2009

THE LEGISLATIVE ASSEMBLY FOR THE AUSTRALIAN CAPITAL TERRITORY

WORKERS COMPENSATION AMENDMENT BILL 2009

REVISED EXPLANATORY STATEMENT

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Workers Compensation Amendment Bill 2009

OUTLINE

Objectives of legislation

The purpose of the amending legislation is threefold, to:

- reduce red tape and administration costs and streamline business requirements associated with the ACT private sector workers' compensation scheme (the ACT Scheme);
- implement the National Framework for the Approval of Workplace Rehabilitation Providers (the Framework) developed by the National Heads of Workers' Compensation Authorities (HWCA); and
- strengthen the existing compliance framework by introducing new offences for sustained non-compliance that scale the penalties to be commensurate with an employer's operational size.

Drivers behind the amendments

The affordability of the Scheme and the lack of robust, tailored penalties for non-compliance has been a growing issue for private sector employers since the *Workers Compensation Act 1951* (WC Act) was amended in 2002.

The amending Act introduced in 2002 included a number of new elements to ensure that employers, insurers, treatment providers, and the injured worker were equally obliged to participate in personal injury plans, claims were dealt with expediently and statutory benefits were aligned with the Scheme's return to work goals.

However, the outcome of an independent review of the Scheme initiated by the ACT Government in late 2006 made clear that the objectives of the 2002 reform had not been fully achieved. Rather, the ACT had fallen behind the progress of other workers' compensation jurisdictions, which had made efforts to improve efficiency of their respective Schemes and reduce unnecessary administrative tasks associated with statutory workers' compensation.

The ACT's inability to align with the progress of its State and Territory counterparts has been compounded by the lack of reform to the Scheme since 2002.

How will the objectives be achieved?

Affordability - a reduction of red tape and associated administrative costs

The Bill refocuses rehabilitation services to ensure a more targeted and effective use of resources while simultaneously streamlining employer workers' compensation insurance policy reporting obligations to reduce costs.

Insurers will no longer be required to involve the services of an approved rehabilitation provider in the development of a personal injury plan for workers suffering a significant injury (i.e. those resulting in at least 7 days incapacity). Rather, the Bill requires that an appropriate rehabilitation provider is appointed in the event that the injured worker has been unable to return to work in their pre-injury hours and duties within 4 weeks from the date notice of the injury was provided.

This amendment injects a degree of transparency around the provision of rehabilitation services to injured Territory workers and ensures that the assistance of a third party is available if a claim is not progressing as expected.

Amendments to the WC Act in 2002 introduced the requirement for employers to provide statutory declarations and certificates from registered auditors in connection with the provision of estimated and actual wages information to insurers. The provision was designed to improve both compliance and the accuracy of wage declarations. In 2003 this requirement was relaxed and employers permitted to provide the necessary certificate from a recognised auditor, in recognition of the shortage of registered auditors in the ACT.

In practice however, this obligation has become a significant cost burden for Territory employers and prevents the timely provision of wage related information to insurers. This outcome is inconsistent with the compliance objectives underpinning the Scheme.

The Bill eliminates the requirement for employers to provide either a statutory declaration or a certificate from a recognised auditor in connection with the provision of wage related information to insurers. In place, the Bill requires employers to provide a statement setting out the relevant information, which is reinforced by the introduction of a new offence for the provision of false and misleading information within these statements.

This amendment gives effect to the Government's intention to reduce administrative barriers to compliance with the Scheme and improve the affordability of behaviour that upholds the purpose, intent and operation of WC Act.

Approved rehabilitation providers - the Framework

The HWCA have developed the Framework in accordance with their mandate to promote and implement best practices in workers' compensation arrangements in Australia and New Zealand in the areas of policy and legislative matters, regulation and scheme administration.

The Bill enshrines the Framework, which at its core establishes a system of mutual recognition in respect of rehabilitation service providers. Where a provider is approved in one workers' compensation jurisdiction (the home jurisdiction) all other workers' compensation authorities will recognise the provider's status and ensure any additional approval requirements are minimal. The Bill has no additional approval requirements for providers wanting to be approved for the ACT jurisdiction.

