter 5

Chapter 5 Injury management process

Part 5.1 Object and definitions for chapter 5

10H Object of ch 5 (NSW WIMWCA s 41)

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.

10I Definitions for ch 5 (NSW WIMWCA s 42 (1))

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 10O (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 10X (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.

10J Meaning of *employer* and *insurer* if more than 1
(NSW WIMWCA s 42 (2))

- (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, is the employer that last employed the worker.

insurer means the employer's insurer.

Part 5.2 General obligations

10K 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.

10L 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 10N to comply with the obligations imposed on the employer under the injury management program
- under s 10O (2) to give notice of injury to the insurer
- under s 10V to take part and cooperate in establishing a personal injury plan for a worker, and to comply with the plan
- under s 10ZA and s 10ZB to provide suitable work for an injured worker
- under s 10ZE to establish a return-to-work program.

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

10M Insurer's obligation of prompt payment

(1) If an insurer is required under this Act to pay an amount for a service, the insurer must pay the amount to the person who provided the service (the *service provider*) within 30 days after the service is provided.

Maximum penalty: 10 penalty units.

(2) Subsection (1) does not apply if the insurer does not pay for the service because—

- (a) the insurer believes on reasonable grounds that the service has not been provided, or has not been properly provided, and the insurer has told the service provider, in writing, why the insurer has not paid for the service; or
- (b) the insurer has another reasonable ground for not paying for the service.

10N Employer's obligations for injury management programs

An employer (other than a non-business 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.

10NA Register of injuries (NSW WIMWCA s 63)

- (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, without lawful authority or excuse, 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.

Part 5.3 Obligations on injury

100 Early notification of workplace injury (NSW WIMWCA s 44)

- (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 10NA).

- (2) The employer must give the insurer notice of the injury (an *injury notice*) under section 10P 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.

10P Injury notice (ACT WCA, s 25 (4), NSW WIMWCA s 62)

- (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.

10Q 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 10O (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 may not be indemnified by the insurer for a payment mentioned in subsection (2).

10R Obligation of insurer on being notified of injury
(NSW WIMWCA s 43 (4))

Within 3 business days after receiving the injury notice, the insurer must take action under the insurer's injury management program and must (in accordance with the program) make contact with the injured worker, the employer (except if the insurer is a self-insurer) and (if appropriate and practicable) the worker's nominated treating doctor.

Maximum penalty: 10 penalty units.

Part 5.4 Obligations in relation to personal injury plans

10S Personal injury plan for worker with significant injury (NSW WIMWCA s 45)

- (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.

10T 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.

10U 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.

10V Employer's personal injury plan obligations (NSW WIMWCA s 46)

- (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.

10W Worker's personal injury plan obligations (NSW WIMWCA s 47)

- (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 10ZI).

- (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.

10X 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.

10Y 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

10Z Injured worker's obligation to return to work (NSW WIMWCA s 48)

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.

10ZA Employer must provide suitable work for full-time, part-time and casual workers (NSW WIMWCA s 49)

- (1) This section applies to a full-time, part-time or casual worker who has been totally or partially incapacitated for work because of an injury if 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.
- (2) The employer liable to pay compensation to the worker under this Act in relation to the injury must provide suitable employment for the worker if asked by the worker within 6 months after the day the worker became entitled to weekly compensation under this Act.

Maximum penalty: 10 penalty units.

- (3) The employment that the employer must provide is employment that is both suitable employment and, so far as reasonably practicable, the same as, or equivalent to, the employment in which the worker was employed at the time of the injury.
- (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.

10ZB Employer must provide suitable work for contract workers

- (1) This section applies to a contract worker who has been totally or partially incapacitated for work because of an injury if 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.
- (2) The employer liable to pay compensation to the worker under this Act in relation to the injury must provide suitable employment for the worker if asked by the worker—
 - (a) if the contract, and any reasonably expected extension or renewal of the contract, ends or would end before the end of 6 months after the day the worker became entitled to weekly compensation under this Act—before the end of the following:
 - (i) the extension or renewal;
 - (ii) if there is no reasonably expected extension or renewal—the contract; or
 - (b) in any other case—within 6 months after the day the worker became entitled to weekly compensation under this Act.

Maximum penalty: 10 penalty units.

- (3) The employment that the employer must provide is employment that is suitable employment and, so far as practicable, the same as, or equivalent to, the employment in which the worker was employed at the time of the injury.
- (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.

10ZC Payment of cost of treatment of injured worker
(NSW WIMWCA s 50)

- (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.

- (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.

10ZD Second injury arrangements (NSW WIMWCA s 51)

- (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.

10ZE Workplace rehabilitation (NSW WIMWCA s 52)

- (1) An employer (other than a non-business employer) must establish a return-to-work program in relation to policies and procedures for the

rehabilitation (including, if necessary, vocational rehabilitation) of injured workers of the employer.

Maximum penalty: 10 penalty units.

