



Australian Capital Territory

Workers Compensation Amendment Act 2003 (No 2)

A2003-49

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2003 120B

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

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Australian Capital Territory

Workers Compensation Amendment Act 2003 (No 2)

A2003-49

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

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

2003 120B

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 2003 (No 2)*.

2 Commencement

This Act commences on a day fixed by the Minister by written notice.

Note 1 The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

Note 2 A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see Legislation Act, s 77 (1)).

Note 3 If a provision has not commenced within 6 months beginning on the notification day, it automatically commences on the first day after that period (see Legislation Act, s 79).

3 Act amended

This Act amends the *Workers Compensation Act 1951*.

Note This Act also amends the following legislation:

- the *Limitation Act 1985* (see s 33)
- the *Workers Compensation Supplementation Fund Act 1980* (see s 34)
- the *Workers Compensation Regulations 2002* (see sch 2.2).

4 Who is a worker? Section 8 (3) (a) to (d)

substitute

- (a) section 156 (6), definition of *employer's estimate*, paragraphs (a) and (b) (Information for insurers on application for issue or renewal of policies);
- (b) section 160 (1) (a) and (b) (Six-monthly information for insurers);

(c) section 190 (1) (b) (Provision of information to inspectors).

5 Trainees
New section 14 (3A)

insert

- (3A) An individual is also taken not to be a **worker** employed by the principal if—
- (a) the individual is an adult with a disability; and
 - (b) the engagement of the individual by the principal is arranged by a specialist disability employment service provider; and
 - (c) the engagement is part of a work experience program (however described) organised by the provider to help adults with disabilities to work.

Example of work experience program

work placement program

6 Section 14 (4)

omit

- (4) In subsection (3):

substitute

- (4) In this section:

7 Section 14 (4), new definitions

insert

adult with a disability means a person who—

- (a) is 16 years old or older; and
- (b) has a physical, intellectual or psychiatric disability; and

- (c) is likely to suffer from the disability permanently or for an extended period.

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

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

8 Section 14

renumber subsections when Act next republished under Legislation Act

9 New section 17A

insert

17A Volunteers

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

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

10 Commercial voluntary workers Section 18 (1)

substitute

- (1) This section applies if—

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

Examples

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

or business', but would not be carried on for the financial benefit of the individuals (or individual) by whom the trust is constituted (who would be the *principals*, or *principal*). The volunteer staff of the shop would therefore also not be commercial volunteers to whom this section applies.

11 Public interest voluntary workers

Section 19 (1)

substitute

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

Example

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

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

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

12 Section 96

substitute

96 Obligations of insurer on being notified of injury

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

Maximum penalty: 10 penalty units.

- (2) Within 3 business days after the day an insurer receives an injury notice, if there are reasonable grounds for the insurer to believe that the injury is a significant injury, the insurer must make contact under the insurer's injury management program with each of the following people:
- (a) the injured worker;
 - (b) the employer (unless the employer is a self-insurer);
 - (c) the worker's nominated treating doctor (if appropriate and practical).

Maximum penalty: 30 penalty units.

- (3) If a workplace injury results in the worker being incapacitated for work for a continuous period of longer than 7 days, within 3 business days after the day the 1st continuous period of 7 days incapacity ends, the insurer must make contact under the insurer's injury management program with each of the following people:
- (a) the injured worker;
 - (b) the employer (unless the employer is a self-insurer);
 - (c) the worker's nominated treating doctor (if appropriate and practical).

Maximum penalty: 30 penalty units.

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

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

- (a) whether or not any of the days in the period are business days; and

- (b) whether or not the incapacity is total or partial or a combination of both.

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

**13 Medical certificates and claims for compensation
Section 118 (2)**

substitute

- (2) A medical certificate required to accompany a claim for weekly compensation must—
 - (a) comply with the requirements for medical assessments prescribed under the regulations; and
 - (b) include a statement of the doctor's assessment of whether the worker's condition is consistent with the worker's employment being a substantial contributing factor to the injury.

**14 Time for taking proceedings generally
Section 120**

omit

A proceeding

substitute

- (1) A proceeding

15 New section 120 (2)

insert

- (2) However, a proceeding for the recovery of compensation for an injury may also continue if—
 - (a) the Magistrates Court allows the proceeding to be maintained under section 120A (Proceedings on late claims); or

- (b) the proceeding may be maintained under section 124 (No notice or defective or inaccurate notice).