The Framework takes into consideration the variety of businesses operating as rehabilitation providers and provides an approval regime that applies regardless of entity size. Significantly, the Framework:

- develops an agreed and transparent national model of workplace rehabilitation, including uniform service definitions and expectations of providers designed to deliver high quality workplace rehabilitation services to workers, employers and insurers;
- provides a robust national approval system across the workers' compensation authorities; and
- reduces administrative costs and complexity for workplace rehabilitation providers, employers and insurers who operate across multiple jurisdictions.

Enhanced compliance framework

The Bill amends the compliance framework underpinning the WC Act to ensure that it operates in a robust and discriminating manner to improve the effectiveness and efficiency of the ACT Scheme. The Bill provides for the equitable application of compliance costs consistent with the principles of fair competition and economic growth.

The Bill enhances existing offences through the introduction of new civil penalties for non-insurance and under-insurance up to a maximum of double the avoided premium for the period of non-compliance (able to be applied retrospectively for up to five years). This 'avoided premium' provision will have the effect of scaling the penalty to be commensurate with size of the employer and disproving the perception that non-compliance is a cheaper alternative to the cost of complying with the WC Act.

In addition, the Bill creates a hierarchy of offences and penalties, which culminate in possible criminal prosecution and/or a cease business order that would operate until such time as the non-compliant employer establishes a workers' compensation policy with the correct declaration of wages as required by the WC Act.

The inclusion of a hierarchy of offences that escalate from strict liability to criminal prosecution is required in order to target those employers who demonstrate a pattern of persistent non-compliance with the WC Act while ensuring that appropriate penalties are available for unintended, 'one off' acts of non-compliance.

The inclusion of the cease business order within the revised hierarchy reinforces the nature of worker's compensation as an unavoidable and non-elective cost of doing business in the Territory. The protection of workers in the event of workplace injury is not optional.

The amendments reducing employer red tape are reinforced by the inclusion of new provisions creating:

- personal liability for executive officers for debt associated with penalties for non-insurance or under-insurance and prohibit the working directors of uninsured entities from claiming compensation from the DI Fund in the event of a workplace injury; and
- an offence for the provision of false and misleading information in connection with wage related statements to insurers.

Similar provisions exist in other jurisdictions, including NSW.

Finally, the amendments close the loop on employers who fail to discharge their statutory obligations by providing clarification on the broad definition of worker, thereby limiting the opportunity for premium avoiding and sham contracting.

Strict liability offences: human rights implications

The Bill includes strict liability offences in relation to sections 147A(2), 147(3) and 200A(3) of the WC Act. A strict liability offence under section 23 of the ACT *Criminal Code 2002* means that there are no fault elements for any of the physical elements of the offence. Essentially, this means that conduct alone is sufficient to make the defendant culpable. However, under the Criminal Code, all strict liability offences will have a specific defence of mistake of fact. Moreover, Clause 23(3) of the Criminal Code makes it clear that other defences may still be available for use in strict liability offences.

The offences incorporating strict liability elements have been carefully considered during the Bill's development. Strict liability offences in the Bill engage certain rights under the ACT *Human Rights Act 2004*. In particular, they engage the right to be presumed innocent (subsection 22(1)). Strict liability offences engage the right to be presumed innocent because the absence of a fault element generally places a burden upon the defendant to challenge the prosecution case, potentially creating a form of reverse onus.

However, the Human Rights Act does not prevent the legislature from enacting offences of strict liability by virtue of this engagement. This view has been supported by the ACT Court of Appeal in the case of *Hausmann v Shute* [2007] ACTCA 5 (5 April 2007). A study of international human rights jurisprudence also indicates that it is accepted that strict liability offences constructed in an appropriate way may still be compatible with human rights.[1]

Section 28 of the Human Rights Act provides that human rights may be subject to reasonable limits set by Territory laws that can be demonstrably justified in a free and democratic society. The process for establishing whether a limitation on a human right is justifiable is now well established. To satisfy the test set out in section 28, the limitation must fulfil a pressing and substantial social need, pursue a legitimate aim and be proportionate to the aims being pursued.

