

**THE LEGISLATIVE ASSEMBLY
FOR THE
AUSTRALIAN CAPITAL TERRITORY**

**WORKERS COMPENSATION AMENDMENT BILL 2005 (2)
AMENDMENTS TO THE WORKERS COMPENSATION ACT 1951**

EXPLANATORY STATEMENT

Circulated by authority of
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Overview

The purpose of the *Workers Compensation Amendment Bill 2005 (No 2)* is to amend the *Workers Compensation Act 1951* to improve the effectiveness of the workers' compensation scheme and repeal the *Workers Compensation Supplementation Fund Act 1980*.

The ACT private sector workers' compensation scheme provides compensation to injured workers for injuries arising out of or in the course of their employment. Significant amendments to the scheme in 2001 introduced a focus on injury management and sustainable return to work for injured workers. These amendments were intended to reduce administrative costs under the scheme.

The workers' compensation scheme has two safety net arrangements to ensure that all injured workers have access to benefits on injury. The Nominal Insurer provisions provide access to benefits for injured workers who are employed by an employer who does not have a compulsory insurance policy. The Workers Compensation Supplementation Fund provides access to benefits where an insurer collapses or is otherwise unable to meet the costs of claims against workers' compensation policies issued by the insurer.

Neither of these safety net arrangements supports the use of injury management and return to work processes for injured workers and are inconsistent with the intent of the scheme. The Bill combines the arrangements for both safety net schemes in the *Workers Compensation Act 1951* and repeals the *Workers Compensation Supplementation Fund Act 1980*.

These changes will:

- improve accountability and transparency for the safety net arrangements;
- allow injury management processes to be applied for all workers' compensation claims; and
- clarify the roles and responsibilities of the Government, insurers, employers and injured workers.

The Bill will also establish a scheme for certificates of currency, which will provide information about the coverage of a compulsory insurance policy held by an employer. Employers will be able to ask insurers for an up to date certificate of currency every six months. An authorised person, including an inspector or workers' representative, will be able to ask an employer for the certificate. Principals entering into subcontracting arrangements will also be able to ask for the certificate of currency. These provisions will ensure that parties with an interest in the scope of an employer's insurance coverage will be able to access information in a timely way.

A number of minor policy amendments to improve the operation of the scheme are also proposed. These include: improving consistent use of language and terms in the Act, treating all periods of absence from work due to an injury as cumulative, ensuring that arbitration costs associated with individual workers' compensation claims are charged to

insurers as part of a claim; introducing publicity orders against persons convicted of offences against the Act, and repealing provisions for infringement notices under the Act and creating a new schedule under the general infringement notice provisions of the *Magistrates Court Act 1930*.

Offences incorporating strict liability elements are carefully considered when developing legislation and generally arise in a regulatory context where for reasons such as public safety or protection of the public revenue, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. In particular, where a defendant can reasonably be expected, because of his or her professional involvement, to know what the requirements of the law are, the mental, or fault, element can justifiably be excluded. The rationale is that individuals or entities engaged in the business of issuing insurance policies, handling liquidations of insolvent insurers, as opposed to members of the general public, can be expected to be aware of their duties and obligations.

The provisions are drafted so that, if a particular set of circumstances exists, a specified person is guilty of an offence. Unless some knowledge or intention ought be required to commit a particular offence (in which case a specific defence is provided), the defendant's frame of mind at the time is irrelevant. The penalties for offences cast in these terms are lower than for those requiring proof of fault.

Notes on Clauses

1. Name of Act

This clause establishes the name of the Act as the *Workers Compensation Amendment Act 2005 (No 2)*.

2. Commencement

This is a formal provision specifying when the Act commences. The Act will commence on a day fixed by the Minister in writing. If the Act has not commenced by 1 July 2006, it will automatically commence on that day.

3. Legislation amended

This is a formal provision specifying the name of the Act that is amended. In addition to the *Workers Compensation Act 1951*, this Act also amends the *Occupational Health and Safety Act 1989*, the *Supreme Court Rules 1937*, the *Taxation Administration Act 1999*, and the *Workers Compensation Regulation 2002*. The *Workers Compensation Supplementation Fund Act 1980* is repealed.

4. New section 30

This clause inserts a new section 30 (DI fund manager required to pay weekly compensation) into part 4.1 of the Act. The new section imposes requirements on the Default Insurance Fund (DI fund). The DI fund is a new fund that is established by clause 45 of this Bill.

The new provision requires the DI fund manager to indemnify an employer in relation to weekly compensation payments. This means the DI fund manager will be liable to

indemnify an employer for weekly compensation to an injured worker in any of the following circumstances:

- where the employer does not have a compulsory insurance policy; or
- where the approved insurer who issued the compulsory insurance policy has been provisionally liquidated or gone into liquidation and cannot provide the indemnity required under the policy; or
- where the insurer who issued the policy has been wound up or formally dissolved; or
- where a self insured employer is unable to pay the injured worker; or
- when the DI fund manager receives a copy of an injury notice from an uninsured employer or an injured worker who worked for an uninsured employer; or
- where the DI fund manager is reasonably satisfied that there is no compulsory insurance policy in force that applies to that injured worker.

Subsection 30 (2) is a transitional provision that provides that the requirements will not apply retrospectively in relation to injuries occurring before the commencement of the *Workers Compensation Amendment Act 2005 (No 2)* where:

- the nominal insurer was already in receipt of an injury notice or was otherwise aware that there was no compulsory insurance policy that applied to the worker in relation to the injury; or
- where an insurer could not provide the indemnity required under a compulsory insurance policy issued by an insurer immediately before the commencement of the *Workers Compensation Amendment Act 2005 (No 2)*; or
- where an insurer who had issued a compulsory insurance policy immediately before the commencement of the *Workers Compensation Amendment Act 2005 (No 2)* has been wound up.

Subsection 30 (3) provides that subsection 30(2) is a law to which section 88 (Repeal does not end effect of transitional laws etc) *Legislation Act 2001* applies. This means that while subsections 30 (2), (3) and subsection (4) will expire **three years** after the day section 30 commences the transitional arrangements continue to operate.

5. New section 36G

This clause inserts a new section 36G to provide a new definition of ***initial incapacity date*** and relocates the definition for ***weekly compensation*** from the Dictionary to the Act to part 4.3 of the Act. Signposts for definitions used throughout the Act also appear in the Dictionary.

Initial incapacity date in relation to an injury that causes incapacity or death means:

- the date the worker first becomes totally or partially incapacitated for work because of the injury;
- if the worker is dead and the death was not preceded by a period of incapacity for work then the initial incapacity date is the date of the worker's death.

The definition of *weekly compensation* is also amended to reflect changes to be made to section 39 and section 40.

6. Sections 38 to 43

This clause substitutes the existing sections 38 to 43 with replacement sections 38 to 43.

Section 38 is intended to clarify when weekly compensation payments begin.

The revised provision inserts a new note to subsection 38 (1) and adds two new subsections requiring an injured worker to submit a claim subsequent to reporting the injury.

The new note for subsection 38 (1) is intended to clarify that employers are liable to pay compensation if the employer's worker suffers personal injury arising out of, or in the course of, the worker's employment. This is done by making a cross reference to section 31 (1) which sets out the employers liability to pay compensation for personal injury.

New subsection 38 (2) provides that if a worker has not made a claim for compensation at the end of seven days after the date of the injury, then the payment of weekly compensation ends. The worker will not be entitled to weekly compensation for the period beginning on the day 8 days after the date of injury and ending on the day before the worker makes a claim for the injury. For instance if a worker sustains a work related injury on Monday 1 May, then the worker is required to submit a claim for compensation no later than Tuesday 9 May to avoid the cessation of workers' compensation weekly payments.

New subsection 38 (3) provides that subsection (2) will not apply if the worker cannot make a claim within the 7 days because of their injury. Such a worker is still required to make a claim within 7 days of being able to do so.

Sections 39 to 43 have been redrafted to clarify that an incapacitated worker is entitled to receive weekly compensation equal to their average pre-incapacity weekly earnings for a period of up to a total of 26 weeks after the initial incapacity date.

Section 39 deals with the weekly compensation entitlement that a totally or partially incapacitated worker may be entitled to for the first 26 weeks of incapacity after a compensable injury.

Subsection 39 (3) provides that a worker will not be entitled to weekly compensation under this section when the period of incapacity extends beyond a period of 26 weeks. The 26 week period of incapacity can be a continuous period of total incapacity, or a continuous period of partial incapacity or a combination of both total and partial incapacity. The entitlement to compensation for workers who are nearing the qualifying age for the age retirement pension remains unchanged apart from minor redrafting to take account of current drafting style.

Subsection 39 (4) provides the methodology for working out weekly compensation for periods of total incapacity and partial incapacity up to a total of 26 weeks after the initial incapacity date.