- (2) An employer's return-to-work program must not be inconsistent with the injury management program of the employer's insurer and is of no effect to the extent of any inconsistency.
- (3) A return-to-work program must—
 - (a) be established in accordance with guidelines (if any) issued by the Minister under section 10ZF; and
 - (b) be developed by the employer in consultation with the workers to whom it relates, or may relate, any industrial union of workers representing the workers and an approved rehabilitation provider; and
 - (c) be in writing displayed or notified at places of work of the workers to whom it relates or may relate.
- (4) A group of 2 or more employers may establish a single return-to-work program under this section for each member of the group if the employers are authorised in writing to do so by the Minister.

10ZF 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 2001*.
- (3) In deciding guidelines for this section, the Minister may consult with the entities the Minister considers appropriate.

Part 5.6 Compliance with chapter 5

10ZG Obligation of Minister

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

10ZH Compliance by insurers (NSW WIMWCA s 55 (1))

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

10ZI Compliance by workers (NSW WIMWCA s 57)

- (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.

10ZIA Unreasonableness in stopping payment

- (1) This section applies if an insurer gives the worker and Minister notice under section 10ZI 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, without reasonable excuse, contravene a direction under this section.

Maximum penalty: 10 penalty units.

10ZJ Liability not affected (NSW WIMWCA s 58)

None of the following things done by an insurer or employer is an admission of liability by the employer or insurer 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).

17 Sections 11 to 13

substitute

Chapter 6 Claims**Part 6.1 Making claims****11 Making claim for compensation**
(NSW WIMWCA s 65 (1), (2) and (13))

- (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.

11A 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.

11B Medical certificates and claims for compensation
(NSW WIMWCA s 65 (3), (4) and (5))

- (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 include a statement of the doctor's opinion about—
 - (a) the likelihood of the worker's employment being a substantial contributing factor to the injury; or
 - (b) whether the worker's condition is consistent with the worker's employment being a substantial contributing factor to the injury.

11C What if no medical certificate with doctor's opinion?

- (1) This section applies if a claim is deficient because section 11B (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 11B (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 11B (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 11B (2)) within 72 hours after receiving the claim, the claim is taken to comply with section 11B (2).

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- (4) Subsection (2) does not apply if the insurer (or self-insurer) waives the requirement for the claim to comply with section 11B (2).

11D Time for taking proceedings generally
(ACT WCA s 25 (1) and (3))

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.

Note Section 11H (No notice or defective or inaccurate notice) contains an exception to this regulation.

11E 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.

11F 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.

11G The notice for an injury (ACT WCA s 25 (4))

- (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.

11H No notice or defective or inaccurate notice (ACT WCA s 25 (2))

- (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.

11I 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.

11J Action by employer in relation to claims (NSW WIMWCA s 69)

- (1) If an employer receives a claim for compensation or another document in relation to a claim, the employer must, within 7 days after receiving the claim or document, forward it to the insurer that the employer believes is 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 receiving the request, either—
- (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) A person does not commit an offence by contravening this section if there was a reasonable excuse for the contravention.

Part 6.2 Time for accepting or rejecting claims

12 Meaning of *given* to the insurer

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.

12A 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.

12B Rejecting claims generally

- (1) An insurer rejects a claim for compensation under this Act by written notice given to the worker and employer.
- (2) The claim is taken to be rejected when the notice is received by the worker and 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 affidavit evidence about why the insurer is rejecting the claim.
- (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.

12C 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 12B.

- (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.

12D 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 12B.

12E 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

12F 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.

12G 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 10Q (What if employer does not give notice of injury within time?).

12H Order for refund of overpayments of compensation (NSW WIMWCA s 68)

- (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 under section 26T (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

12I 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.

12J 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.

12K No assignment etc of payout of weekly compensation
(ACT WCA sch 4, cl 13)

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.

18 Section 15

substitute

15 Medical referees (ACT WCA s 15)

- (1) The Minister may appoint 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.

19 Part 2A

substitute

Chapter 7 Vocational rehabilitation

15A Meaning of *approved rehabilitation provider* etc

- (1) In this chapter:

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

- (2) The regulations may make provision about the approval of rehabilitation providers by the Minister, including—
- (a) the factors to be taken into account in deciding whether to approve rehabilitation providers; and
 - (b) the conditions that may be imposed on approvals; and
 - (c) how approvals may be renewed, suspended and revoked.

15B Meaning of *vocational rehabilitation* (ACT WCA s 15A, 15B)

- (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.

15C Meaning of *protocol* in ch 7 etc (ACT WCA s 15A)

- (1) In this chapter:

protocol means a protocol about vocational rehabilitation approved under the regulations.

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

15D Vocational rehabilitation (ACT WCA s 15C)

- (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) The regulations may exempt employers from subsection (1), either completely or in prescribed circumstances.

15E False representation of approval

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

Maximum penalty: 30 penalty units.

20 Sections 16 to 17D

substitute

16 Meaning of *compulsory insurance policy*

(1) For 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 29 (Approved forms) for a compulsory insurance policy, the form must be used.

(2) Subject to section 16C (2) (Compulsory insurance—employers) and section 17E (Cover notes), a cover note may be a compulsory insurance policy.

16A Approved insurers

- (1) The Minister may, in accordance with the regulations, approve an insurer for this Act.
- (2) The regulations 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.