[1] European Court of Human Rights: *Salabiaku v France 10519/83* [1988] ECHR (7 October 1988); UK House of Lords: Sheldrake *v Director of Public Prosecutions & Attorney General's Reference (No 4 of 2002)* [2004] UKHL 43; Canadian Supreme Court: *R v Wholesale Travel Group Inc.* [1991] 3 S.C.R. 154.

The strict liability offences set out in the Bill arise in a regulatory context where, for reasons such as public safety, the public interest in ensuring that regulatory schemes are observed requires the sanction of criminal penalties. The objective of regulatory legislation is to protect the public and societal interests, moving away from the protection of individual interests, and aims to prevent future harm through the enforcement of minimum standards of conduct and care.

In particular, the strict liability offences have been crafted to address unlawful behaviour in circumstances where the defendant can reasonably be expected, because of the requirements of a regulatory framework to which they are subject, to know of their legal obligations under that regime.

The offence in section 147A(2) provides that an employer commits an offence where they fail to obtain a compulsory policy of insurance with an approved insurer, which mirrors existing section 147(1) of the WC Act. Section 147A(3) creates a second offence where an employer fails to comply with a default notice issued as a result of having committed an offence under section 147A(2).

The employer's conduct in both contexts is a suitable basis for a strict liability offence because the employer is in a regulatory framework which applies to the conduct of its business and is therefore fully aware of their obligation to comply with the requirement to obtain requisite workers' compensation insurance coverage for their employees. In employing workers the employer has chosen to participate in a regulated activity and in doing so, has placed themselves in a responsible relationship to their workers and the public generally and must accept the consequences of that responsibility. The imposition of strict liability offences in regulatory framework recognises the inherent risk to the health and safety of employees that are involved in operating an employer's business.

The inclusion of a second offence at 147A(3) within an escalating hierarchy of offences is a necessary and appropriate mechanism to discourage patterns of sustained non-compliance with the core obligations placed on employers under the WC Act.

The monetary penalty imposed by the three strict liability offences in the

Bill is 50 penalty units, the maximum amount that should be imposed for strict liability offences to ensure compliance with the Human Rights Act. The offences in sections 147A are key to protecting the public interest in ensuring that the ACT private sector workers' compensation regulatory scheme is observed. The prohibition of employment in the absence of appropriate workers' compensation coverage is crucial to ensuring that the regulatory scheme meets the following community expectations:

- promoting the cost of appropriate workers' compensation insurance coverage as an integral and non-elective cost of doing business in the Territory;
- ensuring that the cost of protecting workers in the event of an injury is born equitably across individual employers;
- preventing non-compliant employers from avoiding the consequences of their behaviour;
- preventing the continued use of business practices in relation to the engagement of workers that undermine the responsibilities and objectives of the WC Act.

In summary, it is considered that the strict liability offences in the Bill impose reasonable and proportionate limitations on the rights in the Human Rights Act. The offences are of a regulatory nature. The defence of mistake of fact is available to a defendant charged with a strict liability offence. The defence only imposes an evidential burden, as opposed to a legal or 'persuasive' burden, on the defendant: it is only incumbent on the defendant to present or point to evidence which suggests that there is a 'reasonable possibility' that they acted under a mistake of fact (see the Criminal Code, section 58(4) and (7)). If the defendant discharges the onus, the burden is then put back on the prosecution to disprove beyond reasonable doubt that the defendant did act under a mistake of fact (see the Criminal Code, section 56(2)). The use of strict liability offences will substantially assist in protecting the efficiency and integrity of the regulatory regime under the Bill.