Section 40 deals with the weekly compensation entitlement that a totally or partially incapacitated worker may be entitled to after the first 26 weeks of incapacity. It applies to a worker who is either totally or partially incapacitated because of a compensable injury and the worker has already received weekly compensation for a period or periods totalling 26 weeks.

The worker, dependant on whether the incapacity is total or partial, is entitled to receive weekly compensation calculated according to the methodology prescribed in either section 41 or 42. Again the limitation on injured workers nearing or who have reached the retirement age applies.

Section 41 prescribes the amount of weekly compensation a worker may be entitled to receive if totally incapacitated after 26 weeks of weekly compensation. The methodology for working out the payments remains unchanged. A detailed example is provided to illustrate the intended operation of the section.

The new section revises the definition for *pre-incapacity floor* to reflect the amendment made by clause 5 of this Bill.

Section 42 prescribes the amount of weekly compensation a worker may be entitled to receive if partially incapacitated after 26 weeks of weekly compensation. The methodology for working out the payments remains unchanged. Two detailed examples are provided to illustrate the intended operation of the section. The examples clarify that all periods of partial incapacity after 26 weeks after the initial incapacity date will be treated as cumulative.

Section 43 deals with when payments for total incapacity may be stopped. The section reflects provisions under the existing subsection 39 (4); when the worker ceases to be totally incapacitated, when the worker returns to work, or when the worker dies. However the worker may again become entitled to weekly compensation if the worker becomes totally or partially incapacitated because of the injury.

Section 43A deals with when payments for partial incapacity may be stopped. Similar to section 43, the worker may again become entitled to weekly compensation if the worker becomes totally or partially incapacitated because of the injury.

Section 43B is a redraft of existing section 43 and is consequential to amendments made by this clause.

7. Effect of living outside Australia if compensation still payable Section 45 (4)

This clause omits the existing definition of *quarter* in paragraph (4) of section 45. This is a technical amendment removing the definition of *quarter* from the section. The *Legislation Act 2001* now provides for this meaning.

8. Definitions for ch 5 Section 86, definition of *insurer*

This clause omits the existing definition of *insurer* from section 86 (Definitions for chapter 5). A revised definition of insurer is included at Clause 8.

9. New section 86A

This clause inserts a new section 86A to provide a new definition of *insurer* for chapter 5.

In addition to approved insurers and self-insurers, the new definition for *insurer* will now include the Default Insurer (DI) fund as an insurer in cases where the insurer has gone into liquidation, or been wound up, or where a worker of an uninsured employer sustains a work related injury.

The DI fund manager will be required to meet a number of requirements under chapter 5 including establishing a personal injury plan for workers with a significant injury (section 97) and ensuring the provision of vocational rehabilitation. However the DI fund manager is not required to establish an injury management program (section 88) or to give effect to an injury management program (section 89). In addition where the DI fund is the insurer it will not be prosecuted for an offence against chapter 5.

10. Insurer to establish etc injury management program Section 88 (1), new note

Section 88 imposes the obligations on insurers to establish and maintain an injury management program. This clause inserts a new note into subsection 88 (1) to cross reference the provision of new section 86A that indicates that the DI fund manager is not required to establish and maintain an injury management program.

11. Insurer to give effect to injury management program Section 89 (1), new note

Section 89 requires an insurer to give effect to its injury management program by ensuring that employers are aware of its requirements. This clause inserts a new note into section 89 (1) to cross reference the provision of new section 86A which provides that the DI fund manager is not required to give effect to the injury management program.

12. Insurer's obligation of prompt payment Section 90 (1)

This clause substitutes the existing subsection 90 (1) (Insurer's obligation of prompt payment) with a new subsection. The new subsection clarifies that where insurers are required to pay for a service under the Act, the insurer is required to pay the amount no later than 30 days after receiving a written notice requiring payment.

13. New sections 94A to 94C

This clause inserts three new sections in Part 5.3 of the Act. Part 5.3 requires workers to notify employers, and employers to notify insurers of workplace injuries.

New subsection 94A (1) requires an uninsured employer to give the DI fund manager a notice of injury for an injured worker within 48 hours after receiving the injury notice. The uninsured employer is also required to tell the DI fund manager that the employer does not have a compulsory insurance policy. Failure by an uninsured employer to notify the DI fund manager of a worker's injury attracts a maximum penalty of 50 penalty units.

New subsection 94A (2) specifies that an offence against section 94A is a strict liability offence. There is no requirement for a mental fault element for this offence eg for the uninsured employer to intentionally or deliberately fail to notify the worker's injury: conduct alone is sufficient to make an uninsured employer liable to prosecution. However a mistake of fact defence is available to all strict liability offences.

The application of strict liability is considered necessary, as the obligation to forward give notices to the DI fund manager is integral to the successful operation of the DI fund. The consequences of a failure to notify are that the DI fund manager may be unable to meet the injury management objectives of the workers' compensation scheme in a timely manner. For instance injured workers of employers without compulsory insurance may not receive weekly compensation payments from the DI fund manager in a timely manner and they would not gain early access to specific medical treatment and early rehabilitation that would lead to a timely return to work.

The offence serves an essential regulatory purpose in support of the DI fund and the application of strict liability is likely to achieve a higher level of compliance among employers. The penalty is not severe compared to the potential disadvantage faced by employees who are injured in the service of an employer without compulsory insurance cover.

New subsection 94B (1) requires the liquidator of a failed insurer (other than an insurer that has been wound up under the provisions of the Corporations Act) to give the DI fund manager a notice of injury for an injured worker of an employer who holds or held a compulsory insurance policy with the failed insurer within 48 hours after receiving the injury notice. Failure by the liquidator to notify the DI fund manager of a worker's injury attracts a maximum penalty of 50 penalty units.

New subsection 94B (2) requires the liquidator of a failed insurer that has been wound up under the Corporations Act to return an injury notice relating to an injured worker of an employer who held a compulsory insurance policy with the failed insurer within 48 hours after receiving the injury notice to the injured worker. The liquidator must also tell the worker to give the injury notice to the DI fund manager. The maximum penalty for an offence against this provision attracts a maximum penalty of 50 penalty units.

New subsection 94B (3) specifies that an offence against section 94B is a strict liability offence. This is consistent with the Criminal Code provisions.

There is no requirement for a mental fault element for this offence eg for the liquidator of the failed insurer to intentionally or deliberately fail to forward a notice of injury for an injured worker: conduct alone is sufficient to make a liquidator liable to prosecution. However a mistake of fact defence is available to all strict liability offences.

The application of strict liability is considered necessary, as the obligation to forward give notices to the DI fund manager is integral to the successful operation of the DI fund. The consequences of a failure to notify are that the DI fund manager may be unable to meet the injury management objectives of the workers' compensation scheme in a timely manner. For instance injured workers of employers whose insurer has failed or been wound up under the Corporations Act may not receive weekly compensation payments from the DI fund manager in a timely manner and they would not gain early access to specific medical treatment and early rehabilitation that would lead to a timely return to work.

The offence serves an essential regulatory purpose in support of the DI fund and the application of strict liability is likely to achieve a higher level of compliance among employers. The penalty is not severe compared to the potential disadvantage faced by injured employees of employers who held compulsory insurance policies with a failed insurer.

New section 94C provides that an injured worker may give the DI fund manager a copy of the injured worker's injury notice if:

- the uninsured employer is required to give the notice but has not given the notice; or
- the worker suspects that the uninsured employer has not given the notice; or
- the liquidator tells the worker to give the injury notice to the DI fund manager under section 94B; or
- the liquidator has not told the worker of the requirement; or
- the worker was employed by an employer who held a compulsory insurance policy with an insurer who cannot provide the indemnity under the policy; or
- the worker was employed by a self-insurer employer who the worker reasonably believed is unable to pay compensation; or
- the worker's employer no longer exists.

14. What if employer does not give notice of injury within time? Section 95 (1)

This clause deletes the signpost definition (the *notification time*) from subsection 95 (1).

15. Section 95 (2)

This clause substitutes the existing subsection 95(2).

The new subsection 95(2) clarifies that the employer is liable to pay weekly compensation to the injured worker from the date of injury until the employer notifies the insurer of the injury.

16. Workplace rehabilitation New section 109 (4)

This clause inserts a new subsection 109 (4).

Currently an employer must consult with the workers to whom a return to work program relates, or may relate, and any industrial union of workers representing the workers, and an approved rehabilitation provider. The new subsection 109 (4) confirms that the employer may consult with a range of people when developing the program and is not limited to consulting with the workers' industrial union and rehabilitation provider.

17. Section 109 (4) to (6)

This is a formal provision requiring the renumbering of subsections when the Act is next published under the *Legislation Act 2001*.

18. Section 112

This clause deletes the existing section 112 (Compliance by insurers) and replaces it with a new section 112. The new section requires the DI fund manager to comply with Chapter 5 of the Act which is about the injury management process. Approved insurers are already required to comply with the requirements of that chapter.