16B Effect of revocation or suspension of approval

- (1) If the approval of the insurer for this Act is revoked or suspended, section 16C (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 18H (Funds for payments by nominal insurer).
- (3) However, the regulations 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.

16C Compulsory insurance—employers (ACT WCA s 17B (1), (1A))

- (1) An employer, other than a self-insurer, must maintain a compulsory insurance policy with an approved insurer.

Maximum penalty:

- (a) for a non-business employer—50 penalty units; or
- (b) for a 1st offence—50 penalty units; or

- (c) for a 2nd or subsequent offence—
 - (i) if the person charged is an individual—250 penalty units, 2 years imprisonment or both; or
 - (ii) if the person charged is a corporation—1 000 penalty units.
- (2) 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.
- (3) If 2 or more employers could become liable to pay compensation for the same worker, any of the employers may comply with subsection (1) in relation to the worker with a joint insurance policy for their joint liability.

16D Liability of executive officers (ACT WCA s 17B (2A, 2B))

- (1) If a corporation commits an offence against section 16C, each executive officer of the corporation also commits the offence.
Maximum penalty:
 - (a) for a 1st offence—50 penalty units; or
 - (b) for a 2nd or subsequent offence—250 penalty units, 2 years imprisonment or both.
- (2) It is a defence to a prosecution under subsection (1) if the executive officer establishes that the officer actively endeavoured to ensure that the corporation complied with section 16C.

17 Effect of failure to maintain compulsory insurance on other insurance etc for this Act (ACT WCA s 17B (6))

- (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 18H (Funds for payment by nominal insurer).

17A Nominal insurer entitled to triple premiums (ACT WCA s 17B (5))

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.

17B Evidence of maintenance of compulsory insurance policy (ACT WCA s 17B (4))

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.

17C Self-insurers (ACT WCA s 17C (1))

- (1) The Minister may, by written notice given to an employer, exempt the employer from complying with section 16C (1) (Compulsory insurance—employers) for a stated period.
- (2) The regulations 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.

17D Compulsory insurance—insurers

- (1) An approved insurer must not refuse to issue a compulsory insurance policy required by an employer for section 16C (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 16C (1) that is not a compulsory insurance policy.

Maximum penalty: 100 penalty units.

- (3) It is not an offence under subsection (1) for an insurer to refuse to issue 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.

17DA Cancellation

An approved insurer may cancel a compulsory insurance policy only in accordance with a protocol about cancellation.

Maximum penalty: 50 penalty units.

**21 Cover notes
Section 17E (1) and (2)**

substitute

- (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.

22 Section 18

substitute

18 Information for insurers before renewal

An employer (other than a non-business employer) applying to an insurer for the issue renewal of a compulsory insurance policy must give the insurer, in relation to the period (the *relevant period*) relevant to working out the premium payable for the issue renewal of the policy—

- (a) a certificate from a registered auditor stating the total wages paid in the relevant period by the employer to Territory workers employed by the employer; and
- (b) a statutory declaration setting out—
- (i) the determined categories of Territory workers employed by the employer in the period; and
 - (ii) the total wages paid to each category in the period; and
 - (iii) the number of paid and unpaid workers working for the employer in the period; and

- (iv) the approximate amount of time each paid and unpaid worker worked for the employer in the period.

Maximum penalty:

- (a) for a 1st offence—50 penalty units;
- (b) for a 2nd or subsequent offence—
 - (i) if the person charged is an individual—2 years imprisonment, 250 penalty units or both;
 - (ii) if the person charged is a corporation—1 000 penalty units.

Note A person who knowingly provides a statutory declaration that contains false information is guilty of an offence under this Act (see s 18AE).

18AA Information for insurers after end of policy

If an employer (other than a non-business employer) has a compulsory insurance policy, the employer must, within 30 days after the end of the policy, give the insurer—

- (a) a certificate from a registered auditor stating the total wages paid by the employer to Territory workers in the period covered by the policy (the *policy period*); and
- (b) a statutory declaration setting out—
 - (i) the determined categories of Territory workers employed by the employer in the policy period; and
 - (ii) the total wages paid to each category in the policy period; and
 - (iii) the number of paid and unpaid workers working for the employer in the policy period; and
 - (iv) the approximate amount of time each paid and unpaid worker worked for the employer in the policy period.

Maximum penalty: 50 penalty units.

Note A person who knowingly provides a statutory declaration that contains false information is guilty of an offence under this Act (see s 18AE).

18AB Information for insurers about reporting period

- (1) If an employer (other than a non-business employer) has a compulsory insurance policy, the employer must, within 14 days after each reporting period, give the insurer a statutory declaration setting out—
- (a) the determined categories of Territory workers employed by the employer in the reporting period; and
 - (b) the total wages paid to each 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 A person who knowingly provides a statutory declaration that contains false information is guilty of an offence under this Act (see s 18AE).

- (2) In this section:

reporting period, in relation to the employer's compulsory insurance policy, means—

- (a) the period (the ***first period***) of 6 months beginning on the first day of the policy; and
- (b) each successive period (the ***successive period***) of 6 months following the first period; and
- (c) if the policy ends, or is cancelled, on a day other than the last day of the first period or a successive period—the period following the later of the first period or last successive period and ending on last day of the policy.

