

**2011**

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

**WORKERS COMPENSATION AMENDMENT REGULATION 2011 (No 1)**

**SL2011-27**

**EXPLANATORY STATEMENT**

**Presented by  
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## **Workers Compensation Amendment Regulation 2011 (No 1)**

### **OUTLINE**

The *Workers Compensation Act 1951* (the Act) empowers the Minister to grant licences to Insurers (Approved Insurers) allowing them to offer compulsory workers' compensation insurance to the private sector workers' compensation scheme (the Scheme). Similarly, the Act gives the Minister power to exempt employers from the need to obtain and maintain a compulsory insurance policy. These employers are known as Self-Insurers.

The process of approval for Insurers and exemption for Self-Insurers is governed by the conditions set down in the Act, the Workers Compensation Regulation 2002 (the Regulation) and relevant subordinate instruments (the Regulatory Framework).

Once approved (or exempted) an Approved Insurer (or Self-Insurer) is required to maintain compliance with the conditions imposed upon its approval (or exemption) in addition to satisfying the broader obligations imposed by the Regulatory Framework in relation to policies of insurance, claims and injury management and dispute resolution.

Underpinning the approval (or exemption) process and the wider compliance framework imposed on Approved Insurers and Self-Insurers is the expectation that these entities will conduct their business in accordance with all of the requirements enshrined in the Regulatory Framework.

The Workers Compensation Amendment Regulation 2011 (No 1) (the 2011 Regulation) introduces amendments to the Regulation that are intended to:

- a) Provide clarity on the expectations that attach to Approved Insurers and Self-Insurers during the approval/exemption process and once licensed/exempted; and
- b) Ensure that mechanisms are available to Government to review the compliance of Approved Insurers and Self-Insurers with the Regulatory Framework.

## **Workers Compensation Amendment Regulation 2011 (No 1)**

### **Detail**

#### **Clause 1 — Name of Regulation**

This is a technical clause that names the Regulation. This Act is the *Workers Compensation Amendment Regulation 2011 (No 1)*.

#### **Clause 2 — Commencement**

This Act commences on the day following its notification.

#### **Clause 3 — Legislation amended**

This clause identifies the Regulation to be amended, namely the *Workers Compensation Regulation 2002*.

#### **Clause 4 — Section 68(1)(g), (h) and (i)**

Section 68 of the Regulation sets out the criteria that an application for approval to operate as an Approved Insurer must satisfy. Historically, subsections (g), (h) and (i) expressly referenced the financial soundness of the Approved Insurer and its ability to meet its obligations with respect to injury management programs and personal injury plans.

While these conditions apply specifically to the approval process, the full compliance environment that applies to the Approved Insurers is drawn from specific provisions focused on policies of insurance, injury and claims management and dispute resolution. In practical terms, these provisions are spread through the Act and are not directly referenced in relation to the approval process.

Clause 4 seeks to make expressly clear that the provision of a licence to an Insurer is conditional upon the Approved Insurer complying with all of the obligations and requirements imposed by the Regulatory Framework. In practical terms the clause draws together all of the obligations imposed on Approved Insurers under the Regulatory Framework and identifies compliance with this environment as a cornerstone of any licence granted.

The provision also ensures that Government has mechanisms available to confirm whether an Approved Insurer has complied with the commitments made during the application process and the requirements imposed over the life of its licence.

Under clause 4 an Approved Insurer's application for approval must give evidence to its agreement to participate in, and pay the costs of, an audit to determine its compliance with the financial obligations attached to its licence (a Financial Audit) and its compliance with the entire Regulatory Framework (a Compliance Audit).

#### **Clause 5 — Section 69(b)(ii) and 72(1)(c)**

This clause makes consequential amendments to align with the changes made by Clause 4, clarifying that the Government requires and will assess an Approved Insurers compliance with all of the obligations imposed by the Regulatory Framework not only those related to injury management programs and personal injury plans.

#### **Clause 6 — New section 73A**

New regulation 73A reflects the changes made to regulation 68 and the intended use of audits to assess an Approved Insurers compliance with its financial and non-financial conditions of approval.