Currently there is no requirement for the Nominal Insurer to implement injury management for injured workers of uninsured employers. Under the new provisions, if the DI fund manager receives an injury notice in relation to an injured worker of an uninsured employer and is reasonably satisfied that there is no compulsory insurance policy in force that would apply to that claim, the DI fund manager will be required to implement an injury management program to comply with the requirements of chapter 5.

19. Compliance by workers New section 113 (1) (d)

This clause inserts a new subsection 113 (1)(d) into section 113 (Compliance by workers). Section 113 provides that a worker will not be entitled to weekly compensation when the worker unreasonably fails to comply with certain requirements.

The new subsection provides that if an injured worker unreasonably fails to attend a medical assessment of their injury the entitlement to weekly compensation can be stopped. Subsection 113 (2) requires the insurer to give written notice to the injured worker and the Minister that weekly compensation will stop in two weeks unless the injured worker takes action to have the weekly compensation continued or resumed. This provision would not apply in cases where the worker has reasonable reason for not attending the medical assessment, such as the unavailability of a specialist.

20. Section 113 (1) (d) and (e)

This is a formal provision requiring the renumbering of paragraphs when the Act is next republished under the *Legislation Act 2001*.

21. When is a claim made? Section 122 (1), new note

This clause inserts a new note to subsection 122 (1) (When is a claim made?).

The new note is a consequential amendment relating to amendments made by clause 6 of this Bill. The note inserts a reference to section 38 of the Act.

22. Admissibility of statements by injured workers Section 125 (2), definition of insurer, paragraph (b)

This clause deletes the existing paragraph 125 (2)(b) and substitutes it with a new paragraph.

The clause replaces a reference to the nominal insurer with a reference to the new DI fund which is to be inserted by clause 45 of this Bill.

23. Meaning of insurer and given to insurer for pt 6.2 Section 127 (1), definition of insurer, paragraph (c)

This clause deletes the existing paragraph 127 (1) (c) substituting it with a new paragraph.

The clause replaces a reference to the nominal insurer with a reference to the new DI fund which is to be inserted by clause 45 of this Bill.

24. Section 128

This clause deletes the existing section 128 (Claim accepted if not rejected within 28 days) with a new section 128 to enable renumbering within section 128.

Section 128 provides that an insurer who does not reject a worker's claim within 28 days is taken to have accepted the claim. A payment made in relation to such a claim is not recoverable. However, the restriction on recovery payments does not apply to the DI fund manager as the insurer.

25. Liability on claim not accepted or rejected Section 134 (1)

This clause omits the expression 'an injury' from subsection 134 (1) and substitutes it with the new expression 'an injury for which compensation is payable under the Act'.

The clause clarifies that insurers are only liable for claims relating to compensable injuries and makes the term consistent with the terminology used in section 38 (When do weekly compensation payments begin?).

26. Order for refund of overpayments of compensation Section 135 (2)

This clause omits the expression "an offence against section 213 (False claims etc)" and substitutes it with the expression "a Criminal Code offence". The clause has been reworded to make it consistent with the requirements of the Criminal Code.

27. New section 135 (7)

This clause inserts a new subsection 135 (7) into section 135 (Order for refund of overpayments of compensation).

The clause makes an amendment that is consequential to an amendment made in section 135 so as to be consistent with the requirements of the Criminal Code.

28. New part 8.1 heading

This clause inserts a new part heading titled “Part 8.1 General” before section 144 (Meaning of *compulsory insurance policy*).

29. Effect of revocation or suspension of approval Section 146 (2)(c)

This clause deletes the existing subsection 146(2)(c) and substitutes it with a new subsection.

The clause replaces a reference to the nominal insurer with a reference to the DI fund which is to be inserted by clause 45 of the Bill.

30. Effect of failure to maintain compulsory insurance on other insurance etc for this Act Section 149 (2)(c)

This clause deletes the existing subsection 149 (2)(c) and substitutes it with a new subsection.

The clause replaces a reference to the nominal insurer with a reference to the DI fund which is to be inserted by clause 45 of the Bill.

31. Section 149 (as amended)

This clause renumbers the existing section 149 to section 148.

32. Section 150

Section 150 of the Act currently allows the nominal insurer to recover triple premiums from certain employers who fail to maintain a compulsory insurance policy.

This clause deletes the existing section 150 and substitutes it with a new section 149 (DI fund entitled to triple recovery amount).

New section 149 will ensure that the DI fund, which will replace the nominal insurer, will be able to pursue the recovery of triple premiums in appropriate cases.

33. Information for insurers on application for issue or renewal of policies Section 156 (6), note

This clause deletes the existing expression “(see s161 and s213)” from the note to subsection 156 (6) and substitutes it with a new expression “(see s161 and Criminal Code, pt 3.4)”.

The clause makes an amendment to the note so as to be consistent with the requirements of the Criminal Code.

34. Section 156 (as amended)

This clause renumbers the existing section 156 to new section 155.

35. Information for insurers after renewal of policies Section 157 (1)

Employers are required under the *Workers Compensation Act 1951* to maintain a compulsory insurance policy with an approved insurer. The clause makes an amendment to make the terms and language of the section consistent with other provisions under the Act.

The clause omits the expression “an insurance policy” from subsection 157 (1) and substitutes it with the new expression “a compulsory insurance policy”.

36. Section 157 (3), note

This clause omits the existing expression “(see s213)” from the note to subsection 157 (3) and substitutes it with a new expression “(see Criminal Code, pt 3.4)”.

The clause makes an amendment to the note so as to be consistent with the requirements of the Criminal Code.

37. Section 157 (as amended)

This clause renumbers the existing section 157 to new section 156.

38. Information for insurers after end or cancellation of policies

Section 158 (2), note

This clause omits the existing expression “(see s213)” from the note to subsection 158 (2) and substitutes it with a new expression “(see Criminal Code, pt 3.4)”.

The clause makes an amendment to the note so as to be consistent with the requirements of the Criminal Code.

39. Section 158 (as amended)

This clause renumbers the existing section 158 to new section 157.

40. Six-monthly information for insurers Section 160 (1), note

This clause omits the existing expression “(see s161 and s213)” from the note to subsection 160 (1) and substitutes it with a new expression “(see s161 and Criminal Code, pt 3.4)”.

The clause makes an amendment to the note so as to be consistent with the requirements of the Criminal Code.

41. Section 160 (as amended)

This clause renumbers the existing section 160 to new section 159.

42. New Sections 160 and 161

This clause inserts new sections 160 (Certificates of currency) and 161 (Requirement to produce certificate of currency).

The clause establishes a scheme of certificates of currency for the ACT workers' compensation scheme.

Certificates of currency are intended to improve compliance by providing a mechanism to identify under reporting and under insurance by employers. An authorised person would be able to ascertain the number of workers covered by the employer's compulsory insurance policy and identify any discrepancies between the information included on the policy and the number of workers present at a workplace. In the event of a discrepancy appropriate enforcement action could be taken.

Certificates of currency provide a safeguard to assist principals where contracting arrangements are commonplace, such as the building and construction industries and the information technology sector, in managing their potential liabilities to contractors' employees.

Approved insurers are required to include wage and salary details in an employer's compulsory insurance policy when it is issued. In many cases the insurance policy itself will provide sufficient information and a certificate of currency would not be needed. To minimise the administrative costs of issuing certificates of currency, they would only be required where requested by an authorised person. An authorised person includes a principal, or an inspector under the Act, or an industrial union representing a worker employed by the employer to produce evidence of their workers' compensation coverage.

New section 160 (Certificates of currency) will require insurers to issue a certificate of currency no later than five business days after receiving a written request from employers who are insured with them. They are not required to issue a certificate of currency if the employer has been issued with a certificate of currency within the last six months.

If the employer's level of risk changes or reasonably requires another certificate of currency within the six months, the insurers must issue another certificate on written request from an employer. A reasonable request would include where the previous certificate has been destroyed in a fire.

Certificates of currency must include the details that the employer gives to the insurer:

- when updating their six-monthly wage and salary reports under the requirements of section 159 (Six-monthly information for insurers) (as renumbered by this Bill), or
- on application or renewal of policies under the requirements of section 155 (as renumbered by this Bill) (Information for insurers on application for issue or renewal of policies).

In addition the certificates must state the period of the employer's insurance cover, and the period for which the certificate is current, which must not be more than six months.

An insurer is not required to issue certificates of currency to employers who are in default under the policy, and the insurer has told the employer of this fact.

New section (161)(Requirement to produce certificate of currency) provides that it is an offence for an employer who holds a compulsory insurance policy not to produce the certificate of currency for inspection to an authorised person on request. The maximum penalty for the offence is 50 penalty units.

A defence to a prosecution for an offence against the section is provided in circumstances where an employer has a reasonable excuse for not producing the certificate of currency at the time of request. This could cover the situation where the request occurred away from the employer's business office, at a building site for example. In these cases the employer has seven business days after the request to produce the certificate at a place prescribed by regulation, or as directed in writing by the authorised person. Alternatively, the employer can show evidence of the steps taken to produce the certificate to the authorised person no later than seven business days after the request.

