



Australian Capital Territory

# Workers Compensation (Acts of Terrorism) Amendment Act 2002

Act 2002 No 22

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Australian Capital Territory

# Workers Compensation (Acts of Terrorism) Amendment Act 2002

Act 2002 No 22

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

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*Notified under the Legislation Act 2001 on 28 June 2002  
(see [www.legislation.act.gov.au](http://www.legislation.act.gov.au))*

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

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## Part 1 Preliminary

### 1 Name of Act

This Act is the *Workers Compensation (Acts of Terrorism) Amendment Act 2002*.

### 2 Commencement

This Act commences on 1 July 2002.

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

## Part 2                      Workers Compensation Act 1951

### 3    Act amended—pt 2

This part amends the *Workers Compensation Act 1951*.

### 4    New chapter 14A

*insert*

## Chapter 14A      Temporary provisions for acts of terrorism

### 30A   Application of ch 14A to insurers

- (1) This chapter applies to an insurer if—
- (a) the insurer has acted honestly and taken all proper and business-like steps to obtain reinsurance for the insurer's liability to pay compensation for injuries or deaths (or both) caused by acts of terrorism; and
  - (b) an act of terrorism happens before 1 April 2004; and
  - (c) the insurer accepts liability for claims for compensation for injuries or deaths (or both) caused by the act of terrorism; and
  - (d) the insurer has acted honestly and taken all proper and business-like steps to demand the maximum amounts the insurer may demand under the reinsurance contracts held by the insurer that apply in relation to the claims; and
  - (e) the total amount paid by the insurer for the claims, after the deduction of the maximum amounts the insurer may receive

under the reinsurance contracts, is more than the temporary fund threshold amount that applies to the insurer.

- (2) For this chapter, the *temporary fund threshold amount* that applies to an insurer is the amount worked out using the following formula:

insurer's market share × relevant premium pool amount.

- (3) In this section:

*insurer's market share* means the proportion (expressed as a percentage) of the administrative costs of the Act apportioned by the Minister to the insurer under section 27D (2) (Funds for administration of Act) in relation to the financial year before the act of terror happens.

*premium pool* means the total amount of—

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

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

### 30B Definitions for ch 14A

In this chapter:

*act of terrorism*—see section 30C.

*insurer* means an approved insurer or a self-insurer.

*temporary fund*—see section 30D (1).

*temporary fund threshold amount*—see section 30A (2).

**30C Meaning of *act of terrorism* for ch 14A**

(1) In this chapter:

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

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

(2) Action falls within this subsection if it—

- (a) involves serious violence against a person; or
- (b) involves serious damage to property; or
- (c) endangers a person's life, other than that of the person committing the action; or
- (d) creates a serious risk to the health or safety of the public or a section of the public; or
- (e) is designed seriously to interfere with or seriously to disrupt an electronic system.

(3) The use or threat of action falling within subsection (2) that involves the use of firearms or explosives is terrorism whether or not subsection (1) (b) is satisfied.

(4) In this section:

*action* includes action outside the ACT or Australia.

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

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

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

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

### **30D Terrorism cover temporary reinsurance fund**

- (1) If this chapter applies to an insurer, the terrorism cover temporary reinsurance fund (the *temporary fund*) is established.
- (2) The temporary fund consists of—
  - (a) the amounts of levies paid by insurers under this chapter; and
  - (b) amounts borrowed by the Territory for the fund; and
  - (c) any contributions made by the Territory to the fund; and
  - (d) any amounts paid to the fund under the *Workers Compensation Supplementation Fund Act 1980*; and
  - (d) income from the investment of amounts in the fund; and
  - (e) any other amounts that may lawfully be paid into the fund.
- (3) The temporary fund is to be managed by the Territory and money paid into it is taken to be trust money under the *Financial Management Act 1996*.

### **30E Entitlement of insurers to reimbursement from temporary fund**

- (1) If this chapter applies to an insurer because of an act of terrorism, the insurer is entitled to be reimbursed from the temporary fund the insurer's uninsured liability for the act of terrorism less the temporary fund threshold amount that applies to the insurer in relation to the act of terrorism.
- (2) However, the insurer is entitled to be fully reimbursed from the temporary fund the insurer's uninsured liability for another act of terrorism that happens—



- (a) before 1 April 2004; and
  - (b) not later than 1 year after the day the act of terrorism mentioned in subsection (1) happens.
- (3) Subsection (2) applies only if the insurer has acted honestly and taken all proper and business-like steps to—
- (a) obtain reinsurance for the insurer's liability to pay compensation for injuries or deaths (or both) caused by the later act of terrorism; and
  - (b) demand the maximum amounts the insurer may demand under the reinsurance contracts held by the insurer that apply in relation to the later act of terrorism.

