



Australian Capital Territory

# Workers Compensation (Default Insurance Fund) Amendment Act 2009 (No 2)

A2009-38

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Australian Capital Territory

# **Workers Compensation (Default Insurance Fund) Amendment Act 2009 (No 2)**

**A2009-38**

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An Act to amend the *Workers Compensation Act 1951*

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

## **1 Name of Act**

This Act is the *Workers Compensation (Default Insurance Fund) Amendment Act 2009 (No 2)*.

## **2 Commencement**

- (1) The following provisions commence on the day after this Act's notification day:
- section 3
  - section 4
  - section 5
  - section 6
  - section 10
  - section 15
  - section 16
  - section 17
  - section 18
  - section 19.

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

- (2) The remaining provisions commence on a day fixed by the Minister by written notice.

*Note* 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)).

- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to subsection (2).

## **3 Legislation amended**

This Act amends the *Workers Compensation Act 1951*.

**4 Section 13**

*substitute*

**13 Liability of principal for uninsured contractor's injured worker**

- (1) This section applies if—
  - (a) a person carrying on a business (the *principal*) enters into a contract with another person (the *contractor*) to carry out work that is part of the principal's business (the *contracted work*); and
  - (b) a worker employed by the contractor becomes an injured worker (the *injured worker*) while carrying out the contracted work; and
  - (c) the contractor is uninsured.
- (2) The principal is liable to pay to the injured worker any compensation that the principal would have been liable to pay if the worker was employed by the principal.
- (3) If this section is relied on to make a claim for compensation, or bring any other proceeding, against a principal, then, in the application of this Act to the claim or proceeding—
  - (a) a reference in this Act to an employer is taken to be a reference to the principal; but
  - (b) any calculation of the earnings of the injured worker must be based on the earnings paid or payable to the worker by the contractor that employed the worker.

- (4) If a principal is liable under this section to pay compensation to an injured worker, the principal is entitled to be indemnified by—
- (a) if the principal is uninsured within the meaning of paragraph (a) of the definition of *uninsured*—any person, other than the DI fund manager, who would have been liable to pay compensation to the worker independently of this section; or
  - (b) if the principal is uninsured within the meaning of paragraph (b) of the definition of *uninsured*—any person, including the DI fund manager, who would have been liable to pay compensation to the worker independently of this section.
- (5) Nothing in this section prevents a worker claiming compensation against a contractor instead of a principal.
- (6) In this section:
- uninsured*, in relation to a principal or a contractor, means the principal or contractor—
- (a) does not have a compulsory insurance policy in force that applies to an injured worker mentioned in subsection (1) in relation to an injury; or
  - (b) has a compulsory insurance policy in force that applies to the injured worker in relation to the injury but the policy was issued by an insurer that—
    - (i) cannot provide the indemnity required to be provided under the policy; or
    - (ii) has been wound up.

**5** **DI fund manager required to pay weekly compensation**  
**Section 30**

*omit*

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**6 Section 166A***substitute***166A Purpose of DI fund**

- (1) This section sets out the objects of the DI fund so far as this Act allows.
- (2) The DI fund must meet the cost of compensation to an injured worker if the employer of the injured worker does not have a compulsory insurance policy to cover the worker for the claim.
- (3) The DI fund must meet the cost of compensation by indemnifying an employer for compensation payable by the employer to an injured worker only if—
  - (a) the employer has a compulsory insurance policy in force that applies to the injured worker for the injury forming the basis of the claim but the policy was issued by an insurer that—
    - (i) cannot provide the indemnity required to be provided under the policy; or
    - (ii) has been wound up; or
  - (b) the employer is a self insurer and the employer is unable to pay the injured worker's compensation.
- (4) The DI fund must meet the cost of an employer's liability that arises independently of this Act in relation to an injury to, or the death of, a territory worker of the employer if the employer of the worker does not have a compulsory insurance policy to cover the liability, by paying an amount that satisfies or discharges the liability to a person entitled to that amount.

- (5) The DI fund must meet the cost of an employer's liability arising independently of this Act in relation to an injury to, or the death of, a territory worker of the employer by indemnifying the employer, only if—
- (a) the employer has a compulsory insurance policy to cover the liability but the policy was issued by an insurer that—
    - (i) cannot provide the indemnity required to be provided under the policy; or
    - (ii) has been wound up; or
  - (b) the employer is a self insurer and the employer is unable to cover the liability.