An offence against this section is a strict liability offence.

An authorised person for this section means an inspector under the Act; or the principal of a worker who is, or could reasonably be expected to be, covered by the policy, such as a building developer; or an industrial union of workers representing a worker employed by the employer.

43. Provision of information to Minister Section 163 (8), definition of *applicable offence*, paragraph (b)

This clause deletes the existing paragraph 163 (8)(b), and substitutes a new paragraph.

The clause makes an amendment to the section so as to be consistent with the requirements of the Criminal Code.

44. Section 163 (as amended)

This clause renumbers the existing section 163 to new section 164.

45. Sections 164 to 175

Sections 164 to 175 of the Act currently contain provisions dealing with the nominal insurer. The nominal insurer provisions provide access to benefits for workers in cases where employers have not maintained a compulsory insurance policy under the Act. This clause removes the nominal insurer provisions and inserts a new part into the Act which establishes the Default Insurance Fund (DI fund) for the ACT workers' compensation scheme. The DI fund will take on the functions currently performed by the nominal insurer but also take on the functions currently undertaken by the fund established under the *Workers Compensation Supplementation Fund Act 1980*.

Part 8.2 Default insurance fund

The new part 8.2 default insurance fund is divided into eight separate divisions prescribing the operations of the DI fund.

Division 8.2.1 Definitions for pt 8.2

New section 165(Definitions for pt 8.2) provides signpost definitions for new part 8.2 of the Act by referring to various sections under this part.

New Division 8.2.2 Establishment, staff and consultants of DI fund.

New section 166 (Establishment of DI fund) establishes the Default Insurance Fund (the DI fund) and sets out the amounts that will constitute the DI fund. The DI fund manager will manage the DI fund. Money paid into the fund is taken to be trust money under the *Financial Management Act 1996*.

New section 166A (Purpose of DI fund) describes the objective of the DI fund. The objective of the DI fund is to provide a safety net to meet the costs of workers' compensation claims made by workers in either of two sets of circumstances. In the first case, when an employer does not have a compulsory insurance policy. Or in the second case, where an approved insurer is wound up under the Corporations Act or cannot provide the indemnity required under the compulsory insurance policy.

New section 166B (Payments out of DI fund) prescribes when the DI fund manager may make payments out of the DI fund. Payments include:

- Amounts to be paid in settlement of a claim;
- Costs or fees payable to the liquidator of an approved insurer;
- Costs and expenses incurred by the DI fund claims manager in the settlement of claims;
- Amounts payable under section 168B (Refunds of excess DI fund amounts);
- Repayments and interest on amounts borrowed or contributed by the Territory to the administration of the fund;
- Fees, costs and expenses incurred in the administration of the fund; and
- Any other amount paid out of the fund under a territory law.

If the Minister directs a transfer of funds, the DI fund manager must pay an amount to the terrorism cover temporary reinsurance fund under chapter 15 of the *Workers Compensation Act 1951*. This only applies until 1 October 2009.

New section 166C (Appointment of DI fund manager) provides that the chief executive may appoint a public servant as the DI fund manager.

New section 166D (DI fund manger's functions etc) prescribes the functions of the DI fund manager.

New section 166E (DI fund staff) requires that staff of the DI fund must be employed under the *Public Sector Management Act 1994*.

New section 166F (DI fund manager may engage consultants including claims manager) provides that the DI fund manager may engage consultants with expertise and experience in the delivery of injury and claims management services to manage injuries where claims have been made against the DI fund. This section does not provide a power to enter a contract of employment.

New section 166G (Claims manager's functions) sets out the functions of the claims manager if engaged by the DI fund manager. The functions include: investigation of a claim, negotiating the terms of lump sum or weekly payment settlements of claims, exercising the right of an approved insurer in relation to claims made by injured workers covered by a compulsory insurance policy at the time of injury, and anything prescribed by a regulation.

The claims manager is not authorised to pay an amount to satisfy a claim, or recover an amount owed to an approved insurer against whom a claim is made. The claims manager may exercise any other function given to the claims manager under this Act or any other territory law. The two notes accompanying the new section specify that the *Legislation Act 2001* provide that reference to an Act and function includes statutory instruments, any regulation made under the Act, and powers to exercise the function.

New section 166H (Engagement of DI fund actuary) stipulates that the DI fund manager must engage an actuary with experience and expertise to exercise the functions of a DI fund actuary.

New section 166I (Delegation by DI fund manager) provides that the DI fund manager may delegate the manager's functions under the Act or any other territory law to a public servant, a claims manager and the DI fund actuary.

Division 8.2.3 Administration of DI fund

New section 167 (Accounts for DI fund) provides that the DI fund manager must keep separate accounts in the DI fund for claims made against uninsured employers, and where claims are made against a compulsory insurance policy issued by an insurer who cannot provide the indemnity required under the policy. The DI fund manager must also keep accounts showing the amounts paid into the DI fund from contributions made under division 8.2.4 (Contributions to DI fund), and amounts withdrawn from the DI fund and the reason for the withdrawal.

New section 167A (Investments of amounts of DI fund) provides that the DI fund manager must invest DI fund money if it is not immediately required to make payments out of the fund. This provision ensures that if there is a large cash reserve in the DI fund there is a requirement to invest the funds. This is a rewrite of the current provision under the *Workers Compensation Supplementation Fund Act 1980*.

New section 167B (Borrowing for DI fund) provides a mechanism for the Treasurer to borrow money for or lend public money to the DI fund in the event of unexpected claims

costs. Public money can only be loaned through an appropriation. The new provision also ensures that the DI fund manager may only arrange overdraft or credit facilities with the Treasurer's written approval.

New section 167C (Audit of DI fund) provides that a recognised auditor shall audit the DI fund at the end of each financial year. The DI fund manager must give the recognised auditor's report and the audited accounts to the chief executive.

New section 167D (Information and assistance by employer to DI fund manager) requires an employer without a compulsory insurance policy to comply with the DI fund manager's written direction to provide information, assistance, documents and access to the employer's business premises to inspect plant, works, machinery and appliances in relation to a claim made against the DI fund by an injured worker of the employer. The employer must take reasonable steps to comply with the DI fund manager's requirements. Section 170 of the Legislation Act preserves an employer's common law privileges against self-incrimination and exposure to the imposition of a civil penalty. The maximum penalty for failing to comply with the DI fund manager's requirement is 50 penalty units. An offence against this section is a strict liability offence.

Division 8.2.4 Contributions to DI fund

New section 168 (Approved insurers must give information) provides that the DI fund manager may write to an approved insurer requiring a written statement of the insurer's earned income and any other information in relation to compulsory insurance policies. It is a requirement for the approved insurer to comply with the written notice.

New section 168A (Contributions to DI fund by approved insurers and self-insurers) provides the mechanism for the DI fund manager to determine the DI fund's liability for each quarter of the financial year and the methodology for apportioning the liability among the approved insurers and self-insurers for the quarter.

The DI fund manager must seek the DI fund advisory committee's written advice on the DI fund's existing and expected liabilities for each quarter. The methodology for apportioning each approved insurer and self-insurer's liability for the quarter is based on the earned premium of the approved insurer, or the premium that would have been payable by each self-insurer if they had a compulsory insurance policy.

If an apportionment for the DI fund is required, the DI fund manager must write to each approved insurer and self-insurer seeking payment of the apportionment and stating the time period for payment, which must not be less than 30 days after the day the approved insurer or self-insurer receives the notice.

The explanatory note to the provision alerts employers to the fact that insurers will apportion part of the premium for the purposes of the DI fund. Insurers must comply with section 62A of the *Workers Compensation Regulation 2002* which details the information about the apportionment that must be included in compulsory insurance policies issued by the insurer.

If the apportioned amount is not paid to the DI fund within the time stated, the amount is a debt owing to the DI fund by the approved insurer or self-insurer.

New section 168B (Refunds of excess DI fund amounts) provides that if there are excess amounts in the DI fund resulting from an apportionment among the approved insurers and self-insurers, the DI fund manager may, after taking advice from the DI fund advisory committee, refund the excess amount (proportionately) to each of the approved insurers and self-insurers. In the event that the DI fund manager makes a refund, then an approved insurer must give a credit offset against premiums to employers who take out compulsory insurance policies with the approved insurer.

Division 8.2.5 DI fund's relationship with liquidators of approved insurers

New section 169 (Displacement of liquidator's Corporations Act obligation) provides that recovery of amounts by the DI fund from liquidators of approved insurers is declared to be an excluded matter for the purposes of section 5F of the Corporations Act. This new provision means the liquidator may exercise his or her powers under section 477 of the Corporations Act in relation to a claim or judgement, order or award arising out of or in relation to a compulsory insurance policy. In effect the liquidator can include the approval of the DI fund manager as an authority to compromise debts to the insurer or enter into agreements and pay any class of creditors in full in relation to compulsory insurance policies issued by the insurer.