Administrative arrangements

The legislation will have a direct impact on business procedures for insurers, employer and rehabilitation service providers. To allow for these Scheme participants

to update their internal procedures and published documentation the legislation will have a staggered implementation with the provisions relating to the definition of worker, total wages and rehabilitation to commence on 1 July 2010.

All other positions commence the day after notification of the Act.

Workers Compensation Amendment Bill 2009

Detail

Clause 1 — Name of Act

This is a technical clause that names the Act. This Act is the *Workers Compensation Amendment Act 2009*.

Clause 2 — Commencement

This Act commences as follows:

- Clause 4, 5, 9, 50 and 51 on 1 July 2010;
- The remaining provisions commence on the day after this Act's notification day.

Clause 3 — Legislation amended

This clause identifies the Act to be amended, namely the *Workers Compensation Act 1951*.

Clause 4 — New section 7A: Meaning of *total wages*

This section clarifies that for the purposes of the Act, wages for the purposes of premium calculations will be calculated in a manner prescribed by the regulations.

Clause 5 — Section 8(1): Who is a worker?

This section provides clarification around the core definition of a 'worker' contained in s 8 of the WC Act to address ongoing industry uncertainty surrounding individuals who supply labour or substantially labour only services, including those with an Australian Business Number (ABN).

Clause 5 introduces additional language around the basic definition of worker, which adopts the 'results' test underpinning current workers' compensation related legislation in Queensland and relevant common law principles. The amendment makes expressly clear that if the intent underlying section 9-19 is applied correctly, an individual who provides labour only or substantially labour only services is a worker for workers' compensation purposes even where that individual has an ABN or business name.

In practice, whether an individual is a worker will depend on the application of ss 8-19 to the specific facts of the matter.

Clause 6 — Section 97(2): Personal injury plan for worker with significant injury

The WC Act currently requires insurers to engage the services of an approved rehabilitation provider in developing a personal injury plan (PIP) for a worker who has suffered a *significant injury*, being an injury that has resulted in 7 or more days of incapacity for work.

The involvement of a rehabilitation provider in the development of the PIP has created unnecessary costs for insurers and led to a process-based approach to a

rehabilitation management which detracts from value and importance of outcomes focused claim management.

This clause will be amended to remove the requirement that an approved rehabilitation provider be involved in the development of the PIP.

Clause 7 — New section 99A: Appointment of approved rehabilitation provider under personal injury plan

New s 99A requires external rehabilitation service providers to be appointed to assist with a claim in the event that an injured worker has not returned to work in their pre-injury duties and hours within 4 weeks post notification of the injury. The level of involvement of the rehabilitation provider in a claim will depend upon the individual facts and circumstances of each case.

The intent underlying the provision is to ensure that assistance is provided in the event a claim is not progressing as expected and to ensure that rehabilitation services are obtained at a time when they are most capable of producing enduring return to work outcomes. That is, after an injury has moved beyond the acute stage and the injured worker has some real capacity for rehabilitation as opposed to recovery.

The amendment also encourages insurers to engage in proactive and innovative self-managed return to work processes with a view to assisting injured workers return to their pre-injury hours and duties within the 4-week post injury notification period.

Clause 8 — Section 102(4): Nomination of doctor for personal injury plan

Efficient, effective and timely management of workers' compensation claims involves co-ordinated action from a number of stakeholders – the injured worker, treating doctors, specialists, claim managers, employers, rehabilitation providers etc.

This clause amends s 102(4) to account for the reality of an efficient and robust claims management approach. Practically, it clarifies that a worker's nominated treating Doctor is to provide information to specified third parties for the purposes of management of the worker's rehabilitation and general claim.

Clause 9 – New section 139(4): Meaning of *approved rehabilitation provider* etc.

This section will allow the Framework, as updated from time to time, to apply to the approval and operation of rehabilitation providers in the Scheme under the Regulations.

Clause 10 — Section 144(2): Meaning of *compulsory insurance policy*

This clause amends subsection 144(2) to reflect the amendments made to s 147 below. Subsection 144(2) now appropriately refers to s 147A(7).