18AC Information for insurers after cancellation

If an insurer cancels the compulsory insurance policy of an employer (other than a non-business employer), the employer must, within 14 days after the day the policy is cancelled, give the insurer a certificate from a registered auditor stating the total wages paid by the employer to Territory workers in the period from the start of the policy until the cancellation of the policy.

Maximum penalty: 50 penalty units.

18AD Offence by registered auditor

A registered auditor must not knowingly supply false, misleading or incomplete information in a certificate provided for section 18AA (Information for insurers after end of policy), 18AB (Information for insurers about reporting period) or 18AC (Information for insurers after cancellation).

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

18AE Offence in relation to statutory declaration

- (1) This section applies to a person who provides a statutory declaration under section 18 (Information for insurers before renewal), section 18AA (Information for insurers after end of policy) and section 18AB (Information for insurers about reporting period).
- (2) The person must not knowingly provide false information in the statutory declaration.

Maximum penalty:

- (a) for a 1st offence—
 - (i) if the person charged is an individual—250 penalty units, 2 years imprisonment or both; or
 - (ii) if the person charged is a corporation—1 000 penalty units; or

- (b) for a 2nd or subsequent offence—
- (i) if the person charged is an individual—1 000 penalty units, 10 years imprisonment or both; or
 - (ii) if the person charged is a corporation—10 000 penalty units.

Note Under the *Crimes Act 1900*, pt 8, it is an offence to aid, abet or incite another person to commit an offence, to conspire with the person to commit an offence, to receive or assist the person knowing they have committed an offence or to attempt to commit an offence. Part 8 applies to the offence under this section.

18AF Offence to employ etc after 2nd offence

- (1) This section applies to a person who has been convicted of a 2nd or subsequent offence under the following sections:
- section 16C (Compulsory insurance—employers)
 - section 16D (Liability of executive officers)
 - section 18 (Information for insurers before renewal)
 - section 18AA (Information for insurers after end of policy)
 - section 18AB (Information for insurers about reporting period)
 - section 18AC (Information for insurers after cancellation).
- (2) The person must not employ a Territory worker, or be an executive officer of a corporation that employs a Territory worker, for a period of 5 years from the day the person is, or is last, convicted of an offence mentioned in subsection (1).

Maximum penalty: 5 years imprisonment.

23 Section 18F

substitute

18F 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 unless the nominal insurer consents.
- Maximum penalty: 20 penalty units.
- (4) The nominal insurer is entitled to intervene in any arbitration proceeding on the claim as a party.
- (5) The nominal insurer has the same right of objection to arbitration by a committee as the employer has under the regulations.

18FA Nominal insurer may act

The nominal insurer may treat a claim for compensation as having been made against the nominal insurer under section 18C (Claims for payment by nominal insurer) if the nominal insurer—

- (a) receives a copy of the claim under section 18F; or
- (b) is otherwise satisfied that it is reasonably likely that there is no compulsory insurance policy in force that applies to the claim.

24 Section 18G

substitute

18G 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.

25 New section 21AA

after section 21, insert

21AA Regulations to allow Minister to authorise people

The regulations 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.

26 Sections 23D and 23E

substitute

23D Inspectors

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

Note **Chief executive** means the chief executive of the administrative unit responsible for this section (see *Interpretation Act 1967*, s 24A (2) (a)).

- (2) A person must not be authorised 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 authorised, 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.

23E 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 under the regulations.
- (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 (subsection (2)): 1 penalty unit.

27 New section 23J

insert

23J Obstruction

A person must not, without reasonable excuse, 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.

28 New chapter 13

insert

Chapter 13 Notice and appeals

26RA 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 under the regulations.

- (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).

26RB 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.

29 Sections 26S to 27B

substitute

26RC Confidentiality

A person must not, other than for this Act or as required by law, make a record of or divulge or communicate to anyone else information or a document that the person acquired under this Act.

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

26S Time for beginning prosecutions

- (1) A prosecution for an offence against 1 of the following sections may be begun within 5 years after the commission of the offence:
 - section 16C (Compulsory insurance—employers)
 - section 18 (Information for insurers before renewal)
 - section 18AA (Information for insurers after end of policy)
 - section 18AB (Information for insurers about reporting period)
 - section 18AC (Information for insurers after cancellation).
- (2) A prosecution for an offence against any other provision of this Act may be begun within 1 year after the commission of the offence.
- (3) However, a prosecution for an offence against this Act committed before the commencement of the *Workers Compensation Amendment Act 2001*, section 29 may be begun within 2 years after the commission of the offence.
- (4) Subsection (3) and this subsection expire 2 years after the commencement of this section.

26T False claims etc (NSW WIMWCA s 67)

- (1) A person must not make a statement knowing that it is false or misleading in a material particular—
 - (a) in a notice given by the person under this Act; or

-
- (b) in a claim for compensation made by the person; or
 - (c) in a medical certificate or other document that relates to a claim for compensation; or
 - (d) when giving information to someone about a claim for compensation (whether the information is given by the person who made the claim or not).