New section 169A (Payment to DI fund of amounts recovered by liquidator from reinsurer) provides that the DI fund receives priority payment of amounts recovered by the liquidator from the reinsurer of an approved insurer. The liquidator may deduct reasonable expenses for recovering the amount.

New section 169B (Payment to DI fund of amounts recovered by liquidator using fund amounts) provides that the DI fund receives priority payment of amounts recovered by the liquidator of certain amounts paid out of the DI fund. The liquidator may deduct reasonable expenses for recovering the amount.

New section 169C (Rights of DI fund manager against approved insurer) applies where an approved insurer cannot provide the indemnity under a compulsory insurance policy and the DI fund meets any part of the employer's liability. The DI fund manager has the same rights against the insurer as the employer in relation to unrecovered amounts under section 169A (Payment to DI fund of amounts recovered by liquidator from reinsurer) or section 169B (Payment to DI fund of amounts recovered by liquidator using fund amounts).

New section 169D (Liquidator to notify DI fund manager of dissolution) provides that the liquidator of an approved insurer must promptly tell the DI fund manager in writing about an application to a court for an order that the insurer be dissolved under the Corporations

Act. The liquidator is also required to give the DI fund manager a copy of any order made by the court on the application.

Division 8.2.6 Making claims for payment

New section 170 (Who may make claim for payment) provides that a person, who is eligible under any one of the following circumstances, may make a claim for payment:

- section 170E (Claim for payment if employer to pay and liability not covered by compulsory insurance policy etc);
- section 170F (Claim for payment if final judgement etc and liability not covered by compulsory insurance policy);
- section 170G (Claim for payment if agreement to discharge liability at common law and liability not covered by compulsory insurance policy);
- section 170H (Claim for payment if final judgement etc and liability covered by compulsory insurance policy);
- section 170I (Claim for payment if entitlement to claim compensation and liability covered by compulsory insurance policy).

The circumstances where a person may make a claim for payment are detailed in the following paragraphs of this Explanatory Statement.

New section 170A (When must claim for payment be made) requires persons wishing to make a claim against the DI fund under a circumstance outlined in Division 8.2.6 to make the claim no later than one month after the day they become eligible to make the claim. The DI fund manager may allow further time on application.

New section 170B (How claim for payment made if no insurer) applies when a claim for payment is made against an employer not covered by a compulsory insurance policy and either the employer has been wound up, or a liquidator has been appointed or the employer's liability to pay the compensation is outstanding for at least one month. A claim for payment must be in writing and given to the DI fund manager together with a copy of any judgement, order, or award relating to the claim.

New section 170C (How claim for payment made if insurer not wound up) applies to claims for payment where a liquidator has been appointed for the insurer but the insurer has not been wound up. A claim for payment must be in writing and given to the liquidator together with a copy of any judgement, order, or award relating to the claim.

New section 170D (How claim for payment made if insurer wound up) applies to claims for payment where the insurer has been wound up. A claim for payment must be in writing and given to the DI fund together with a copy of any judgement, order, or award relating to the claim.

New section 170E (Claim for payment if employer to pay and liability not covered by compulsory insurance policy etc) applies where an uninsured employer's liability to pay

compensation has been established and the employer has defaulted. The person may make a claim for payment against the DI fund for the amount of compensation, including costs that remain unpaid.

New section 170F (Claim for payment if final judgement etc and liability not covered by compulsory insurance policy) applies where a person has obtained a final judgement against an employer and the judgement has remained completely or partly unsatisfied for at least one month. The person is eligible to make a claim for payment against the DI fund for the amount of the judgement that remains unsatisfied.

New section 170G (Claim for payment if agreement to discharge liability at common law and liability not covered by compulsory insurance policy) applies where an employer without a compulsory insurance policy has made an agreement to pay an amount to discharge the employer's liability in relation to an injury to, or the death of, a territory worker of the employer. If the agreed amount of any part of that amount is not paid within one month after the day the amount is payable, then the person is eligible to make a claim for payment against the DI fund for the outstanding amount.

New section 170H (Claim for payment if final judgement etc and liability covered by compulsory insurance policy) applies where a person has obtained a final judgement, order or award against an employer whose insurer has been wound up or cannot provide the indemnity required by a compulsory insurance policy. The person is eligible to make a claim for payment against the DI fund for the amount of the judgement, order or award that remains unsatisfied.

New section 170I (Claim for payment if entitlement to claim compensation and liability covered by compulsory insurance policy) applies where a person is entitled to claim compensation against an employer and the employer's insurer has been wound up. The person is eligible to make a claim for payment against the DI fund for the amount.

New section 170J (Liquidator to forward claims to DI fund manager) stipulates that the liquidator of an approved insurer must give the DI fund manager a copy of a claim for payment and all information, including copies of any judgement, order or award relating to the claim.

New section 170K (Power of Supreme Court to set aside agreements) applies where a person is eligible to make a claim for payment against the DI fund for an outstanding amount from an employer without compulsory insurance who has defaulted on an agreement to pay a liability in relation to an injury to, or the death of, a territory worker of the employer. The DI fund manager may apply to the Supreme Court for an order to set aside the agreement.

The Supreme Court may set aside the agreement if satisfied that there are reasonable grounds for believing that the employer has:

- not honestly tried to protect the employer's own interests (in relation to their assets and liabilities); and

- taken all reasonable steps to protect the employer's own interests.

The DI fund is liable for the costs of the employer unless the Supreme Court orders otherwise.

New section 170L (Treatment of set aside agreement) provides that if the agreement is set aside under new section 170K, then the agreement is taken never to have had effect for court proceedings. Documents or other evidence relating to the agreement's existence become inadmissible unless the Supreme Court orders otherwise.

New section 170M (Time-barred rights after agreement set aside) applies to cases where an agreement is set aside under new section 170K. An action to recover damages relating to a liability covered by a set aside agreement can be brought despite a bar imposed by the Limitations law. The action may be started at any time no later than three months after the day the agreement is set aside.

New section 170N (Action after agreement set aside) applies where an agreement has been set aside and an action has been taken to recover damages by a party to the set aside agreement. The plaintiff to the action must give the DI fund manager written notice of the action within seven days after commencing the action. It is a strict liability offence against this provision if the plaintiff does not give notice to the DI fund manager attracting a maximum penalty of five penalty units.

The DI fund manager has the option of defending the action on behalf of the employer. This option is designed to allow the DI fund manager to defend an action appropriately. The DI fund manager is required to indemnify the employer for the cost of the action.

New section 170O (DI fund manager not to consent to judgement etc unless defendant agrees) stipulates that the DI fund manager can only consent to a judgment or the compromise of an action against a defendant with the agreement of the defendant.

Division 8.2.7 Payment of claims

New section 171 (Payments out of DI fund) requires that a claim for payment may only be paid if the terms of settlement are approved. The Magistrates Court may approve the terms of settlement of a lump sum to the claimant. In any other case, the DI fund manager may approve the terms of settlement of a claim for payment.

New section 171A (Reopening of agreements and awards) applies where an employer has agreed to pay compensation or the employer's liability to pay compensation has been established (under new section 170E). The DI fund manager may apply to the Magistrates Court for an order directing that the agreement or award be reopened on the basis that the employer has not honestly endeavoured nor taken all reasonable steps to protect the employer's own interests.

New section 171B (Deciding or re-deciding claim) provides that when the Magistrates Court makes an order to reopen an agreement or award under section 171A, it must decide or re-decide the claim by arbitration. In this circumstance, the DI fund manager is a party to the arbitration. The Court may set aside a previous agreement or award. An agreement to accept a settlement of a claim that is less than the amount payable according to an agreement or award has no effect unless approved by the Magistrates Court.

New section 171C (Approval of terms of settlement by court) provides that if proposed terms of settlement of a claim provide for the payment of a lump sum, the DI fund manager may apply to the Magistrates Court for approval of the terms of settlement. The Magistrates Court may approve the terms of settlement if satisfied that they are just.

New section 171D (DI fund paying claims for payment if liability not completely covered by a compulsory insurance policy and settlement approved) applies to claims made by eligible persons under section 170E, section 170F and section 170G (where the employer is not covered by a compulsory insurance policy) and the Magistrates Court or the DI fund manager has approved the terms of settlement. The DI fund manager must pay the claimant out of the DI fund in accordance with the terms of settlement.

New section 171E (DI fund paying claims for payment against approved insurers settlement approved) applies to claims made by eligible persons under section 170H or section 170I (where the insurer has been wound up or cannot provide the indemnity required under the policy) and the Magistrates Court or the DI fund manager has approved the terms of settlement. The DI fund manager must pay the liquidator out of the DI fund the amount necessary to satisfy the claim in accordance with the terms of settlement and any further amount agreed between the manager and the liquidator for the liquidator's costs in satisfying the claim.

The DI fund manager must also give the liquidator copies of all documents related to the claim. The liquidator must then pay the amount in accordance with the terms of settlement.