*Note* Section 170F, s 170G, s 170H and s 170HB deal with claims for payment against the DI fund for employers' liability, arising independently of this Act, in relation to injury or death of a territory worker.

**7** **Payments out of DI fund**  
**Section 166B (1) (d)**

*omit*

**8** **Borrowing for DI fund**  
**Section 167B (2) (b)**

*omit*

section 168A

*substitute*

section 168A or section 168AA



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**9 New section 167E**

*in division 8.2.3, insert*

**167E Assessment of financial position**

- (1) Each year, the DI fund manager must assess the DI fund's financial position.
- (2) In assessing the DI fund's financial position, the DI fund manager—
  - (a) must take into account—
    - (i) the written advice of the DI fund actuary about existing and expected liabilities of the fund; and
    - (ii) the assets of the fund; and
  - (b) may take into account any other information which, in the opinion of the DI fund manager, is relevant to an assessment of the DI fund's financial position.

**10 New section 167F**

*in division 8.2.3, insert*

**167F Determination that policy in force despite absence of record**

The DI fund manager may determine that an employer has a compulsory insurance policy in force that applies to an injured worker for an injury forming the basis of a claim for compensation if—

- (a) the employer cannot produce a record of the policy; and
- (b) the DI fund manager is satisfied that it is reasonably likely that the employer has the policy.

**11 Contributions to DI fund by approved insurers and self-insurers**  
**Section 168A (1) to (4) and note**

*substitute*

- (1) Each year, the DI fund manager must determine the yearly contribution (the *annual insurer contribution*) approved insurers and self-insurers must make to the DI fund based on the following:
  - (a) the DI fund manager's assessment of the DI fund's—
    - (i) existing and expected liabilities; and
    - (ii) assets;
  - (b) the total of the following amounts for the last completed policy period:
    - (i) the gross written premiums for each approved insurer;
    - (ii) the notional gross written premium for each self-insurer;
  - (c) the amount required to be paid into the DI fund to ensure the sustainable functioning of the fund.
- (2) The DI fund manager may apportion the annual insurer contribution among approved insurers and self-insurers to be paid—
  - (a) quarterly; or
  - (b) as required for the sustainable functioning of the DI fund.
- (3) If the DI fund manager makes an apportionment for a period, the manager must give each approved insurer and self-insurer a written notice that—
  - (a) sets out details of the apportionment; and

- (b) requires the insurer or self-insurer to pay to the DI fund the amount apportioned to the insurer or self-insurer within the time for payment stated in the notice.

*Note* An insurer issuing a compulsory insurance policy to an employer must include information about the proportion of the premium that is to offset an amount paid by the insurer to the DI fund for the policy (see *Workers Compensation Regulation 2002*, s 62A).

## 12 New section 168A (9)

*insert*

- (9) In this section:

***gross written premiums***, in relation to an approved insurer, means the total amount of premiums, less GST, for all insurance policies written by the insurer for a policy period.

***notional gross written premium***, in relation to a self-insurer, means the total amount of premium that would have been payable, less GST, if the self-insurer had obtained a compulsory insurance policy for a policy period.

***policy period*** means the period beginning on 1 July in a year and ending on 30 June in the following year.

## 13 New section 168AA

*insert*

### 168AA Supplementary contributions to DI fund by approved insurers and self-insurers

- (1) This section applies if—
- (a) the DI fund manager has made a determination of the annual insurer contribution for a year under section 168A (1); and

- (b) after the determination was made an unusual claim or class of claim (an *unexpected claim*) that was not reasonably foreseeable at the time the determination was made—
    - (i) is brought against the DI fund in the year; and
    - (ii) is, in the opinion of the DI fund manager, a claim that will be settled in the year; and
  - (c) the DI fund manager is of the opinion that the DI fund cannot meet the cost of the unexpected claim.
- (2) The DI fund manager must determine and apportion a supplementary annual insurer contribution that approved insurers and self-insurers must make to the DI fund to allow the fund to meet the cost of the unexpected claim for the year.
- (3) Section 168A (2) and (3) apply to the apportionment of a supplementary annual insurer contribution under this section as if the contribution were an annual insurer contribution.