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

- (2) This section does not apply to statements—
 - (a) made in documents filed, or information given, in a court proceeding; or
 - (b) 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.
- (3) This section applies to a statement even if it has been verified by statutory declaration.

26U Acts and omissions of representatives

- (1) In this section:

representative means—

- (a) for a corporation—an executive officer, employee or agent of the corporation; or
- (b) for an individual—an employee or agent of the individual.

state of mind, of a person, includes—

- (a) the person's knowledge, intention, opinion, belief or purpose; and
- (b) the person's reasons for the intention, opinion, belief or purpose.

- (2) This section applies to a prosecution for a defined offence.

Note Defined offence is defined in the dict.

- (3) If it is relevant to prove a person's state of mind about an act or omission, it is enough to show—
- (a) the act was done or omission made by a representative of the person within the scope of the representative's actual or apparent authority; and
 - (b) the representative had the state of mind.
- (4) An act done or omitted to be done on behalf of a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.
- (5) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the individual would not have been convicted of the offence without subsection (3) or (4).

27 Criminal liability of officers of corporation

- (1) If a corporation commits an offence against this Act (other than against section 16C (Compulsory insurance—employers)), an executive officer of the corporation—
- (a) commits the offence; and
 - (b) is liable, on conviction, to a penalty not exceeding the maximum penalty that may be imposed for the commission of the offence by an individual.

Note Section 16D deals with the liability of executive officers if a corporation commits an offence against section 16C.

- (2) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant exercised due diligence to prevent the corporation from doing the act or making the omission alleged to constitute the offence or an element of the offence committed by the corporation; or
 - (b) an officer or employee of the corporation in the defendant's position could not reasonably have been expected to know of the contravention; or
 - (c) the corporation would not have been found guilty of the offence because it could have established a defence available to it for the offence.
- (3) An executive officer may, under subsection (1), be prosecuted for and convicted of an offence whether or not the corporation has been prosecuted for or convicted of the offence.

27A 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 prevent doubt—
 - (a) it is a function of the OH&S Council to advise the Minister on matters relating to workers compensation; and
 - (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 This function is given to the OH&S Council under the *Occupational Health and Safety Act 1989*, s 10 (1) (a) (ii).

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.

- (3) In this section:

OH&S Council—see the *Occupational Health and Safety Act 1989*, section 5 (1), definition of *council*.

27B Rules of court

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

27C 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 2001*.

- (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.

27CA 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.

30 Regulation-making power Section 30 (2) and (3)

substitute

- (2) The regulations may make provision in relation to the following:
- (a) the procedure for the medical examination of injured workers;
 - (b) the functions of medical referees appointed under this Act;
 - (c) what compulsory insurance policies must, and must not, include;

- (d) how the performance of brokers and agents in relation to workers compensation in the Territory may be monitored;
 - (e) 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;
 - (f) 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;
 - (g) the benefits payable to injured workers;
 - (h) the accreditation of people to act as injury managers;
 - (i) 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;
 - (j) protocols that may be approved by the Minister for this Act and how they may be approved;
 - (k) 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) The regulations may also prescribe offences for contraventions of the regulations and prescribe maximum penalties of not more than 10 penalty units for offences against the regulations.

31 Part 8

omit

32 New chapter 15

insert

Chapter 15 Transitional

32 Definitions for ch 15

In this chapter:

the amendment Act means the *Workers Compensation Amendment Act 2001*.

the current Act means the *Workers Compensation Act 1951*, as in force after the commencement of the amendment Act.

the previous Act means the *Workers' Compensation Act 1951*, as in force immediately before the commencement of the amendment Act.

33 What injuries does this Act apply to?

- (1) The current Act applies only to injuries that happen on or after the commencement of the amendment Act.
- (2) However, if the worker first became aware that the worker received an injury after the commencement of the amendment Act, the injury is, for this chapter, taken to have happened when the worker became aware of the injury.
- (3) Also, if an injury (the *original injury*) that happened before the commencement of the amendment Act is aggravated after the commencement, the current Act applies to the aggravation as if the original injury were an injury within the meaning of the current Act.

34 What happens to injuries before the commencement of the amendment Act?

The previous Act continues to apply to injuries that happened before the commencement of the amendment Act.

35 Determined categories of workers

- (1) This section applies if, immediately before the commencement of the amendment Act, a determination by the Minister under the previous Act, section 6B (Determined categories of workers) was in force.
- (2) The determination is taken to be a determination under the current Act, section 4A (3) (Who is a *worker*?).

36 Approved insurers

- (1) An insurer (the *previously approved insurer*) that was an approved insurer under the previous Act immediately before the commencement of the amendment Act is taken to be an approved insurer under the current Act.
- (2) However, the approval of the previously approved insurer under the current Act ends 6 months after the commencement of the amendment Act, because of the operation of this section.
- (3) Subsection (2) applies to the approval irrespective of the terms of the approval under the previous Act.