If the approved insurer has been wound up, then the DI fund manager may directly pay the claimant in accordance with the terms of settlement.

New section 171F (Liquidators to account to DI fund manager) applies where the liquidator receives from the DI fund manager an amount to satisfy the terms of settlement of a claim. The liquidator must give the DI fund manager a written statement detailing the payments made by the liquidator out of the settlement amount during each prescribed period no later than two weeks after the end of the prescribed period. Statements provided under this section are required to be certified as correct by an auditor.

A prescribed period is three months starting the day after the settlement amount is received and each subsequent period of three months.

New section 171G (Intervention by DI fund manager) is an offence provision that applies to cases where a claim for compensation has been made against a person who is not a self-insurer and does not hold a compulsory insurance policy that would cover the liability.

Subsection 171G (2) requires the person to give the DI fund manager a copy of the claim no later than 48 hours after the claim is made. An offence against this subsection is subject to a maximum penalty of 10 penalty units.

Subsection 171G (3) requires the person not to make an agreement or admission in relation to the claim unless the DI fund manager consents to the admission or agreement under subsection 171G (4). An offence against subsection 171G (3) is subject to a maximum penalty of 20 penalty units.

The DI fund manager is entitled to intervene in any arbitration proceeding on a claim as a party and holds the same right of objection to arbitration by a committee (a representative committee under section 50, *Workers Compensation Regulation 2002*) as an employer.

Subsection 171G (7) specifies that an offence against this section is a strict liability offence.

New section 171H (DI fund manager may act) applies to a claim for payment made by a person eligible under the provisions of new section 170E, new section 170F, or new section 170G (where the employer is not covered by a compulsory insurance policy).

If the DI fund manager receives a copy of the claim under the provisions of new section 171G, or is reasonably satisfied that there is no compulsory insurance policy in force applying to the claim, then the DI fund manager may treat the claim for payment as having been made against the DI fund.

New section 171I (Effect of payment of claims) applies where an amount is paid out of the DI fund in settlement of a claim in relation to the liability of an employer.

Such a payment will discharge the liability of the DI fund and the employer. However the employer (except non-business employers such as householders) will owe, as a debt to the DI fund, an amount equal to three times the amount of the payment.

The DI fund manager has the right of subrogation (substitute for another) for any right that the employer has against anyone else in relation to the matter that is the subject of the claim that caused the liability of the employer.

Division 8.2.8 Miscellaneous

New section 172 (Proceedings to be in the name of 'Workers Compensation Default Insurance Fund Manager') provides that proceedings taken by or against the DI fund will use the name 'Workers Compensation Default Insurance Fund Manager'.

New section 173 (DI fund manager not personally liable) provides that the DI fund manager is not personally liable for the payment of claims against the DI fund or the costs or expenses of the DI fund relating to such claims. The DI fund manager is to pay such amounts out of the DI fund.

46. Section 182

This clause deletes the existing section 182 and substitutes it with a new section 182 (Payments by DI fund manager).

The clause makes a consequential amendment relating to amendments made by clause 45 of this Bill.

47. No compensation if damages received Section 184 (1) and (2)

Section 184 is intended to prevent a person from receiving compensation both under the Act, and from an independent source in relation to the same injury.

This clause deletes the existing subsections 184 (1) and (2) and substitutes them with two new subsections.

New sub sections 184 (1) and (2) have been rewritten to make it clear that the limitation on double recovery applies in the case of a worker's injury or the death of a worker.

48. Section 189

Chapter 10 of the Act is concerned with inspection for the purpose of ensuring that the Act is complied with. Section 189 deals with the identity cards that are issued to inspectors.

This clause deletes the existing section 189 and substitutes it with a new section.

The new section has been restructured to make it consistent with the administration of inspectorate functions in other legislation. It also provides transitional arrangements for identity cards issued prior to the commencement of this Act.

49. Provision of information to inspectors Section 190 (3), note

Section 190 deals with the provision of information to inspectors. This clause deletes the existing note to subsection 190 (3) and replaces it with a new note.

The clause makes an amendment to the note so as to be consistent with the requirements of the Criminal Code.

50. Obstruction or hindrance of inspector Section 194

This clause deletes section 194 (Obstruction or hindrance of inspector) from the Act.

The clause omits the obstruction provision because section 361 of the Criminal Code makes it an offence to obstruct, hinder, intimidate or resist a public official in the exercise of his or her functions.

51. Admissibility of statements by injured workers Section 196 (2), definition of insurer, paragraph (b)

This clause deletes the existing paragraph (b) and substitutes it with a new paragraph.

The clause makes a consequential amendment relating to amendments made by clause 45 of this Bill.

52. On-the-spot fines Chapter 12

This clause deletes chapter 12 which is about On-the-spot fines and infringement notices for the Act.

General infringement notice provisions creating a single consistent regime for infringement notices under ACT legislation are contained in part 3.8 of the *Magistrates Court Act 1930*. A regulation will be made under the Magistrates Court to provide for infringement notices issued for strict liability offences under the *Workers Compensation Act 1951*.

53. New sections 204 and 205

This Clause inserts new sections 204 and 205.

New section 204 empowers the Court to order a convicted employer or an employer who has been found guilty of an offence against the Act to publish a statement in relation to the offence. The adverse publicity to the employer arising from the statement may be a significant deterrent to other employers.

New Section 205 provides that the chief executive can publish details of convictions for offences against the *Workers Compensation Act 1951*. It sets out the details of a notice published under this section. The publication must not be made during the appeal period or if the conviction is quashed. The purpose of this provision is to provide a further disincentive for people who breach the Act. **While the publication of breaches may impact on the privacy of individual employers, it involves information which has been appropriately tested in the public domain and is already available on the public record. It is considered more appropriate and effective than increasing the penalties associated with breach.** It is intended that this provision would only apply where there has been serious persistent breaches against the Act.

54. Section 210

This clause deletes the existing section 210 and replaces it with a new section.

Section 210 of the Act imposes confidentiality requirements on people requiring information or documents under the Act.

The purpose of this clause is to ensure that inspectors, or anyone else exercising a function under the Act properly protects information about a person that is obtained because of the exercise of a function under this Act. The new section makes it an offence to record or divulge protected information unless this is required under the Act or another law. The new section will align more closely with other territory laws and is consistent with current drafting practice.

55. False information etc Section 213

Section 213 of the Act sets out a number of offences relating to the provision of false information under the Act. This clause omits section 213, as the provision of false or misleading statements, information and documents is now dealt with in part 3.4 of the Criminal Code.

56. Criminal liability of executive officers Section 214 (1)

This clause deletes the existing subsection 214 (1) and replaces it with a new subsection.

The clause makes an amendment to restructure the provisions of the current section so as to be consistent with the requirements of the Criminal Code.

57. Section 214 (6)

This clause deletes the existing subsection 214(6) and replaces it with a new subsection.

This amendment substitutes a new section 214 (6) to reflect renumbering of other sections made by this Bill.

58. Section 214 (as amended)

This clause renumbers the existing section 214 to new section 203.

59. Sections 219 and 220

This clause removes sections 219 and 220 and replaces them with new sections 209, 210 and 211.

New Section 209 (References to Workers' Compensation Act etc) provides that references in all Acts or statutory instruments to the *Workers Compensation Supplementation Fund Act 1980* will also be taken to be a reference to the *Workers Compensation Act 1951*. It will also mean that any reference to the nominal insurer or the workers compensation supplementation fund will be a reference to the DI fund. This will ensure that the removal of the supplementation fund and the nominal insurer will not affect any other legislation or statutory instrument.

New section 210 (Apportionment of costs of administration of Act) provides that the Minister may apportion the cost of administration of the Act for a financial year among approved insurers or self-insurers during the year.

The new section will clarify that the Minister is to, as far as practicable, take into account the costs of administering the Act that are attributable to each approved insurer or self-insurer during the year. For instance, the liability for the costs incurred by the Magistrates Court in relation to the Act should be met by those approved insurers or self-insurers on the basis of the number of matters an insurer or self-insurer had where a claim for relief was made to the court.

The new section also sets out the notice that the Minister must give to the insurer or self-insurer about the apportionment. The new section will ensure that the Minister gives at least 30 days notice before the date for payment, and allow the Minister to amend or revoke a notice.

New Section 211 (Amounts for administration of Act) will clarify that the costs of administration of the Act may be paid out of amounts received by the Territory under any section of the Act, as well as under section 210. Subsection (2) clarifies that costs incurred by the Magistrates Court in relation to the Act may be paid out of amounts received under the Act.

60. Terrorism cover temporary reinsurance Section 227(2)(d)

Chapter 15 of the Act includes temporary provisions for acts of terrorism. This clause amends section 227(2)(d) replacing the amounts paid under the *Workers Compensation Supplementation Fund Act 1980* with amounts paid to the fund by the DI fund manager. This change is consequential to the changes introduced by clause 45.