- (4) In this section:

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

### **30F Payments out of temporary fund**

The temporary fund may be used to—

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

### **30G Regulations about temporary fund**

- (1) The regulations may make provision in relation to the temporary fund, including—

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

### **30H Exclusion of Corporations legislation**

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

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

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

**30I Expiry of ch 14A**

This chapter expires on 1 October 2004.

## Part 3                      Workers' Compensation Supplementation Fund Act 1980

### 5      Act amended—pt 3

This part amends the *Workers' Compensation Supplementation Fund Act 1980*.

### 6      Payments out of fund Section 7

*omit*

The manager may

*substitute*

- (1) The manager may

### 7      New section 7 (2) and (3)

*insert*

- (2) The manager must pay out of the fund any amount the Minister directs be transferred to the terrorism cover temporary reinsurance fund under the *Workers Compensation Act 1951*.
- (3) Subsection (2) and this subsection expire on 1 October 2004.

## **Part 4 Additional amendments**

### **8 Acts amended—sch 1**

Schedule 1 amends the Acts mentioned in the schedule.

## **Schedule 1 Additional amendments**

(see s 8)

### **Part 1.1 Children and Young People Act 1999**

#### **[1.1] Section 113**

*omit*

### **Part 1.2 Magistrates Court (Civil Jurisdiction) Act 1982**

#### **[1.2] Section 471 (1)**

*omit*

(other than rules made under section 497 (Rule-making power))

#### **[1.3] Section 471 (4)**

*omit*

or rules made under section 497

#### **[1.4] Section 471 (6)**

*omit*

(other than a proceeding to which rules made under section 497 apply)

### **Part 1.3 Periodic Detention Act 1995**

#### **[1.5] Section 28**

*omit*

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## **Part 1.4                      Remand Centres Act 1976**

### **[1.6] Section 21A**

*omit*

## **Part 1.5                      Supervision of Offenders (Community Service Orders) Act 1985**

### **[1.7] Section 10**

*omit*

## **Part 1.6                      Workers Compensation Act 1951**

### **[1.8] Section 4C (2), example 3**

*substitute*

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

### **[1.9] Section 6C (3) (d)**

*substitute*

- (d) cerebral aneurism;
- (e) any other condition prescribed by the regulations for this section.

### **[1.10] Section 9C (2), definition of *medical certificate***

*omit*

of a doctor

*substitute*

, from a doctor, that complies with the requirements for medical assessments prescribed under the regulations and

**[1.11] Section 9H heading**

*substitute*

**9H Second assessments**

**[1.12] Section 9H (2)**

*omit*

examined

*substitute*

assessed

**[1.13] Section 9J (5)**

*substitute*

(5) In this section:

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

**[1.14] Section 10Q (3)**

*omit*

may

*substitute*

must

**[1.15] Section 11B (2)**

*omit everything before paragraph (a), substitute*



- (2) A medical certificate required to accompany a claim for weekly compensation must comply with the requirements for medical assessments prescribed under the regulations and include a statement of the doctor's assessment of—

**[1.16] Section 11C heading**

*substitute*

**11C No compliant certificate with claim**

**[1.17] Section 12**

*substitute*

**12 Meaning of *insurer* and *given* to insurer for pt 6.2**

- (1) In this part:

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

- (a) the approved insurer with whom the employer has or had a compulsory insurance policy that applies to the claim; or
  - (b) if the employer was a self-insurer when the injury happened—the employer; or
  - (c) if, when the injury happened, the employer was not a self-insurer and the employer has or had no compulsory insurance policy that applies to the claim—the nominal insurer.
- (2) For this part, a claim is *given* to the insurer if the claim is given to the insurer or the insurer is given notice of the claim by the employer or worker.

**[1.18] Section 12B (1) and (2)**

*substitute*

- (1) An insurer rejects a claim for compensation under this Act by written notice given to the worker and, unless the insurer is a self-insurer, the employer.

- (2) The claim is taken to be rejected when the notice is received by the worker and, unless the insurer is a self-insurer, the employer.

**[1.19] Section 12B (5)**

*omit*

affidavit evidence about

*substitute*

a statutory declaration explaining

**[1.20] Section 12B (5), new note**

*insert*

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

**[1.21] New section 12G (4)**

*insert*

- (4) Subsection (3) does not affect a self-insurer's liability in relation to the claim.