16 Section 120, notes 1 and 2

substitute

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

17 New section 120A

insert

120A Proceedings on late claims

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

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

- (2) The Magistrates Court may allow the application if the court considers that it is just and reasonable to allow the proceeding to be maintained.
- (3) Before making a decision about whether to allow the application, the Magistrates Court may hear anyone likely to be affected by the proceeding if the court considers it appropriate.
- (4) In considering whether to allow the application, the Magistrates Court must have regard to all the circumstances of the case, including the following:
- (a) the length of and reasons for the delay in making the claim;
 - (b) the extent to which, having regard to the delay, there is or is likely to be prejudice to the employer;
 - (c) the conduct of the employer and the employer's insurer after the cause of action accrued to the claimant, including any steps

taken by the employer or the employer's insurer to make available to the claimant ways of working out facts that were or might have been relevant to the cause of action;

- (d) the duration of any disability of the worker arising at the time of or after the injury giving rise to the claim;
 - (e) the extent to which the claimant acted promptly and reasonably once the claimant knew that the injury to, or death of, the worker could be capable at that time of giving rise to a claim for compensation;
 - (f) any steps taken by the claimant to obtain medical, legal or other expert advice and the nature of any advice received.
- (5) In this section:
- claimant*, if the claim is made by a person other than the worker, includes the worker.

18 New section 126A

in part 6.1, insert

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

- (1) This section applies if an insurer is given notice by an employer of a lump sum claim, and the insurer is liable to indemnify the employer for the claim.
- (2) After the insurer is given notice of the claim, the insurer must give the claimant information explaining the requirements of the following sections for the repayment of compensation together with the employer's legal costs as between party and party:
 - section 36F (No ACT compensation if external compensation received)
 - section 183 (Remedies against employer and stranger)
 - section 184 (No compensation if damages received)

- section 185 (Dependants recovering damages and not claiming compensation).

Maximum penalty: 50 penalty units.

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

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

19 Sections 156 to 162

substitute

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

- (1) This section applies if an employer applies to an insurer for the issue or renewal of a compulsory insurance policy for a particular period (the *proposed insurance period*).
- (2) The employer must give the insurer, with the application, a statutory declaration in relation to the proposed insurance period stating the employer's estimate for the period.

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

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

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

Maximum penalty: 50 penalty units.

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

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

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

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

157 Information for insurers after renewal of policies

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

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

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

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

Maximum penalty: 50 penalty units.

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

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

158 Information for insurers after end or cancellation of policies

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

Maximum penalty: 50 penalty units.

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

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

159 Information for new insurers after change of insurers

- (1) This section applies if—

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

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

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

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

Maximum penalty: 50 penalty units.

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

160 Six-monthly information for insurers

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

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

Maximum penalty: 50 penalty units.

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

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

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

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

161 Statutory declarations—false information etc

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

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

Maximum penalty:

- (a) for a 1st offence—1 250 penalty units; or
- (b) for a 2nd or subsequent offence—10 000 penalty units, imprisonment for 10 years or both.
- (2) A person commits an offence if—
- (a) the person makes a statement in a relevant statutory declaration; and
- (b) the person does so reckless of whether the statement—
- (i) is false or misleading; or
- (ii) omits anything without which the statement is misleading.

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

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

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

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

162 Employment after 2nd offence

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

Maximum penalty: imprisonment for 5 years.

20 New section 182F

before section 183, insert

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

- (1) This section applies if a person proposes to engage a lawyer to act for the person in a claim for damages in relation to an injury for which a claim for compensation has been made, or may be made, under this Act or under the statutory workers compensation scheme of a place outside the ACT.

- (2) Before accepting the engagement, the lawyer must give the person information explaining the requirements of the following sections for the repayment of compensation together with the employer's legal costs as between party and party:
- section 36F (No ACT compensation if external compensation received)
 - section 183 (Remedies against employer and stranger)
 - section 184 (No compensation if damages received)
 - section 185 (Dependants recovering damages and not claiming compensation).

Maximum penalty: 50 penalty units.

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

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

Maximum penalty: 50 penalty units.