61. New Chapter 19

This clause inserts a new Chapter 19 to provide transitional arrangements for the implementation of the DI fund that is established under clause 45 of this Bill. In particular it sets out the process for the transfer of assets and liabilities from the nominal insurer and workers compensations funds to the accounts under the new DI fund.

New Section 255 (Definitions – ch 19) defines the terms that are used in this chapter.

New Section 256 (Transfer of nominal insurer's assets and liabilities) sets out the process for the transfer of the nominal insurer's assets and liabilities to the DI fund. It requires the DI fund manager to pay any asset that is an amount into the DI fund account that relates to claims made against employers without compulsory insurance policies. It also requires the DI fund manager to attribute any liability that is an amount owed or deficit in the account kept by the nominal insurer to that account.

New section 257 (Amounts in workers compensation supplementation fund) requires the DI fund manager to transfer any amount remaining in the workers compensation supplementation fund to accounts in the DI fund that relate to claims made against compulsory insurance policies issued by insurers that have been wound up or cannot provide the indemnity required by the policies. The Minister may give direction to the DI fund manager about the amount that must be transferred to each of those accounts.

New Section 258 (Amounts to be paid) provides that any amounts that were to be paid to the nominal insurer or workers compensation supplementation fund, must be paid to the DI fund. The new section also provides that if any amounts were due to be paid out of the nominal insurer and the workers compensation supplementation funds immediately before commencement day, then the amount must be paid from the DI fund.

New Section 259 (Proceedings and evidence in relation to previous entities) will ensure the continuity of any cases that are proceeding against the nominal insurer or the workers compensation supplementation fund (**previous entity**) and preserve the rights of those entities and injured workers. The new section makes the DI fund a party to a civil or administrative proceeding that the nominal insurer or the workers compensation supplementation fund was a party to immediately before commencement of this bill.

The new section also provides that a proceeding that could have been initiated against either of the two entities before commencement day, may be started by or against the DI fund manager. Furthermore the section provides that any evidence that would have been admissible against the two entities continues to be admissible for or against the DI fund manager. Any order made in a proceeding by or against either of the two entities before commencement day may be enforced by or against the DI fund manager.

New section 260 (Claims made against nominal insurer) ensures that claims made against the nominal insurer under the previous section 165 (deleted in Clause 45) which have not been discharged before the commencement date, are taken to have been made against the DI fund under the corresponding new sections 170E, 170F and 170G created in Clause 45.

New section 261 (Claims made under the WCSF Act before commencement day) is similar to new section 260 and ensures that claims made under part 5 of the Workers Compensation Supplementation Fund Act (to be repealed by clause 74) and not discharged before commencement date are taken to have been made under the corresponding new sections 170H, and 170I created in Clause 45. New section 261 (4) ensures that anything done in relation to the claim under the Compensation Supplementation Fund Act is taken to be done under this Act.

New section 262 (Claims for weekly payments) provides that the DI fund manager is not required to pay weekly compensation for claims made against the nominal insurer and workers compensation supplementation fund before the commencement day.

New section 263(Transitional regulations) allows the making of a regulation to prescribe transitional matters where they are necessary or convenient. The new regulation may modify chapter 19 to make provision for matters that in the Executive's opinion are not adequately or appropriately dealt with under this chapter.

New Section 264 (Expiry of ch 19) provides for chapter 19 to expire two years after the commencement date. Section 88 of the Legislation Act 2001 applies to chapter 19.

62. New Schedule 3

This clause inserts a new Schedule 3 into the Act to establish the DI fund advisory committee. The new advisory committee will replace the existing Insurers' Advisory Committee established under the sections 13 to 21 of the repealed *Workers Compensation Supplementation Fund Act 1980* and the Nominal Insurer Advisory Committee (a non statutory body) established by the Nominal Insurer, a function repealed by clause 45 of this amending Bill. The new advisory committee will monitor the operations of the DI fund and monitor and provide advice about the management of the DI fund and the exercise of the DI fund manager's powers.

Schedule 3.1 (Definitions -sch 3) provides the definitions for this schedule.

Schedule 3.2 (Establishment of DI fund advisory committee) establishes the DI Fund advisory committee.

Schedule 3.3 (Functions of committee) sets out the functions of the DI fund advisory committee. The committee will monitor the operations of the DI fund and provide advice to the Minister on matters relating to the part 8.2 (created under clause 45), as well as any other function given to it under the Act or any other territory law.

Schedule 3.4 (Membership of committee) sets out the membership of the committee. The committee consists of the DI fund manager, the DI fund actuary and six members appointed by the Minister. The members appointed by the Minister will consist of two members nominated by an employer group, two members nominated by an employee group and two members nominated by approved insurers. The duration of members' appointments is three years.

Schedule 3.5 (When DI fund manager not member of committee) excludes the DI manager from membership of the DI fund advisory committee when it is considering the DI manager's conduct under the Act.

Schedule 3.6 (Ending of members' appointments) provides the mechanism for terminating members' appointments and is consistent with other Territory statutory appointments. The provision includes grounds for which the responsible Minister may terminate the appointment of a board member.

Schedule 3.7 (Committee chair) provides that members must elect a chair for the Committee. The DI fund actuary may not be elected as chair. Where the chair is absent from a meeting, the members present will elect a chair.

Schedule 3.8 (Honesty, care and diligence of members) requires committee members to act with the same degree of honesty, care and diligence required by a director of a corporation in relation to the affairs of the corporation.

Schedule 3.9 (Conflicts of interest by members) requires committee members to take all reasonable steps to avoid a conflict of interest position.

Schedule 3.10 (Agenda to require disclosure of interest item) requires the committee to have a standing agenda item that any material interest in an issue to be discussed must be disclosed at the meeting.

Schedule 3.11 (Disclosure of interest by members) requires a committee member to disclose as soon as possible any material interest in a matter to be or being considered by a meeting of the committee.

Paragraph (2) requires that any disclosure must be recorded in the committee's minutes and the member concerned must leave the meeting or not take part in a decision by the committee on the issue, unless the committee decides otherwise. A detailed example is provided by way of illustration.

Paragraph (3) requires that any other committee member with a material interest in the issue must leave the meeting when the committee is considering its decision under paragraph (2). This is to avoid possible collusion when several committee members have a material interest.

Paragraph (4) provides definitions of the terms *associate*, *executive officer*, *indirect interest* and *material interest* for the purposes of this schedule.

Schedule 3.12 (Reporting of disclosed committee interests to Minister) requires the chair of the committee to provide a written report about a disclosure of a material interest under schedule 3.11 (2) to the responsible Minister, within three months after the day of disclosure.

Paragraph (2) requires the chair, within 31 days of the previous financial year, to give the responsible Minister, a statement of all the disclosures for that financial year.

Paragraph (3) requires the Minister to refer any statement received under paragraph (2) to the relevant Assembly Committee within 31 days.

Schedule 3.13 (Protection of members from liability) provides that committee members are not personally liable for acts or omissions done in accordance with their functions under the Act. Any civil liability for such acts or omissions attaches instead to the Territory.

Schedule 3.14 (Time and place of committee meetings) sets out the procedure for the scheduling of, and the attendance at meetings. The provision requires that the DI fund advisory committee must meet at least once every three months.

Schedule 3.15 (Presiding member at committee meetings) requires the chair to preside at all meetings unless absent in which case the member chosen by the members present presides. However, the DI fund actuary cannot preside over any meeting.

Schedule 3.16 (Quorum at committee meetings) establishes a quorum of at least three members appointed by the Minister for committee meetings.

Schedule 3.17 (Voting at committee meetings) establishes the decision-making procedure. Each of the six members appointed by the Minister has a vote. Where the votes are equal the chair has the deciding vote. The DI fund manager and the fund actuary do not have a vote.

Schedule 3.18 (Conduct of committee meetings etc) allows the DI fund advisory committee to conduct its meetings as it considers appropriate and by a combination of methods of communication including teleconference, video link or email. The committee must keep minutes of its meetings.

63. Dictionary, new notes

This clause inserts two new notes to explain that the *Legislation Act 2001* includes definitions of commonly used terms that will be relevant to the *Workers Compensation Act 1951* and provides examples of terms.

64. Dictionary, new definitions

This clause inserts new definitions created by this Bill into the Dictionary for the Act.

auditor means an auditor registered under the *Corporations Act 2001 (Cth)*; a member of the Institute of Chartered Accountants in Australia; a member of CPA Australia; and a member of the National Institute of Accountants.

chair, means the person elected under the provisions of schedule 3.

claim for payment by a person means a claim for payment made under the provisions of section 170 in part 8.2 (Default insurance fund).

claims manager means an entity engaged as a claims manager under section 165 in part 8.2 of this Act.

committee means the entity established under the provisions of schedule 3.

DI fund means the Default Insurance Fund established under section 165.

DI fund actuary means the actuary engaged under the provisions of section 165.

DI fund advisory committee means the committee established under the provisions of schedule 3.