#### **Clause 7 — Section 79(c)**

Section 79 of the Regulation empowers the Minister to impose further conditions on an Approved Insurers license. Consistent with the wording of Regulation 68, this section expressly references the financial solvency and soundness of an Approved Insurer in addition to its responsibilities in relation to injury management programs and personal injury plans.

Clause 7 introduces amendments which reflect the Government's intention to hold Approved Insurers expressly accountable to the full scope of obligations and responsibilities imposed by the Regulatory Framework. The clause removes the historical reference to injury management programs and personal injury plans, empowering the Minister to impose conditions on an Approved Insurers license in relation to its ability to meet any of its obligations under the Act.

#### **Clause 8 — Section 86(1)(h)**

Regulation 86 establishes the criteria that an employer must satisfy in seeking exemption from the requirement to obtain and maintain a compulsory insurance policy and recognition as a Self-Insurer.

Clause 8 amends regulation 86 in accordance with the amendments proposed to regulation 68, ensuring that Self-Insurers are subject to the same requirements as Approved Insurers in relation to compliance with the full Regulatory Framework.

#### **Clause 9 – Section 86(1)(l)**

Clause 9 introduces amendments consistent with the amendments proposed to regulation 68, ensuring that Self-Insurers are subject to the same requirement of compliance with the full Regulatory Framework.

#### **Clause 10 — New section 90A**

New regulation 90A reflects the changes made to regulation 86 and the intended use of audits to assess a Self-Insurers compliance with its financial and non-financial conditions of exemption.

#### **Clause 11 — New part 10A**

New Part 10A sets out the framework for Compliance and Financial Audits of Approved Insurers and Self-Insurers.

Regulation 95A makes clear that the Minister may, at any time, direct that a Compliance Audit be undertaken in relation to the performance of an Approved Insurer or Self-Insurer, including an Insurer seeking approval or an employer seeking exemption under the Act.

The audit must be undertaken by a compliance auditor (as defined in regulation 95C) and conducted in accordance with any protocol approved by the Minister. The provision also makes clear the onus on the party audited to comply with the requirements of the auditor and provide all information required in order to conduct the audit.

Regulation 95B makes clear that the Minister may, at any time, direct that a Financial Audit be undertaken to determine whether an Approved Insurer or Self-Insurer, including an

Insurer seeking approval or an employer seeking exemption under the Act, is financially and prudentially sound and able to meet its current and expected liabilities under the Act.

The audit must be undertaken by a Financial Auditor (as defined in regulation 95C) and conducted in accordance with any protocol approved by the Minister. The provision also makes clear the onus on the party audited to comply with the requirements of the auditor and provide all information required in order to conduct the audit.

Regulation 95C sets out the conditions on appointment of auditors – compliance and financial – which is within the scope of the Director-General’s powers. The provision makes clear that a Compliance or Financial Auditor must not be appointed for longer than three years.

#### **Clause 12 — Section 100(1)(d)**

Regulation 100(1)(d) authorises the Minister to approve protocols about any document (other than approved forms) mentioned in the Act that is used in relation to injury management or claims by injured workers.

Clause 12 amends the Minister’s power to approve a protocol under regulation 100(1)(d) to reflect the amendments to regulation 68 and 86. Specifically, clause 12 allows the Minister to approve protocols about **any** document (other than approved forms) mentioned in the Act.

#### **Clause 13 — Section 100A**

Regulation 100A sets out the basis on which the Minister may approve a protocol in relation to Approved Insurers.

Clause 13 re-numbers this provision as regulation 101 and amends:

- Previous regulation 100A(1) to reflect the changes made to regulations 68 and 86 and the express recognition that Approved Insurers and Self-Insurers are required to comply with the full Regulatory Framework; and
- Previous regulation 100A(2) to allow the Minister to approve protocols in relation to Compliance and Financial Audits.

#### **Clause 14 — Dictionary, note 3**

This clause updates the Dictionary contained in the Act to reflect new Part 10A and incorporate the definition of ‘auditor’ as set out in the Act.