37 Exempt employers

- (1) A person who was an exempt employer immediately before the commencement of the amendment Act is taken to have been exempted under the current Act, section 17C (Self-insurers).
- (2) However, the exemption of the person under section 17C ends 6 months after the commencement of the amendment Act.
- (3) Subsection (2) applies to the exemption irrespective of the terms of the exemption under the previous Act.

38 Modification of ch 15's operation

The regulations may modify the operation of this chapter to make provision with respect to any matter that is not already, or is not (in the Executive's opinion) adequately, dealt with in this chapter.

39 Expiry of ch 15

This chapter expires 2 years after it commences.

Note Transitional provisions are usually of transitional effect. They are kept with the original provisions for a limited time to ensure people are aware of them. However, the expiry of transitional provisions does not end their effect (see *Legislation Act 2001*, s 88).

33 Schedules 1 to 4

substitute

Schedule 1 Compensation for permanent injuries

(see s 8L and s 8O)

column 1 item	column 2 nature of injury	column 3 % of maximum 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

column 1 item	column 2 nature of injury	column 3 % of maximum amount payable
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
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

column 1 item	column 2 nature of injury	column 3 % of maximum amount payable
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
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

Dictionary

(see s 1A)

ABS means the Australian Bureau of Statistics established under the *Australian Bureau of Statistics Act 1975 (Cwlth)*.

approved insurer means an insurer approved by the Minister under section 16A (Approved insurers).

approved rehabilitation provider, for chapter 7 (Vocational rehabilitation)—see section 15A (Meaning of *approved rehabilitation provider* etc).

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

- (a) for a worker who is not a contractor—section 5H (Working out average pre-incapacity weekly earnings for non-contractor); or
- (b) for a worker who is a contractor—section 5I (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 5J (Working out average pre-incapacity weekly hours for non-contractor); or
- (b) for a worker who is a contractor—section 5K (Working out average pre-incapacity weekly hours for contractor).

AWE means the *Average weekly earnings*, States and Territories, seasonally adjusted for the ACT (all males total earnings) issued by the ABS.

awe indexed—see section 5G.

boilermakers deafness includes deafness of a similar origin.

child, in relation to a worker, means an unmarried child of the worker who is—

- (a) younger than 16; or
- (b) a full-time student.

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 16 (Meaning of *compulsory insurance policy*).

cpi indexed—see section 5G.

deductible proportion, for part 4.4 (Compensation for permanent injuries)—see section 8X (1) (Deduction for previous injury or pre-existing condition).

dependent, 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 4A (3) (Who is a *worker*?).

employer—see section 3 (Meaning of *employer*).

employer, for chapter 5 (Injury management process)—see section 10J.

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 part 6.2 (Time for accepting or rejecting claims)—see section 12.

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 8X (1) (Deduction for previous injury or pre-existing condition).

injured worker, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

injury—see section 2A (Meaning of *injury*).

injury management, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

injury management program, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

injury notice—

- (a) for chapter 5 (Injury management process)—see section 10O (2) (Early notification of workplace injury);

- (b) for chapter 6 (Claims)—see section 11D (Time for giving injury notice).

insurer, for chapter 5 (Injury management process), means—

- (a) an approved insurer or a self-insurer; or
- (b) if there is more than 1 employer of the worker—see section 10J.

loss, for chapter 4 (Entitlements to compensation)—see section 8L.

maximum loss amount, for part 4.4 (Compensation for permanent injuries)—see section 8N.

medical referee means a medical referee appointed under section 26RD.

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.

nominated treating doctor, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

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.

partially incapacitated—see section 4 (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 10I (Definitions for ch 5).

protocol—

- (a) for chapter 7 (Vocational rehabilitation)—see section 15C (Meaning of *protocol* for ch 7 etc); or
- (b) means a protocol, approved in accordance with the regulations, prescribing how certain activities under this Act should be performed.

registered agreement means an agreement registered under section 10B (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 10ZE (Workplace rehabilitation).

reviewable decision, for chapter 13 (Notice and appeals)—see section 26RA (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 17C (Self-insurers).

single loss amount, for part 4.4 (Compensation for permanent injuries)—see section 8M.

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.

Territory worker means a worker of the Territory under section 7A (Compensation limited to Territory workers).

totally incapacitated—see section 3A (Meaning of *totally incapacitated*).

vocational rehabilitation, for chapter 7 (Vocational rehabilitation)—see section 15B (Meaning of *vocational rehabilitation*).

weekly compensation, for a worker, means compensation to which the worker is entitled under section 8C (Totally incapacitated workers), section 8D (Partially incapacitated workers up to 26 weeks after incapacity date) or section 8E (Partially incapacitated workers after 26 weeks after incapacity date).

worker—see chapter 3 (Meaning of worker).

workplace injury, for chapter 5 (Injury management process)—see section 10I (Definitions for ch 5).

34 Workers Compensation Act—renumbering

renumber provisions when Act next republished under Legislation Act 2001

35 Limitation Act 1985, new section 16A

insert

16A Claims for common law compensation for workers compensation

- (1) This section applies to a cause of action, other than a cause of action that is a claim for compensation under the *Workers Compensation Act 1951*, if—
 - (a) the cause of action relates to a personal injury that is a compensable injury under the *Workers Compensation Act 1951*; and
 - (b) a claim could be, or could have been, made in relation to the cause of action under the *Workers Compensation Act 1951* if notice of the injury had been given as required under that Act.
- (2) The action is not maintainable if brought 3 or more years after the day the injury happened.

