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THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

Workers Compensation Amendment Regulations 2002 (No. 1)

Explanatory Statement
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AUSTRALIAN CAPITAL TERRITORY

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Subordinate Law No.

Explanatory Statement

Overview

These Regulations amend the *Workers Compensation Regulations 2002*.

The Regulations exclude work experience students from the meaning of 'worker' in Chapter three of the *Workers Compensation Act 1951*. The power to make this Regulation is provided by section 245 of the Act.

The Regulations re-make Regulations that cap workers compensation premiums for group trainers in the building and construction industry at 15% of total wages paid to trainees of the group trainer. These regulations were unintentionally omitted from the *Workers Compensation Regulations 2002* made in July 2002. The amending Regulations also include a number of minor and technical amendments. The power to make these regulations is found under section 223 of the *Workers Compensation Act 1951*.

Detail

Clause 1, Clause 2 and Clause 3
These are formal clauses. Clause 1 names the regulations as the *Workers Compensation Amendment Regulations 2002 (No. 1)*. Clause 2 notes when the regulations will commence and clause 3 notes that the regulations amend the *Workers Compensation Regulations 2002*.

Clause 4
Clause 4 substitutes existing regulation 7 with a new regulation 7. The new regulation more accurately expresses the function of the regulation, which is to enable internet sites and other electronic sources of information to be approved as clinically relevant research. New subregulations 7(3) and 7(4) allow the approval of information as in force from time to time. This will ensure that where information is approved that will be updated frequently, such as web sites, the information will not need to be re-notified under the *Legislation Act 2001* every time the information is updated. This will ensure that the provisions regarding clinically

relevant research can operate effectively in practice. Subregulation 7(4) identifies that particular sections of the *Legislation Act 2001* that would otherwise require the re-notification of the approved information when it is updated do not apply to regulation 7.

Clause 5
Clause 5 amends regulation 10 to make it clear that if the party requesting a specialist medical assessment proposes an earlier appointment than the two weeks notice required in regulation 10(3), the party being notified of the request may agree to the shorter time proposed.

Clause 5 does not negate the requesting person's obligation to provide a notice that complies with regulation 10(4).

Clause 6
Clause 6 provides for renumbering of the regulations when next republished under the provisions of the *Legislation Act 2001*.

Clause 7
Clause 7 amends regulation 45 to remove a reference to the scale of costs in the Supreme Court Rules for the purposes of conciliation under the Regulations. The conciliation process, set out in part 6 of the Regulations, is intended to be a cost-effective, alternative dispute resolution process to the Court.

It was therefore intended that the costs of conciliation would be less than those applying to formal Court hearings. However, following the repeal of the New South Wales *Workers Compensation (General) Regulations 1995*, which were originally to be referenced, the Supreme Court scale of costs was mistakenly identified as the appropriate scale.

Instead of using the Supreme Court scale, a scheduled of maximum costs for conciliation will be included in the conciliation protocol to be developed in accordance with regulation 47 (see notes on clause 9 below).

Clause 8
Clause 8 amends subregulation 46(3) by substituting a description of the regulation's expiry date with a specific expiry date of 1 July 2006. This is intended to simplify the regulations for ease of use.

Clause 9
Clause 9 amends regulation 47 to allow a schedule of costs and disbursements, including maximum amounts, to be included in the conciliation protocol. This amendment is necessary as the current reference to the Supreme Court scale of fees is to removed from regulation 45 (see notes on clause 7 above).

Clause 10
Clause 10 amends regulation 62 to make it clear that if the insurer informs the employer of the employer's obligations in the insurance policy itself, the insurer does not have to again tell

the employer of their obligations within 14 days after the policy is issued. However, if this information is not in the policy itself the insurer must tell the employer of their obligations within 14 days.

Clauses 11 and 12

Clause 11 amends subregulation 86(1)(k) to make it clear that employers who wish to apply to become self-insurers must use the current version of Australian Standard 4801 that exists at the time of their application to become a self-insurer. The former wording could have been construed to mean that employers could only use the version of AS 4810 that applied when the regulations were made on 1 July 2002.

Clause 12 amends subregulation 86(5) to clarify that sections of the *Legislation Act 2001* do not apply to Australian Standard 4801 (identified in regulation 86(1)(k)). The relevant Australian Standard details the occupational health and safety management system that an employer must have in place before they can be approved as a self-insurer. The standard is updated by Standards Australia from time to time, in consultation with industry and Governments. These amendments will ensure that an employer seeking to self-insure must comply with the most recent version of the Standard.

Clause 13

Clause 13 re-makes regulations made in September 2001 that were accidentally left out of the *Workers Compensation Regulations 2002* made on 1 July 2002.

Regulation 95A(1) is consistent with section 176 of the *Workers Compensation Act 1951*. The regulation sets the maximum workers' compensation premium for trainees employed by group trainers in the building and construction industry at 15% of the total wages paid to trainees by the group trainer.

Regulation 95A(2) defines 'trainee', 'building and construction industry', 'group trainer', 'registered provider' and 'training agreement'. The definitions are consistent with the ACT's vocational training scheme as set out by the *Vocational Education and Training Act 1995*.

Regulation 95A(3) identifies 11 September 2003 as the expiry date of regulation 95A.

Clause 14 and 15

Clause 14 introduces modifications to the *Workers Compensation Act 1951* in the form of a schedule. Clause 15 introduces Schedule 4, which addresses the status of work experience students under the *Workers Compensation Act 1951*.

Section 245 of the Act enables regulations to be made to modify the operation of Chapter 16 of the Act, Transitional, to address matters the Executive considers not already, or adequately, dealt with in Chapter 16.

The Schedule clarifies the *Workers Compensation Act 1951* to ensure that students in the workplace on work experience programs (however described) are not considered to be workers.

Prior to the *Workers Compensation Amendment Act 2001* (the Amendment Act) work experience students were not covered by the workers compensation scheme. The amendments made by the Amendment Act to ensure that individuals being trialled by employers before being employed were covered by the *Workers Compensation Act 1951* (section 14 of the Act) left the position of work experience students unclear.

Work experience students participating in work placements are covered by insurance arrangements entered into by the educational institution they attend. Because the educational institution bears the risk of injury to work experience students, employers are more willing to provide work experience opportunities to students than if the employers were required to provide workers compensation coverage for the students.

An amendment to section 14 of the Act to clarify the position of work experience students has been included in the Statute Law Amendment Bill 2002. It is expected that this Bill will be introduced later in the current sittings. However, given that work experience students were not intended to be covered by the Act and have not been covered in the past, to ensure that schools' work experience programs can continue in the meantime, this regulation is being made as a transitional measure pending passage of the Bill.