Clause 11 — Section 147: Compulsory insurance

The compliance framework underpinning the WC Act is premised on the requirement that all employers have a compulsory insurance policy with an approved insurer. Failure to satisfy this requirement strikes at the core of the Scheme - it unfairly exposes those employers who meet their workers' compensation duties to increased costs.

New s147 and 147A set out revised offences and penalties for failure to have a compulsory insurance policy by introducing a hierarchy that culminates in criminal

prosecution and/or the making of a cease business order requiring the non-compliant employer to cease operations until such time as a workers' compensation policy is in place. Employers who fail to obtain a compulsory insurance policy will be issued a default notice and face upfront fines. Sustained failure to obtain a compulsory insurance policy will result in additional default notices, increased fines, criminal prosecution and/or an order prohibiting the ongoing operations of that business in the Territory until such time as a compulsory insurance policy is obtained.

This hierarchy allows the ACT Government to take appropriate action against an employer that continues to show deliberate disregard for their workers' compensation obligations. Importantly, the hierarchy scales penalties available to be commensurate with the nature of the non-compliance and reinforces the principle that workers' compensation insurance is an unavoidable and non-elective cost of doing business in this community.

Section 147B requires employers who have received a default notice for failing to maintain a compulsory insurance policy to pay a deposit premium to the insurer with whom they ultimately obtain a policy. This requirement ensures a tangible financial outlay is required from the previously non-compliant employer when the policy is obtained.

Clause 12 — Section 149: Failure to maintain compulsory insurance policy—executive entitled to recovery amount

As a corollary to the amendments made to s 147, clause 12 introduces a new civil penalty for failure to hold a compulsory insurance policy. This penalty operates concurrently with the default notice regime set out at s 147 and 147A, allowing the Chief Executive to pursue non-compliance under either or both provisions simultaneously.

Under s 149 the Chief Executive is to impose a penalty equal to double the amount of the premium that would have been payable to an improved insurer if an employer had maintained a compulsory insurance policy for the period that the employer was uninsured (the double avoided premium).

To facilitate timely imposition of this penalty, the double avoided premium is calculated based on the wages paid by the employer during the relevant period and the average premium rate payable for that time. In practice, the average premium rate used in this calculation may be different than the premium which an employer may have been able to obtain through private negotiations with a particular insurer. In imposing a penalty, the Chief Executive is not obliged to undertake any such negotiations.

The Chief Executive has the discretion to reduce the penalty payable under this section having regard to the factors listed in ss 149(4). Whether the penalty payable under this section is reduced will depend upon the application of these factors to the specific circumstances of each individual case.

The Chief Executive's decision as to the amount recoverable under s 149 is an internally reviewable decision in accordance with the procedures sit down in Chapter 12 of the WC Act.

This section provides the Government with a further mechanism with which to pursue employers that have made deliberate choices to evade their workers' compensation obligations.

Clause 13 — Subsection 151(1): Self-insurers

This clause updates ss 151(1) to reflect amendments made to s 147.

Clause 14 — Subsection 152(1): Compulsory insurance – insurers

This clause updates ss 152(1) to reflect amendments made to s 147.

Clause 15 — Subsection 152(2): Compulsory insurance – insurers

This clause updates ss 152(1) to reflect amendments made to s 147.

Clause 16 — Subsections 155(2) and 155(3): Information for insurers on application for issue or renewal of policies.

Territory businesses indicate that the current requirement to provide a statutory declaration in connection with the application for issue and renewal of a compulsory insurance policy prevents the timely provision of wages related information to insurers and adds unnecessary costs.

These clauses remove the need for employers to provide a statutory declaration with their application for issue or renewal of a policy. Instead employers are obliged to provide a statement of wages from an appropriately authorised officer of the business, which will attract new penalties where that statement contains false or misleading information.