DI fund manager means the DI fund manager appointed under section 166C.

earned premium means the total billed underwritten premium for compulsory insurance policies for the period.

65. Dictionary, definition of *incapacity date*

This clause deletes the existing definition for *incapacity date* from the Dictionary for the Act.

66. Dictionary, new definition of *initial incapacity date*

This clause inserts a new definition for *initial incapacity date* into the Dictionary for the Act.

Initial incapacity date is defined in section 36G created by clause 5 of this Act.

67. Dictionary, definition of *insurer*

This clause substitutes the existing definition of *insurer* and inserts a reference to sections 86A and 87 in chapter 5 (Injury management process) of the Act and a further reference to section 127 (1) in part 6.2 (Time for accepting or rejecting claims) of the Act.

68. Dictionary, new definitions

This clause inserts new definitions for *liquidator* and *managing controller* into the Dictionary for the Act.

Liquidator means the official manager of the insurer, or the receiver of the insurer's property, or the receiver and manager of the insurer's property, or the managing controller of the insurer's property.

Managing controller is defined in section 9 of the *Corporations Act 2001 (Cth.)*

69. Dictionary, definition of *nominal insurer*

This clause omits the definition for *nominal insurer* from the Dictionary for the Act.

70. Dictionary, new definitions

This clause inserts new definitions for *official manager* and *receiver and manager* into the Dictionary for the Act.

Both definitions are taken directly from the dictionary in section 9 of the *Corporations Act 2001 (Cth.)*.

71. Dictionary, definition of *recognised auditor*

This clause substitutes the existing definition of *recognised auditor* in the Dictionary with a new definition.

A *recognised auditor* means that for the purposes of a certificate to be provided under the provisions of this Act, an auditor shall not be the employer, or the employee or an executive officer of the employer. The auditor shall not be an auditor employed or engaged by the DI fund.

72. Dictionary, definition of *rules*

This clause omits the existing definition of *rules* from the dictionary for the Act. This is a technical amendment removing the definition of *rules* as the meaning is already provided in the *Legislation Act 2001*.

73. Dictionary, definition of *weekly compensation*

This clause substitutes the existing definition of *weekly compensation* from the Dictionary for the Act with a signpost definition to section 36G created by clause 5 of this Bill.

74. Repeal of Workers Compensation Supplementation Fund Act 1980

This clause repeals the *Workers Compensation Supplementation Fund Act 1980* and instruments made under the Act.

Schedule 1 Further Amendments

[1.1] Section 8(3)(a) and (b)

This substitutes the existing paragraphs (a) and (b) of subsection 8(3) with new paragraphs as a consequence to amendments made by clauses 44 and 51 of this Bill.

[1.2] Section 30 to 32

This clause renumbers the existing sections 30 to 32 to new sections 31 to 33.

[1.3] Section 36(1), note

This note replaces the existing note to section 36 (1) and is consequential to an amendment made by clause 1.2 of this schedule.

[1.4] Section 144 (2)

This section substitutes the existing subsection 144 (2) with a new subsection to reflect an amendment to be made by clause 1.5 of this schedule.

[1.5] Sections 151 to 155

This clause renumbers the existing sections 151 to 155 to new sections 150 to 154.

[1.6] Section 159 (2) and (3)

This clause substitutes references to section 158 (2) in subsections 159 (2) and (3) with section 157 (2) to reflect an amendment to be made by clause 1.7 of this schedule.

[1.7] Section 159 (as amended)

This clause renumbers the existing section 159 to new section 158.

[1.8] Section 161 (5), definition of *relevant statutory declaration*

This clause replaces the existing subsection 161(5) with a new subsection as a consequence to renumbering amendments made by this Bill.

[1.9] Section 161

This clause renumbers the existing section 161 to new section 162.

[1.10] Section 162(1) and (2)

This clause substitutes the existing subsections 162 (1) and (2) with new subsections to reflect renumbering amendments made by this Bill.

[1.11] Section 162 (as amended)

This clause renumbers the existing section 162 to new section 163.

[1.12] Chapter 13

This clause renumbers the existing chapter 13 as chapter 12

[1.13] Sections 208 and 209

This clause renumbers the existing sections 208 and 209 to new sections 198 and 199 respectively.

[1.14] Chapter 14

This clause renumbers the existing chapter 14 to new chapter 13.

[1.15] Section 211

This clause renumbers the existing section 211 to new section 201.

[1.16] Section 212(1) and (2)

This clause substitutes the existing subsections 212 (1) and (2) with new subsections to reflect renumbering amendments made by this Bill.

[1.17] Sections 212 (as amended)

This clause renumbers the existing section 212 to new section 202.

[1.18] Sections 216 to 218

This clause renumbers the existing section 216 to 218 to new sections 207 to 209.

[1.19] Section 224 (3), definition of *insurer's market share*

This clause substitutes the existing definition of *insurers market share* with a revised definition as a consequence of amendments made to this Act.

[1.20] Dictionary, definition of *medical referee*

This clause substitutes the existing definition of *medical referee* with a revised definition as a consequence of an amendment made in this schedule.

[1.21] Dictionary, definition of *reviewable decision*

This clause substitutes the existing definition of *reviewable decision* with a revised definition as a consequence of an amendment made in this schedule.

[1.22] Dictionary, definition of *self-insurer*

This clause substitutes the existing definition of *self-insurer* with a revised definition as a consequence of an amendment made in this schedule.

Schedule 2 Consequential Amendments

This schedule inserts amendments to other ACT legislation and is consequential to the amendments in this Act.

Part 2.1 Occupational Health and Safety Act 1989

[2.1] Section 12(2) (f)

Substitutes the existing paragraph (f) of subsection 12 (2) of the *Occupational Health and Safety Act 1989* with a new paragraph to remove a reference to a former version of the Act.

[2.2] Dictionary, definition of *associated law*, paragraphs (f) and (g)

This clause changes the definition of associated law in the *Occupational Health and Safety Act 1989* to remove a reference to the Workers Compensation Supplementation Fund Act.

Part 2.2 Supreme Court Rules 1937

[2.3]. Order 26 rule 2(1)(b)

This clause replaces the nominal insurer with the DI fund manager in the Supreme Court Rule Order 26 rule (2)(1)(b) relating to the payment into court of a bond by the a defendant.

Part 2.3 Taxation Administration Act 1999

[2.4] Section 97(d)(iv)

This clause changes s97(d)(iv) of the *Taxation Administration Act* so that a Tax officer may disclose information to the DI fund manager rather than the Nominal Insurer.

Part 2.4 Workers Compensation Regulation 2002

[2.5] Section 5(2)

This clause substitutes the existing reference to section 216 of the Act in subsection 5 (2) of the Regulation with a new reference to section 206.

[2.6] Section 13

This clause substitutes the existing reference to section 216 in section 13 with a new reference to section 206.

[2.7] Section 35(1), note

This clause substitutes the existing note to subsection 35 (1) with a new note.

[2.8] Section 36(3)

This clause substitutes the existing reference to subsection 216 in section 36(3) with a new reference to section 206.

[2.9] Section 62 (3)

This clause substitutes the existing subsection 62 (3) with a new subsection.

[2.10] New section 62A

This clause inserts a new section 62A (Required information from employer in policy) which requires that certain information required of the employer be included in the insurance policy document issued to an employer. It also requires that a statement of the proportion of the premium for the policy that has been recovered for use by the DI fund be included in the policy. This will make employers aware of the costs created by employers who do not meet the workers compensation insurance requirements.

[2.11] Section 81(1)(a)(i)

This clause inserts the words “including DI fund” after the expression “section 112 (Compliance by insurers)” into paragraph (a)(i) of subsection 81 (1). The clause reflects the changes made to s112 of the Workers Compensation Act by amendments made by this Bill.

[2.12] Section 82(3)(e)

This clause replaces the existing reference to section 163 of the Act in subsection 82(3)(e) with section 164 of the Act.

[2.13] Section 83(1), note

This clause substitutes the existing note to subsection 83(1) with a new note.

[2.14] Section 86(1)(f)

This clause substitutes the existing reference to the nominal insurer in subsection 86(1)(f) with DI fund.

[2.15] Section 95(1), note

This clause substitutes the existing note to subsection 95(1) with a new note.

[2.16] Section 97

This clause deletes section 97. Section 97 of the Regulation prescribes the offences and fines suitable for enforcement by the On the spot fines provisions in Chapter 12 of the Act. Chapter 12 was deleted by clause 62 of this Bill.

[2.17] Section 98

This clause replaces the existing reference to section 208(1) of the Act in section 98 with section 198(1) of the Act.

[2.18] Section 99(3)

This clause substitutes the existing reference to the nominal insurer in subsection 99(3) with DI fund manager.

[2.19] Schedule 2

This clause deletes Schedule 2 which contains details of the prescribed offences and fines suitable for enforcement by the On the spot provisions in chapter 12 of the Act. Chapter 12 was deleted by clause 62 of this Bill.