**14 Refunds of excess DI fund amounts  
Section 168B**

*omit*

**15 Section 170**

*substitute*

**170 Who may make claim for payment**

A person may make a claim for payment against the DI fund (a *claim for payment*) if the person—

- (a) is—
  - (i) an injured worker (the *injured worker*) who sustained an injury (the *injury*) that forms the basis of the claim for payment; or

- (ii) a person appointed to represent the injured worker; or
  - (iii) if the injured worker has died leaving a dependent—a dependent of the injured worker; or
  - (iv) if the injured worker has died leaving no dependents—a person acting on behalf of the estate of the injured worker; and
- (b) cannot make a claim against a person other than the employer of the injured worker for—
- (i) payment of compensation for the injury under this Act; or
  - (ii) damages for the injury arising independently of this Act; and
- (c) is eligible to make a claim for payment under any of the following provisions:
- (i) section 170E (Claim for payment if employer to pay and liability not covered by compulsory insurance policy etc);
  - (ii) section 170F (Claim for payment if final judgment etc and liability not covered by compulsory insurance policy);
  - (iii) section 170G (Claim for payment if agreement to discharge liability at common law and liability not covered by compulsory insurance policy);
  - (iv) section 170H (Claim for payment if final judgment etc and liability covered by compulsory insurance policy);
  - (v) section 170HA (Claim for payment if entitlement to claim compensation and self-insurer unable to pay compensation);
  - (vi) section 170HB (Claim for payment if final judgment etc and self-insurer unable to cover liability);

- (vii) section 170I (Claim for payment if entitlement to claim compensation and liability covered by compulsory insurance policy).

**16 New sections 170HA and 170HB**

*insert*

**170HA Claim for payment if entitlement to claim compensation and self-insurer unable to pay compensation**

- (1) This section applies if—
  - (a) a person has made a claim against an employer for compensation in relation to a territory worker employed by the employer; and
  - (b) the employer is a self-insurer; and
  - (c) either—
    - (i) the employer has agreed to pay compensation; or
    - (ii) the liability of the employer to pay compensation has been established; and
  - (d) the employer is unable to pay the amount of compensation.
- (2) The person is eligible to make a claim for payment against the DI fund for payment of the amount of compensation.

**170HB Claim for payment if final judgment etc and self-insurer unable to cover liability**

- (1) This section applies if—
  - (a) a person has obtained a final judgment, or an order or award has been made against an employer; and
  - (b) the employer is a self insurer; and

- (c) the judgment, order or award relates to the employer's liability independently of this Act in relation to an injury to, or the death of, a territory worker of the employer; and
  - (d) the employer is unable to cover the liability.
- (2) The person is eligible to make a claim for payment against the DI fund of the amount of the judgment, order or award that remains unsatisfied.

**17** **DI fund paying claims for payment if liability not completely covered by a compulsory insurance policy and settlement approved**  
**Section 171D (1) (a) and note**

*substitute*

- (a) the claim was made by a person who—
  - (i) is mentioned in section 170 (a); and
  - (ii) is eligible to make a claim for payment under section 170E, section 170F or section 170G; and

*Note* Under s 170E, s 170F and s 170G, the employer's liability is not covered by a compulsory insurance policy.

**18** **Section 171E heading**

*substitute*

**171E** **DI fund paying claims for payment against approved insurers and self-insurers if settlement approved**

**19** **Section 171E (1) (a) and note**

*substitute*

- (a) the claim was made by a person who—
  - (i) is mentioned in section 170 (a); and

- (ii) is eligible to make a claim for payment under section 170H, section 170I, section 170HA or section 170HB; and

*Note* Under s 170H and s 170I, the employer's liability is covered by a compulsory insurance policy but the insurer has been wound up or cannot provide the indemnity required to be provided under the policy. Under s 170HA and s 170HB the employer is a self-insurer unable to cover liability.

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 17 September 2009.

**2 Notification**

Notified under the Legislation Act on 21 October 2009.

**3 Republications of amended laws**

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

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I certify that the above is a true copy of the Workers Compensation (Default Insurance Fund) Amendment Bill 2009 (No 2), which was passed by the Legislative Assembly on 15 October 2009.

Clerk of the Legislative Assembly

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