This clause gives effect to the Government's intentions to create an affordable system of workers' compensation for employers by streamlining business practices to reflect standard corporate governance models and removing unnecessary administrative costs. Importantly, the amendment will bring the ACT into line with other Australian workers' compensation jurisdictions that have made efforts to reduce the administration and unnecessary tasks associated with statutory workers' compensation over several years.

Clause 17 — Section 155(6) note

This section will be omitted.

Clause 18 — Subsections 156 (2) and (3): Information for insurers after renewal of policies

Consistent with s 155 this clause amends ss 156(2) and (3) to reflect retirement of the requirement for employers to provide a certificate from a recognised auditor to their insurer after renewal of a compulsory insurance policy.

Clause 19 — Section 156(3) note

This clause will be omitted.

Clause 20 — New section 156(3A)

This clause supports the amendments to ss 156(2) and 156(3) by creating s 156(3A), which sets out who is authorised to sign a statement made under that section.

Clause 21 — Section 157(2): Information for insurers after end or cancellation of policies.

Consistent with s 155, this clause amends ss 157(2) to reflect retirement of the requirement for employers to provide a certificate from a recognised auditor to their insurer after renewal of a compulsory insurance policy.

Clause 22 — Section 157(2) note

This clause will be omitted.

Clause 23 — New section 157(2A)

This clause supports the amendments to ss 157(2) by creating s 157(2A), which sets out who is authorised to sign a statement made under that section.

Clause 24 — Section 158 (2) and (3): Information for new insurers after change of insurers

Consistent with s 155 this clause amends ss 158(2) and 158(3) to reflect retirement of the requirement for employers to provide a certificate from a recognised auditor to a new insurer.

Clause 25 — Section 159 (1): Six-monthly information for insurers

Consistent with s 155 this clause amends ss 159(1) to reflect retirement of the requirement for employers to provide a statutory declaration in connection with the provision of six-monthly information to insurers.

Clause 26 — Section 159(1) note

This clause will be omitted.

Clause 27 — New section 159 (2A)

This clause supports the amendments to ss 159(1) by creating s 159(2A), which sets out who is authorised to sign a statement made under that section.

Clause 28 — Section 162 and new section 162A and 162B: False information

Clause 28 amends s 162 to ensure the compliance framework underpinning the WC Act is adapted to reflect the change in reporting obligations under ss 155 - 159. The reduction in red tape and administrative costs under these provisions must be counterbalanced by robust offences and penalties directed towards safeguarding the accuracy of the information provided to insurers.

Section 162 creates a criminal offence in respect of employers who knowingly provide false or misleading information to insurers for the purposes of section 155 - 159.

Employers will commit an offence under s 162A if the amount of wages paid in a particular period is at least 10% more than the amount set out in a statement provided under ss 156 and 157. In such cases the Chief Executive will be obliged to determine

the amount of the avoided premium for each period of insurance to which the statement applies. Having done so, the Chief Executive will then determine whether to impose an amount equal to double the avoided premium or a lesser amount having regard to the factors enumerated in ss 162A(3)(b). These factors and the process by which the avoided premium will be calculated are consistent with the provisions made by the amended s 149.

As with s 149, the Chief Executive's decision under s 162A(3) is internally reviewable accordance with Chapter 12 of the WC Act.

Finally, this clause introduces s 162B which closes the loop on payment of a penalty imposed under s 162A. Where an employer has committed an offence under section 162A and a judgment has been entered against the employer for the amount determined under section 162A, the Chief Executive may seek a cease business order against the employer. That order would prevent the employer from operating their business until the judgment awarded under section 162A has been fully paid.

This mechanism makes clear the Government’s intentions that the cost of maintaining appropriate workers’ compensation insurance is seen as an integral and unavoidable cost of doing business in the Territory.

Clause 29 — Section 163 (1), new dot point: Employment after 2nd offence

This clause amends s 163(1) to reflect amendments made to s 147.

Clause 30 — Section 166A(2), new note

This clause amends s 166A(2) to reflect amendments made to s 170, which preclude a director of an uninsured business from seeking access to the Default Insurance Fund in the event of that he or she suffers a work-related injury.