**[1.22] Section 15A (2)**

*substitute*

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

**[1.23] Section 18H (4) (a)**

*omit*

incomes

*substitute*

income

**[1.24] Section 24 heading**

*substitute*

**24 Conciliation and arbitration**

**[1.25] Section 24**

*omit*

arbitration

*substitute*

conciliation or arbitration

**[1.26] Chapter 13 heading**

*substitute*

**Chapter 13      Review of decisions by  
administrative appeals  
tribunal**

**[1.27] Section 26RD (1)**

*omit*

appoint

*substitute*

appoint, in writing,

**[1.28] New section 26RD(5)**

*insert*

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

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

**[1.29] Section 27D (3) (a)**

*omit*

incomes

*substitute*

income

**[1.30] Section 30 (2) (a)**

*substitute*

- (a) medical assessments of injured workers;  
(ab) the use of medical specialists in relation to compensable injuries;

**[1.31] Section 30 (2) (h)**

*substitute*

- (h) the action that may be taken in relation to an approved insurer, self-insurer or approved rehabilitation provider in circumstances prescribed under the regulations, including an order that an insurer or provider pay to the Territory an amount of not more than \$1 000;

**[1.32] Sections 36 and 37**

*substitute*

### **36 Approved insurers**

- (1) An 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 insurer stops being an approved insurer 6 months after the commencement of the amendment Act unless the insurer, before the end of the 6 months, is approved under section 16A (Approved insurers) other than because of the operation of this section.

### **37 Exempt employers**

- (1) A person who was an exempt employer under the previous Act immediately before the commencement of the amendment Act is taken to be a self-insurer under the current Act.
- (2) However, the person stops being a self-insurer 6 months after the commencement of the amendment Act unless the person, before the end of the 6 months, is exempted under section 17C (Self-insurers) other than because of the operation of this section.

### **37A Prescribed insurance policies**

- (1) This section applies if, immediately before the commencement of the amendment Act, a prescribed insurance policy under the previous Act was in force.
- (2) The prescribed insurance policy is taken to be a compulsory insurance policy under the current Act.

### **37B Approved rehabilitation providers**

- (1) A person who is an approved program provider under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth) is taken to be an approved rehabilitation provider under the current Act.
- (2) A person who is accredited as a provider of rehabilitation services under the *Workers Compensation (Workplace Injury Management)*

*Regulation 1995* (NSW) is taken to be an approved rehabilitation provider under the current Act.

- (3) However, a person mentioned in subsection (1) or (2) stops being an approved rehabilitation provider 6 months after the commencement of the amendment Act unless the person, before the end of the 6 months, is approved under section 15A (Meaning of approved rehabilitation provider etc) other than because of the operation of this section.

### **37C Children and Young People Act and compensation**

Despite the repeal of the *Children and Young People Act 1999*, section 113 (Compensation), the section, as in force immediately before its repeal, is taken to continue in force as if the previous Act were still in force.

### **37D Periodic Detention Act and compensation**

Despite the repeal of the *Periodic Detention Act 1995*, section 28 (Compensation), the section, as in force immediately before its repeal, is taken to continue in force as if the previous Act were still in force.

### **37E Remand Centres Act and compensation**

Despite the repeal of the *Remand Centres Act 1976*, section 21A (Compensation), the section, as in force immediately before its repeal, is taken to continue in force as if the previous Act were still in force.

### **37F Supervision of Offenders (Community Service Orders) Act and compensation**

Despite the repeal of the *Supervision of Offenders (Community Service Orders) Act 1985*, section 10 (Compensation), the section, as in force immediately before its repeal, is taken to continue in force as if the previous Act were still in force.

**[1.33] Dictionary, new definition of *committee***

*insert*

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

**[1.34] Dictionary, definition of *given***

*substitute*

***given*** to the insurer, for pt 6.2 (Time for accepting or rejecting claims)—see section 12 (2).

**[1.35] Dictionary, definition of *injured worker***

*substitute*

***injured worker***—see section 10I (Definitions for ch 5).

**[1.36] Dictionary, definition of *insurer***

*substitute*

***insurer***—

- (a) for chapter 5 (Injury management process), means—
  - (i) an approved insurer or a self-insurer; or
  - (ii) if there is more than 1 employer of the worker—see section 10J; and
- (b) for part 6.2 (Time for accepting or rejecting claims)—see section 12 (1).

**[1.37] Dictionary, definition of *workplace injury***

*substitute*

***workplace injury***—see section 10I (Definitions for ch 5).

## Part 1.7 Workers' Compensation Supplementation Fund Act 1980

### [1.38] Section 1

*substitute*

#### 1 Name of Act

This Act is the *Workers Compensation Supplementation Fund Act 1980*.

### [1.39] Section 2, new definition of *approved insurer*

*insert*

*approved insurer*—see the Compensation Act, dictionary.

### [1.40] Section 2, definition of *Compensation Act*

*substitute*

*Compensation Act* means the *Workers Compensation Act 1951*.

### [1.41] Section 2, new definition of *compulsory insurance policy*

*insert*

*compulsory insurance policy*—see the Compensation Act, dictionary.