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

21 Section 183 heading

substitute

183 Remedies against employer and stranger

22 Section 183

omit

If an injury

substitute

- (1) If an injury

23 New section 183 (2)

insert

- (2) If an amount of compensation is paid in relation to a lump sum claim, this section applies as if a reference to **amounts** paid under this Act by an employer to a worker included a reference to any legal costs as between party and party that the employer is liable to pay in relation to the claim.

24 Section 184

substitute

184 No compensation if damages received

- (1) Compensation under this Act (**ACT compensation**) is not payable in relation to a worker's injury to the extent that, independently of this Act, a judgment or agreement for damages (**independent damages**) has been obtained in relation to the same injury.
- (2) If a person receives ACT compensation from an employer in relation to a worker's injury and later receives independent damages in relation to the same injury, the employer is entitled to recover from the person the recoverable amount.
- (3) For subsection (2), the lesser of the following amounts is the recoverable amount:
 - (a) the amount of ACT compensation;
 - (b) the amount of the independent damages.
- (4) If an amount of ACT compensation is paid in relation to a lump sum claim, subsection (3) (a) applies as if the reference to the **amount of ACT compensation** paid by the employer included a reference to any legal costs as between party and party that the employer is liable to pay in relation to the claim.

- (5) An employer cannot recover an amount under this section in relation to an injury if the employer has recovered an amount under section 36F (No ACT compensation if external compensation received) in relation to the same injury.

**25 Dependants recovering damages and not claiming compensation
Section 185 (2) (b)**

substitute

- (b) in any other case—the total amount of compensation paid to the dependants of the worker in relation to the worker’s injury.

26 Section 185 (3), definition of C

substitute

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

27 New section 185 (5)

insert

- (5) If an amount of compensation was paid (or is payable) to the worker in relation to a lump sum claim, subsections (2) and (3) apply as if a reference to ***the total amount of compensation*** paid by the employer included a reference to any legal costs as between party and party that the employer is liable to pay in relation to the claim.

**28 Provision of information to inspectors
Section 190 (1) (b)**

substitute

- (b) a statutory declaration setting out—
- (i) the number of Territory workers in each determined category employed by the employer in the period; and

- (ii) the total wages paid to Territory workers in each determined category in the reporting period.

29 Time for beginning prosecutions Section 212 (1)

substitute

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

30 Section 212

renumber subsections when Act next renumbered under Legislation Act

31 Dictionary, new definition of *lump sum claim*

insert

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

32 Dictionary, definition of *recognised auditor*, paragraph (c)

substitute

(c) a member of CPA Australia;

33 Limitation Act 1985, section 35

after

section 16,

insert

16A,

34 Workers Compensation Supplementation Fund Act 1980, section 7 (3)

omit

1 October 2004

substitute

1 October 2006

Schedule 1 Cross-border amendments

[1.1] Section 30 (4) (a)

substitute

- (a) part 4.2A (Employment connection with ACT or State);

[1.2] Section 33

omit

[1.3] New part 4.2A

insert

Part 4.2A Employment connection with ACT or State

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

- (1) In this Act:

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

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

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

- (2) In this part:

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

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

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

36B Employment connection test

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

-
- (b) if the ship is registered in more than 1 Territory or State—the Territory or State where the ship most recently became registered.
- (5) If no Territory or State is identified for a worker by subsection (3) or (4), the worker's employment is connected with the ACT if—
- (a) the worker is in the ACT when injured; and
- (b) the worker is not entitled to compensation in relation to the injury under the workers compensation law of an external Territory, or a place outside Australia.
- (6) In deciding whether a worker usually works in a Territory or State—
- (a) regard must be had to the following:
- (i) the worker's work history with the employer over the preceding 12 months;
- (ii) the worker's proposed future working arrangements;
- (iii) the intentions of the worker and employer;
- (iv) any period during which the worker worked in a Territory or State (a *relevant place*) or was in a relevant place for the purposes of employment, whether or not the worker is regarded as working or employed in the relevant place under the workers compensation law of the relevant place; but
- (b) regard must not be had to any temporary arrangement under which the worker works in a Territory or State for a period of not longer than 6 months.
- (7) Compensation under this Act is not payable in relation to the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* (Cwlth) applies to the worker's employment.

(8) In this section:

ship means any kind of vessel used in navigation by water, however propelled or moved, and includes all of the following if used wholly or primarily in navigation by water:

- (a) a barge, lighter or other floating vessel;
- (b) an air-cushioned vehicle, or other similar craft.