Clause 31 — Section 166A(4), new note

This clause amends s 166A(2) to reflect amendments made to s 170, which preclude a director of an uninsured business from seeking access to the Default Insurance Fund in the event of that he or she suffers a work-related injury.

Clause 32 — Section 170(2): Who may make a claim for payment

The Default Insurance Fund (the DI Fund) is the insurer of last resort for injured workers of uninsured employers. The purpose of the Uninsured Employer arm of the DI Fund is to provide safety net protection for injured workers against the consequences of unscrupulous business practices that fall short of the obligations imposed by the WC Act.

In these cases, the full cost of the employer's failure to satisfy their obligations under the WC Act is born by compliant Territory employers - those businesses whose contributions fund the continued operations of the Uninsured Arm of the DI Fund.

It is unacceptable to expose ACT employers who comply with the WC Act to this cost where the injured worker is a director of the uninsured employer.

Clause 33 — Section 190(1): Provision of information to inspectors

Under the present WC Act employers have 28 days to provide inspectors with information sought pursuant to a notice issued under section 190(1). That timeframe commences from the date the notice has been received by the employer.

In practice, this timeframe frustrates the efficient and effective operations of the workers' compensation inspectors in ensuring that all relevant employers have a compulsory insurance policy in place and are otherwise meeting their worker's compensation obligations.

This clause amends section 190 to reduce the timeframe in which an employer must provide information requested pursuant to a notice issued by an inspector from 28 to 3 days. The truncated timeframe recognises the fact that the information sought by inspectors is of a standard business nature and should be readily accessible to all employers.

Clause 34 — Section 190(1)(a)

This clause amends ss 190(1)(a) to reflect retirement of the requirement for employers to provide a certificate from a recognised auditor in connection with the provision of information pursuant to a notice issued under that section.

Clause 35 — Section 190(1)(b)

This clause amends ss 190(1)(b) to reflect retirement of the requirement for employers to provide a statutory declaration in connection with the provision of information pursuant to a notice issued under that section.

Clause 36 — Section 190(2)

This clause amends s 190(2) consistent with the changes to s 190(1), reducing the timeframe for provision of information requested in a notice under s 190(2) from an inspector to 3 days from receipt of the notice.

Clause 37 — Section 190(3) Note

This clause will be omitted.

Clause 38 — New section 190(3A)

This clause supports the amendments to ss 190(1)(a) and 190(1)(b) by creating s 190(3A), which sets out the class of persons who are authorised to sign a statement made by an employer under that section.

Clause 39 — New section 190(5): new definitions

This clause provides guidance on the kinds of information that falls within the meaning of 'relevant information' for the purposes of a notice issued under s 190. The definition is not exclusive or exhaustive and the information required by an inspector in the discharge of their functions under the WC Act may vary from case to case.

Clause 40 — Chapter 12

The amendments made to ss 149 and 162 oblige the Chief Executive to determine the value of the double avoided premium in each case and, having done so, determine what proportion of that amount will be recovered. This decision is an internally

reviewable decision. Chapter 12 has been amended to establish the necessary review framework to underpin these decisions.

Clause 41 — New section 200A: Record keeping

This clause amends s 200A to provide clarity around the nature of the information that an employer is required to keep for the purposes of the WC Act. It also reflects the changes made to the timing of the provision of information to inspectors, reducing this timeframe to 3 days for the purposes of s 200A.

Clause 42 — New section 201A: Civil Liability of executive officers

New section 201A is the final amendment to the core compliance framework underpinning the WC Act. This clause of introduces personal accountability for culpable executive offices in respect of recovery of penalties under s 149 (failure to maintain a policy) and s 162A (avoiding payment premium).

Executive officers will, in specified circumstances, face personal liability for satisfaction of debt arising under these provisions and ensure that the corporate veil is not utilised to improperly avoid the consequences of disregarding the requirements of the WC Act. This offence will mean that culpable executive officers may be held liable for penalties arising under s 149 or 162A if the corporation is unlikely or unable to pay the debt.