36 Magistrates Court (Civil Jurisdiction) Act 1982, section 497

omit

Schedule 1 Consequential amendments

(see s 3)

[1.1] Section 6 (1) (definitions of *approved insurer, base figure, compensation, court, dependant, determined categories of workers, employer, employer's insurer, exempt employer, Index number, injury, medical treatment, outworker, overtime, prescribed insurance policy*)

omit

[1.2] Section 6 (1) (definition of *professional sporting activity*)

omit

but does not include an activity referred to in subsection (4B), (4C) or (4D);

[1.3] Section 6 (1) (definition of *registered auditor*)

omit

[1.4] Section 6 (1) (definitions of *worker, worker of this Territory*)

omit

[1.5] Section 6 (1) (definitions, as amended by this schedule)

relocate the definitions to the dictionary

[1.6] Remainder of section 6

omit

[1.7] Sections 6A and 6B

omit

[1.8] Section 7A (1)

substitute

- (1) An employer is liable to pay compensation only in relation to a worker of the Territory.

[1.9] Section 7A (4) (c)

omit

respect of

substitute

relation to

[1.10] Section 7A (5)

omit

[1.11] Section 7B

substitute

7B 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.

[1.12] Section 9

relocate as section 5N

[1.13] Section 9AA

omit

[1.14] Sections 9A and 9B

relocate as sections 5O and 5P

[1.15] Section 14

relocate after section 5 (as inserted by this Act), as section 5AA

[1.16] Section 15

relocate as section 26RD

[1.17] Part 3, heading

renumber as chapter 8

[1.18] Section 18A (1)

substitute

(1AA) This section applies to the following:

- (a) an approved insurer;
- (b) a self-insurer;
- (c) if an approved insurer or employer is a corporation—an officer of the corporation on behalf of the corporation.

(1) 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.

[1.19] Section 18E (2)

omit

schedule 4

substitute

the regulations

[1.20] Section 18EA (7) (b)

omit

(other than an Act)

[1.21] Section 18H (2) and (3)

omit

exempt employers

substitute

self-insurers

[1.22] Section 18H (4)

substitute

- (4) In making an apportionment under subsection (3), the nominal insurer must have regard as far as practicable to—
- (a) the premium incomes 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).

[1.23] Section 18H (5)

omit

exempt employer

substitute

self-insurer

[1.24] Section 18H (5)

omit

or employer

substitute

or self-insurer

[1.25] Section 18H (6)

omit

exempt employer

substitute

self-insurer

[1.26] Section 18H (7)

omit

exempt employers

substitute

self-insurers

[1.27] Section 20

substitute

20 Premiums—maximum rates

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 under the regulations.

Maximum penalty: 50 penalty units.

[1.28] Section 20AA

omit

prescribed

substitute

compulsory

[1.29] Section 20A

omit

[1.30] Section 21

substitute

21 Workers' rights to information (ACT WCA s 21)

- (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 29 (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

Schedule 1 Consequential amendments

Amendment [1.31]

- (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 29 (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.

[1.31] Part 4

renumber as chapter 9

[1.32] Section 21A

omit

Part

substitute

chapter

[1.33] Section 21A, definition of *compensation*

omit

[1.34] Section 21B

omit

in respect of

substitute

in relation to

[1.35] Section 21B

omit

Part

substitute

chapter

[1.36] Sections 22, 23 and 23A

omit

in respect of

substitute

in relation to

[1.37] Section 23A (4) (b)

substitute

- (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.

[1.38] Part 5

renumber as chapter 10

[1.39] Section 23C, heading

omit

pt 5

substitute

ch 10

[1.40] Section 23C

omit

Part

substitute

chapter

[1.41] Section 23F

substitute

23F 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 registered 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 determined categories of Territory workers employed by the employer in the period; and
 - (ii) the total wages paid to each category in the 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) A registered auditor must not knowingly supply false, misleading or incomplete information in a certificate given to an inspector under subsection (1).

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

- (4) An employer must not, without reasonable excuse, fail to comply with a notice given to the employer under subsection (1) or (2).

Maximum penalty: 50 penalty units.

- (5) In this section:

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

[1.42] Part 6

renumber as chapter 11

[1.43] Section 24

omit

Schedule 4

substitute

the regulations

[1.44] Section 25

omit

[1.45] Part 6A

omit

[1.46] Part 6B

renumber as chapter 12

[1.47] Section 26G

omit

Part

substitute

chapter

[1.48] Section 26G, definition of *on-the-spot fine*

substitute

on-the-spot fine, in relation to a prescribed offence, means the fine prescribed under the regulations for the offence.

[1.49] Sections 26H, 26J, 26L, 26P, 26Q and 26R

omit

Part

substitute

chapter

[1.50] Part 7

renumber as chapter 14

[1.51] Section 27D (1) and (2)

omit

exempt employers

substitute

self-insurers

[1.52] Section 27D (3)

substitute

- (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 incomes 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).