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

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

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

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

- (1) If a claim for compensation under this Act has been made, a party to the claim may apply to the Magistrates Court for a determination of the question of which Territory or State is the Territory or State of connection.
- (2) The Magistrates Court must determine the Territory or State of connection in accordance with section 36B (Employment connection test).

- (3) However, an application may not be made or heard if there is a determination of the Territory or State of connection that is to be recognised under section 36E.

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

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

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

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

36F No ACT compensation if external compensation received

- (1) Compensation under this Act (**ACT compensation**) is not payable in relation to a worker's injury to the extent that compensation (**external compensation**) under the workers compensation law of an external Territory or a place outside Australia has been received in relation to the same injury.

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

[1.4] Section 144 (2)

omit

section 147 (2)

substitute

section 147 (7)

[1.5] Section 147

substitute

147 Compulsory insurance—employers

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

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

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

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

Maximum penalty: 50 penalty units.

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

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

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

[1.6] Section 150

omit

If an employer

substitute

- (1) If an employer

[1.7] New section 150 (2)

insert

- (2) However, the employer is not liable under subsection (1) for a failure to maintain a compulsory insurance policy in relation to a worker if—
- (a) the employer believed on reasonable grounds that a State was the Territory or State of connection for the employment under the law of a State corresponding to part 4.2A (Employment connection with ACT or State); and
 - (b) the employer had insurance, or was registered, as required under a law of the State in relation to liability for workers compensation under the law of the State.

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

[1.8] Chapter 9 heading

substitute

Chapter 9 Common law damages**Part 9.1 Interpretation and application****[1.9] New part 9.2 etc**

after section 182, insert

Part 9.2 Choice of law**182A Definitions for pt 9.2**

- (1) In this part:

damages claim—see section 182C.

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

substantive law—see section 182B.

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

- (2) For this part, a *work-related injury* is an injury to a worker for which compensation is payable (whether or not it has been paid) under the workers compensation law of a Territory or State.
- (3) Also, a *work-related injury* includes an injury to a worker for which compensation under a workers compensation law of a Territory or State—

- (a) would have been payable apart from a provision of the law that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker stated in the provision; or
- (b) would have been payable if a claim for the compensation had been properly made, and (if applicable) an election to claim compensation (instead of damages) had been properly made.

182B Meaning of *substantive law*

- (1) For this part, *substantive law* includes each of the following, whether or not it would otherwise be regarded as procedural in nature:
 - (a) a law that establishes, modifies or extinguishes a cause of action or a defence to a cause of action;
 - (b) a law prescribing the time within which an action must be brought (including a law providing for the extension or shortening of that time);
 - (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not begun within a stated time;
 - (d) a law that limits the kinds of injury, loss or damage for which damages or workers compensation may be recovered;
 - (e) a law that prevents the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered;
 - (f) a law expressed as a presumption, or rule of evidence, that affects substantive rights;
 - (g) a provision of this chapter, and any other provision of this Act for the interpretation of this chapter;

- (h) a provision of the law of another Territory or a State about damages for work-related injuries that is prescribed for this section under the regulations.

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

- (2) However, **substantive law** does not include a law prescribing rules for choice of law.

182C Meaning of *damages claim*

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

182D Applicable substantive law for damages claims

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

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

182E Claims to which pt 9.2 applies

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

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

Part 9.3 Compensation and common law damages

[1.10] Chapter 16 heading

substitute

Chapter 16 Transitional—Workers Compensation Amendment Act 2001

[1.11] New chapter 17

insert

Chapter 17 Transitional—Workers Compensation Amendment Act 2003 (No 2)

247 Definitions for ch 17

In this chapter:

cross-border scheme commencement day means the day the cross-border scheme provisions are inserted or substituted by the *Workers Compensation Amendment Act 2003 (No 2)*.

cross-border scheme provisions means the following provisions of this Act:

- part 4.2A (Employment connection with ACT or State)
- part 9.2 (Choice of law)
- schedule 2 (Adjacent areas).