This provision is intended to provide the Government with a mechanism to attach the consequences of non-compliance with the Scheme's requirements to culpable executive offices that operate behind the guise of non-compliant corporations which avoid payment of fines under the WC Act through dissolution and reopen under a new business name.

Clause 43 — Section 203(6): definition of defined provision, new paragraph (a)(xi)

This clause amends s 203(6) to reflect the changes made to s 162.

Clause 44 — Schedule 3, section 3.4 (1) (b): Membership of committee

Schedule 3 of the *Workers Compensation Act 1951* establishes the DI Fund Advisory Committee (the Committee), which has statutory responsibility for monitoring the operations of the DI Fund and providing advice as requested to the Minister or Fund Manager on the same.

Owing to the nature of its statutory responsibilities it is essential that the Committee operate in an open and transparent manner free from any conflict of interest or the appearance of it. This requires that the Committee comprise individuals who do not have any other personal or professional interests that are, or have the potential to be, in conflict or competition with their duties to the Committee.

Currently, s 3.4 requires that the Committee consist of:

- the Fund Manager;
- the Fund actuary;
- 2 members nominated by a group that the Minister is satisfied represents employer interests;

- 2 members nominated by a group that the Minister is satisfied represents employee interests; and
- 2 members nominated by a majority of approved insurers.

The composition of the Committee is intended to be representative of the key workers' compensation stakeholders - injured workers, employers, insurers and the Government.

The DI Fund is administered by the ACT Insurance Authority (ACTIA) on behalf of the Chief Minister's Department (CMD). CMD remains responsible for strategic oversight of its functions and implementation of appropriate legislative and policy reform.

In order to properly discharge its responsibility for strategic oversight of the DI Fund within the overall statutory scheme for private sector workers' compensation and ensure that it is managed consistently with the policy objectives underpinning its creation, it is necessary for the CMD to have representation on the Committee.

Clause 44 replaces the role of the DI Fund actuary with the Chief Executive of CMD (or delegate).

Clause 45 — Schedule 3, section 3.7

This clause amends s 3.7 to reflect the amendments made to s 3.4(1)(b) and appoints the Chief Executive of CMD (or delegate) as the chair of the Committee.

Clause 46 — Dictionary, new definitions

This clause amends the dictionary to reflect the introduction of s 198 – 199E within chapter 12.

Clause 47 — Dictionary, definitions

This clause amends the dictionary to account for amendments made to the body of the WC Act.

Clause 48 — Dictionary, new definition of *total wages*

This clause amends the dictionary to reflect the introduction of new s 7A as the stand alone definition of total wages.

Clause 49 — Legislation amended—pt 3

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

Clause 50 — New section 8A: Calculation of total wages—Act, dictionary, definition of *total wages*

This clause supports the introduction of a stand alone definition of total wages in new s 7A of the Act and prescribes the *ACT Wages and Earnings Guide* as the applicable guide for working out total wages for the purposes of premium calculations under the WC Act.

Clause 51 — Part 5: Rehabilitation providers

This clause amends Part 5 of the Regulations to reflect the introduction and adoption of the Framework.

Clause 52 — Sections 98 and 98A (Regulation)

This clause amends ss 98 and 98A of the Regulation to support the amendments made to Chapter 12 of the WC Act and prescribes reviewable and internally reviewable decisions for the purposes of those provisions.

Clause 53 — Schedule 3: reviewable decisions

This clause amends Schedule 3 of the Regulations to support the amendments made to Chapter 12 of the WC Act and ss 98 and 98A of the Regulations.

Clause 54 — Legislation amended, Pt 4 (Taxation Administration Act 1999)

This clause identifies the Act to be amended, namely the *Taxation Administration Act 1999*.

Clause 55 — Section 97(d)(iv): Other permitted disclosures

This clause restores previous information sharing mechanisms that existed between the ACT Revenue Office and the Chief Executive for the purposes of the operation of the WC Act.