[1.53] Section 27D (4)

omit

exempt employer

substitute

self-insurer

[1.54] Section 27D (4)

omit

or employer

substitute

or self-insurer

[1.55] Section 27D (5)

omit

exempt employer

substitute

self-insurer

Schedule 2 Minor amendments

(see s 3)

[2.1] Section 6 (1) (definitions of dental prosthetist, dentist and medical practitioner)

omit

[2.2] Section 6 (1) (definition of *spouse*)

omit

bona fide

substitute

genuine

[2.3] Section 7A (3)

omit

pursuant to

substitute

under

[2.4] Section 7C

substitute

7C When is a worker taken to be totally incapacitated?

- (1) For 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.

[2.5] Section 14 (4)

substitute

- (4) This section does not prevent a worker recovering compensation from the contractor instead of the principal.

[2.6] Section 17B (1), penalty

substitute

Maximum penalty:

- (a) for a 1st offence—50 penalty units; or
- (b) for a 2nd or subsequent offence—
 - (i) if the person charged is an individual—250 penalty units, 2 years imprisonment or both; or
 - (ii) if the person charged is a corporation—1 000 penalty units.

[2.7] Section 17B (2), penalty

substitute

Maximum penalty:

- (a) for a 1st offence—50 penalty units; or
- (b) for a 2nd or subsequent offence—
 - (i) if the person charged is an individual—250 penalty units, 2 years imprisonment or both; or
 - (ii) if the person charged is a corporation—1 000 penalty units.

[2.8] Section 18 (1), penalty

substitute

Maximum penalty:

- (a) for a 1st offence—50 penalty units; or
- (b) for a 2nd or subsequent offence—
 - (i) if the person charged is an individual—250 penalty units, 2 years imprisonment or both; or
 - (ii) if the person charged is a corporation—1 000 penalty units.

[2.9] Section 18 (4), penalty

substitute

Maximum penalty:

- (a) for a 1st offence—
 - (i) if the person charged is an individual—250 penalty units, 2 years imprisonment or both; or
 - (ii) if the person charged is a corporation—1 000 penalty units;

- (b) for a 2nd or subsequent offence—
- (i) if the person charged is an individual—1 000 penalty units, 10 years imprisonment or both; or
 - (ii) if the person charged is a corporation—10 000 penalty units.

[2.10] Section 18A (1)

omit

furnish

substitute

give

[2.11] Section 18A (1B) and (1C)

omit

furnishing

substitute

giving

[2.12] Section 18A (1C)

omit

furnished

substitute

gave

[2.13] Section 18A (2)

substitute

- (2) A person must not—
- (a) fail to comply with a notice given to the person under subsection (1); or

- (b) give details in response to a notice given to the person under subsection (1) that are false or misleading in a material particular.

Maximum penalty (subsection (2)): 50 penalty units.

[2.14] Section 18D (1) (a)

omit

thereafter

substitute

afterwards

[2.15] Section 18E

substitute

18E Reopening of agreements and awards

- (1) This section applies if a claim is made against the nominal insurer under section 18C (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.

18EAA Deciding or re-deciding claim

- (1) If the Magistrates Court makes an order under section 18E, the court must decide or re-decide 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.

[2.16] Section 18EA (3) (b)

omit

court

substitute

Supreme Court

[2.17] Section 18EA (4)

omit

A court

substitute

The Supreme Court

[2.18] Section 18EA (8)

substitute

- (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.

[2.19] Section 18J (1)

omit

powers and

[2.20] Section 18J (1) (c)

omit

those powers and

substitute

the nominal defendant's

[2.21] Section 18J (2)

substitute

- (2) An employer must comply with a requirement of the nominal insurer under subsection (1).

Maximum penalty (subsection (2)): 50 penalty units.

[2.22] Section 21A, heading

substitute

21A Definitions for pt 4

[2.23] Section 21A (1)

omit

- (1)

[2.24] Section 21A (2) and (3)

substitute

21AB 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 the chapter to a person to whom compensation is paid or payable, as the case may be, is a reference to the person for whose benefit the compensation is paid or payable.

[2.25] Section 23C

substitute

23C Definitions for pt 5

In this part:

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)).

[2.26] Section 23G (5)

substitute

- (5) A person must not, without reasonable excuse, contravene a requirement under this section.

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

[2.27] Section 25A (1)

omit

legal practitioner

substitute

lawyer

[2.28] Section 26 (1) and (2) (b)

omit

the court

substitute

the Magistrates Court

[2.29] Section 26Q (3)

omit

in loco parentis

substitute

in place of a parent

Endnotes

Workers' Compensation Act 1951

- 1 Republished as in force on 31 December 1998. See also Acts 1999 Nos 66, 82 and 85; 2000 Nos 74 and 80.

Penalty units

- 2 The *Interpretation Act 1967*, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.

[Presentation speech made in Assembly on 15 June 2001]

I certify that the above is a true copy of the Workers Compensation Amendment Bill 2001 which was passed by the Legislative Assembly on 28 August 2001.

M J McRae
Clerk of the Legislative Assembly

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