248 Application of cross-border scheme provisions

- (1) The cross-border scheme provisions do not apply in relation to an injury (an *earlier injury*) received before the cross-border scheme commencement day.
- (2) This Act applies in relation to the earlier injury as if the cross-border provisions had not been inserted by the *Workers Compensation Amendment Act 2003 (No 2)*.
- (3) If the death of a worker results from both an earlier injury and an injury (a *later injury*) received on or after the cross-border scheme commencement day, the worker is, for the application of the provisions in relation to the death of the worker, to be treated as having died as a result of the later injury.
- (4) If a period of incapacity for work resulted both from an earlier and a later injury, the incapacity is, for the application of the cross-border scheme provisions in relation to the incapacity, to be treated as having resulted from the later injury.
- (5) The cross-border scheme provisions, and this section, do not affect the following:
 - (a) the liability of an employer or an insurer in relation to an earlier injury, including a liability to make a contribution under section 27 (Compensation for death or incapacity through disease) in relation to compensation payable for a later injury;
 - (b) the apportionment of liability under this Act if there are 1 or more earlier injuries and 1 or more later injuries.

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, s 104).

- (6) A compulsory insurance policy in force on the cross-border scheme commencement day covers the employer, for as long as the policy remains in force, for the employer's liability under this Act as affected by the cross-border scheme provisions.

249 Expiry of ch 17

- (1) This chapter expires 2 years after the day it commences.
- (2) This chapter is a law to which the Legislation Act, section 88 (Repeal does not end the effect of transitional laws etc) applies.

[1.12] New schedule 2

insert

Schedule 2 Adjacent areas

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

1 Definitions for sch 2

In this schedule:

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

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

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

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

2 Adjacent areas for States and the Northern Territory

- (1) The *adjacent area* for New South Wales, Victoria, South Australia or Tasmania is—

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

- (b) the adjacent area for the Territory of Ashmore and Cartier Islands (within the meaning of the Petroleum Submerged Lands Act, section 5A (3)) other than the territorial sea within that area; and
 - (c) the space above and below the areas described in paragraph (a) and (b).
- (5) However, the *adjacent area* for a State or the Northern Territory does not include any area inside the limits of a State or Territory.

[1.13] Dictionary, new definitions

insert

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

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

[1.14] Dictionary, definition of *employer*, paragraph (b)

substitute

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

[1.15] Dictionary, new definition

insert

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

[1.16] Dictionary, definition of *injury*, new note

insert

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

[1.17] Dictionary, definition of Territory worker

substitute

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

Territory or State of connection—see section 36A.

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

[1.18] Dictionary, definition of *worker*

substitute

worker—

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

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

work-related injury, for part 9.2 (Choice of law)—see section 182A (2) and (3).

Schedule 2 Criminal Code harmonisation

Part 2.1 Workers Compensation Act 1951

[2.1] New section 3A

insert

3A Offences against Act—application of Criminal Code etc

- (1) The Criminal Code applies to offences against this Act.
- (2) Other legislation applies in relation to offences against this Act.
- (3) Subsection (1), this subsection and note 3 expire on 31 December 2005.

Note 1 Criminal Code

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

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

Note 2 Penalty units

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

Note 3 Default application date of Code

The Criminal Code will apply to all ACT legislation from 1 January 2006, making subsection (1) redundant from that date (see the Criminal Code, pt 2.1).

[2.2] Section 90

substitute

90 Insurer's obligation of prompt payment

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

Maximum penalty: 10 penalty units.

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

[2.3] Section 91

omit

An employer (other than a non-business employer)

substitute

- (1) An employer

[2.4] New section 91 (2) and (3)

insert

- (2) This section does not apply to a non-business employer.

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

[2.5] Section 92 (4)

omit

, without lawful authority or excuse,

[2.6] New section 92 (7) and (8)

insert

- (7) An offence against this section is a strict liability offence.
- (8) This section does not prevent the alteration of the register to correct an error of fact.

[2.7] New section 100 (4)

insert

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

[2.8] Section 105 (1) to (3)

substitute

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

- (a) so far as reasonably practical, the same as, or equivalent to, the employment in which the worker was employed at the time of the injury; and
- (b) otherwise suitable employment for the worker.

Maximum penalty: 10 penalty units.

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

[2.9] Section 106 (1) to (3)

substitute

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

Maximum penalty: 10 penalty units.

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

[2.10] New section 106 (5)

insert

- (5) In this section:

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

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

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

[2.11] Section 109

substitute

109 Workplace rehabilitation

- (1) An employer must establish and maintain a return-to-work program that complies with subsection (3).

Maximum penalty: 10 penalty units.

- (2) An employer must display or notify a return-to-work program that complies with subsection (3) at each place of work of the workers to whom the program relates or may relate.