### [1.42] Section 2, definition of *employer*

*substitute*

*employer*—see the Compensation Act, section 5.

### [1.43] Section 2, definitions of *employer's policy* and *insurer*

*omit*



**[1.44] Section 2, definition of *fund***

*substitute*

*fund* means the Workers Compensation Supplementation Fund of the Australian Capital Territory established by section 3.

**[1.45] Section 2, definition of *worker***

*substitute*

*worker*—see the Compensation Act, dictionary.

**[1.46] Part 2 heading**

*substitute*

## **Part 2**                      **Workers Compensation Supplementation Fund**

**[1.47] Section 3 (1)**

*substitute*

- (1) The Workers Compensation Supplementation Fund of the Australian Capital Territory is established.

**[1.48] Section 3 (3)**

*substitute*

- (3) Each account kept by the manager under subsection (3) must contain in its title the words 'Workers Compensation Supplementation Fund Account'.

**[1.49] Division 4.1 heading**

*substitute*

## **Division 4.1**                      **Surcharge on compulsory insurance policies**

**[1.50] Section 22 (1)**

*substitute*

- (1) An employer who obtains a compulsory insurance policy from an approved insurer must pay to the insurer the prescribed surcharge for the policy.

**[1.51] Section 22 (2)**

*omit*

**[1.52] Section 22 (3)**

*substitute*

- (3) For this section, the prescribed surcharge for a compulsory insurance policy is an amount equal to 10% (or, if a lesser percentage is determined, in writing, by the Minister, the lesser percentage) of the premium payable in relation to the policy at the premium rate in force on the day stated in the policy to be the day when insurance cover begins under the policy.

**[1.53] Section 22 (5) and (7)**

*omit*

**[1.54] Section 22**

*renumber subsections when Act next republished under Legislation Act 2001*

**[1.55] Section 23**

*omit*

section 17C

*substitute*

section 152

**[1.56] Section 24 (1) (b) and (3) (a)**

*omit*

employer's policies

*substitute*

compulsory insurance policies

**[1.57] Section 26 (1) and (2)**

*omit*

Where, before or after the commencement of this Act—

*substitute*

If—

**[1.58] Sections 27 (b), 30 (2) (c) and 39**

*omit*

employer's policy

*substitute*

compulsory insurance policy

**[1.59] Section 40 (1) (a)**

*omit*

employer's policies

*substitute*

compulsory insurance policies

**[1.60] Section 40 (2)**

*omit*

employer's policy

*substitute*

compulsory insurance policy

**[1.61] Section 40 (3)**

*omit*

whether made before or after the commencement of this Act

**[1.62] Further amendments, mentions of *an employer's policy***

*omit*

an employer's policy

*substitute*

a compulsory insurance policy

*in*

- section 22 (6) (a)
- section 23 (2)
- section 25 (1)
- section 26
- section 41 (a).

**[1.63] Further amendments, mentions of *insurer***

*omit*

insurer

*substitute*

approved insurer

*in*

- section 2, definition of *liquidator*
- section 2, definition of *supervising insurer* (2nd mention)

- section 7 (b) (*1st mention*)
- section 22 (6) (a) and (b)
- section 24 heading
- section 24 (1) (*1st mention*)
- section 24 (2)
- section 24 (3) (*1st mention*)
- section 25 (1) (*1st mention*)
- section 25 (2) (*1st mention*)
- section 26 (1) (c)
- section 26 (2) (c)
- section 26 (3) (*1st mention*)
- section 27 (*1st mention*)
- section 28 (1) (*1st mention*)
- section 28 (3) (*1st mention*)
- section 30 (1) (*1st and 3rd mention*)
- section 30 (2) (c)
- section 30 (3) (*2nd mention*)
- section 35 heading
- section 35 (1) (*1st mention*)
- section 35 (3) (*1st mention*)
- section 39 heading
- section 39 (*1st mention*)
- section 40 (1) (a) (*1st mention*)
- section 40 (2) (*1st mention*)

- section 41 heading
- section 41 (a) (*1st mention*)
- section 42 (*1st mention*).

#### **[1.64] Further amendments, mentions of *insurers***

*omit*

insurers

*substitute*

approved insurers

*in*

- section 12 (1) (a) (*1st mention*)
- section 17 (2) (d) (*2nd mention*)
- section 26 heading
- section 28 heading.

---

#### **Endnote**

##### **Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

*[Presentation speech made in Assembly on 6 June 2002]*

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I certify that the above is a true copy of the Workers Compensation (Acts of Terrorism) Amendment Bill 2002 which was passed by the Legislative Assembly on 27 June 2002.

Clerk of the Legislative Assembly

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