Maximum penalty: 10 penalty units.

- (3) A return-to-work program must—
 - (a) provide policies and procedures for the rehabilitation (including, if necessary, vocational rehabilitation) of injured workers of the employer; and
 - (b) be consistent with the injury management program of the employer's insurer; and
 - (c) be established in accordance with any guidelines issued by the Minister under section 110; and

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

[2.12] Section 114 (4)

substitute

- (4) The insurer must not contravene a direction under this section.
Maximum penalty: 10 penalty units.
- (5) An offence against this section is a strict liability offence.

[2.13] Section 126 (1) and (2)

substitute

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

Maximum penalty: 50 penalty units.

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

Maximum penalty: 50 penalty units.

[2.14] Section 126 (5)

substitute

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

[2.15] Section 139 (1)

omit

chapter

substitute

Act

[2.16] New section 142 (5)

insert

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

[2.17] Section 148

omit

[2.18] Section 153 (3)

substitute

- (3) Subsection (1) does not apply in relation to a compulsory insurance policy if—
- (a) the employer has not paid for the policy; or
 - (b) the employer has not given the insurer information reasonably requested by the insurer in relation to the policy.
- (4) An offence against this section is a strict liability offence.

[2.19] Section 154

substitute

154 Cancellation

- (1) An approved insurer must not cancel a compulsory insurance policy otherwise than in accordance with a protocol about cancellation.
- Maximum penalty: 50 penalty units.
- (2) An offence against this section is a strict liability offence.

[2.20] New section 155 (1A)

insert

- (1A) An offence against this section is a strict liability offence.

[2.21] Section 155

renumber subsections when Act next republished under Legislation Act

[2.22] Section 163 (1) (c)

substitute

- (c) if an approved insurer or a self-insurer is a corporation—an executive officer of the corporation.

[2.23] Section 163 (3)

substitute

- (3) The notice must set out details of the applicable offences and penalties for the offences.

[2.24] Section 163 (5)

omit

an offence against subsection (6)

substitute

an applicable offence.

[2.25] Section 163 (6)

substitute

- (6) A person to whom a notice is given must comply with the notice.
Maximum penalty: 50 penalty units.
- (7) An offence against this section is a strict liability offence.
- (8) In this section:
applicable offence means—
- (a) an offence against this section; or
 - (b) an offence against section 213 (False information etc) in relation to a notice.

[2.26] New section 169 (8A)

insert

- (8A) An offence against this section is a strict liability offence.

[2.27] Section 169

renumber subsections when Act next republished under Legislation Act

[2.28] Section 170 (3)

substitute

- (3) The alleged employer must not make an agreement or admission in relation to the claim.

Maximum penalty: 20 penalty units.

- (3A) Subsection (3) does not apply to an admission or agreement if the nominal insurer consents to the admission or agreement.

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

[2.29] Section 170

renumber subsections when Act next republished under Legislation Act

[2.30] Section 174 (2), penalty

substitute

Maximum penalty: 50 penalty units.

[2.31] New section 174 (3)

insert

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

[2.32] Section 176

omit

An insurer

substitute

- (1) An insurer

[2.33] New section 176 (2)

insert

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

[2.34] New section 178 (5)

insert

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

[2.35] Section 189 (2), penalty

substitute

Maximum penalty: 1 penalty unit.

[2.36] New section 189 (3)

insert

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

[2.37] Section 190 (3) and (4)

substitute

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

Maximum penalty: 50 penalty units.

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

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

[2.38] Section 191 (5)

substitute

- (5) A person must not contravene a requirement under this section.

Maximum penalty: 50 penalty units.

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

[2.39] Section 191

renumber subsections when Act next republished under Legislation Act

[2.40] Section 194

substitute

194 Obstruction or hindrance of inspector

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

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

[2.41] Section 210

substitute

210 Confidentiality

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

Maximum penalty: 50 penalty units.

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

[2.42] Sections 213, 214 and 215

substitute

213 False information etc

- (1) This section applies to each of the following statements (a *relevant statement*):
 - (a) a statement in a notice under this Act;
 - (b) a statement by a recognised auditor in a certificate given for this Act;
 - (c) a statement in a claim for compensation;
 - (d) a statement in a medical certificate or other document that relates to a claim for compensation;
 - (e) a statement giving information to someone about a claim for compensation (whether the information is given by the person who made the claim or not).
- (2) This section applies to a relevant statement even if it has been verified by a statutory declaration.
- (3) However, this section does not apply to the following statements:
 - (a) a statement made in a document filed, or information given, in a court proceeding;
 - (b) a statement made in a document or information if the person who made the statement did not know that the document or information was to be given in relation to a claim for compensation.
- (4) A person commits an offence if—
 - (a) the person makes a relevant statement; and
 - (b) the person does so knowing that the statement—
 - (i) is false or misleading; or

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

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

- (5) A person commits an offence if—
 - (a) the person makes a relevant statement; and
 - (b) the person is reckless about whether the statement—
 - (i) is false or misleading; or
 - (ii) omits anything without which the statement is misleading.

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

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

214 Criminal liability of executive officers

- (1) An executive officer of a corporation commits an offence if—
 - (a) the corporation contravenes a defined provision of this Act; and
 - Note* Subsection (6) lists the *defined provisions* to which this paragraph applies.
 - (b) the contravention constitutes an offence against this Act (a *relevant offence*); and
 - (c) the officer was reckless about whether the contravention would happen; and

- (d) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and
- (e) the officer failed to take all reasonable steps to prevent the contravention.

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

- (2) This section applies whether or not the corporation is prosecuted for, or convicted of, the relevant offence.
- (3) In deciding whether the executive officer took (or failed to take) reasonable steps to prevent the contravention, a court must have regard to the following:
 - (a) any action the officer took directed towards ensuring the following (to the extent that the action is relevant to the act or omission):
 - (i) that the corporation arranges regular professional assessments of the corporation's compliance with the defined provision;
 - (ii) that the corporation implements any appropriate recommendation arising from such an assessment;
 - (iii) that the corporation's employees, agents and contractors have a reasonable knowledge and understanding of the requirement to comply with the defined provision;
 - (b) any action the officer took when the officer became aware that the contravention was, or might be, about to happen.
- (4) Subsection (3) does not limit the matters to which the court may have regard.
- (5) This section does not apply if the corporation would have a defence to a prosecution for the relevant offence.
- (6) In this section:

defined provision, of this Act, means any of the following provisions of this Act:

- (a) section 92 (3) (Register of injuries);
- (b) section 126 (Action by employer in relation to claims);
- (c) section 142 (1) (Vocational rehabilitation);
- (d) section 147 (Compulsory insurance—employers);
- (e) section 153 (Compulsory insurance—insurers);
- (f) section 156 (Information for insurers on application for issue or renewal of policies);
- (g) section 157 (Information for insurers after renewal of policies);
- (h) section 158 (2) (Information for insurers after end or cancellation of policies);
- (i) section 159 (Information for new insurers after change of insurers);
- (j) section 160 (1) (Six-monthly information for insurers);
- (k) section 161 (Statutory declarations—false information etc);
- (l) section 162 (3) (Employment after 2nd offence);
- (m) section 163 (6) (Provision of information to Minister);
- (n) section 176 (1) (Premiums—maximum rates);
- (o) section 190 (3) (Provision of information to inspectors);
- (p) section 191 (5) (Entry and inspection of premises);
- (q) section 194 (1) (Obstruction or hindrance of inspector);
- (r) section 210 (Confidentiality);
- (s) section 213 (False information etc).

[2.43] Dictionary, definition of *approved rehabilitation provider*

substitute

approved rehabilitation provider—see section 139 (1).

Part 2.2 Workers Compensation Regulations 2002

[2.44] New regulation 2

insert

2 Offences against regulations—application of Criminal Code etc

Other legislation applies in relation to offences against these regulations.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to offences against these regulations (see Code, pt 2.1).

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

Note 2 Penalty units

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

[2.45] Regulation 99 (3)

substitute

- (3) The insurer must give a copy of a notice under subregulation (2) to the nominal insurer as soon as practicable.

Maximum penalty: 5 penalty units.

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

[2.46] Regulation 99

*renumber subregulations when regulations next republished under
Legislation Act*

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 25 September 2003.

2 Notification

Notified under the Legislation Act on 3 December 2003.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

I certify that the above is a true copy of the Workers Compensation Amendment Bill 2003 (No 2) which was passed by the Legislative Assembly on 18 November 2003.

Clerk of the Legislative Assembly

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