

2018

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

PUBLIC SECTOR WORKERS' COMPENSATION FUND BILL 2018

EXPLANATORY STATEMENT

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PUBLIC SECTOR WORKERS COMPENSATION FUND BILL 2018

OUTLINE

The object of this Bill is to ensure that appropriations and moneys held for the management of the ACT's Public Sector workers' compensation liabilities are dedicated to meeting the ongoing expenses and liabilities of ACT public sector workers' compensation claims.

The Bill provides for:

- the establishment of the Public Sector Workers Compensation (PSWC) fund;
- the establishment of the PSWC fund directorate;
- the establishment of PSWC fund banking account(s);
- the quarantining of funds held in the account(s) by restricting expenditure from the account(s);
- PSWC appropriations and investments; and
- the appointment of a PSWC commissioner to manage and administer the fund.

The Bill restricts payments from the fund to:

- expenditure in connection with the management of the PSWC liabilities of the Territory; or
- for the investment of assets held against the account.

This will allow for expenditures to cover such things as:

- payments to meet the workers' compensation liabilities of the Territory in relation to public sector workers' compensation claims;
- costs and expenses incurred in the management of workers' compensation claims;
- remuneration, allowances, office accommodation and similar costs of the PSWC commissioner in exercising the performance of functions under this Act; and
- investments.

The PSWC fund will be established as a separate reporting entity under the *Financial Management Act 1996* (FMA). This will apply the reporting requirements under that Act to the PSWC fund.

HUMAN RIGHTS CONSIDERATIONS

The Bill is considered not to engage the *Human Rights Act 2004*.

Public Sector Workers Compensation Fund Bill 2018

Part 1 Preliminary

Clause 1 Name of Act

This clause cites the Name of the Act as the *Public Sector Workers Compensation Fund Act 2018*.

Clause 2 Commencement

This clause provides for the Act to commence on a day fixed by the Minister by written notice. If the Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period. The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

Clause 3 Dictionary

This clause refers to the Dictionary of definitions which defines certain words and expressions used in this Act including signpost definitions to other terms defined elsewhere in the Act.

Clause 4 Notes

This clause states that notes within the Act do not form part of the Act.

Clause 5 Offences against Act-application of Criminal Code etc

This clause states that other legislation applies in relation to offences under the Act, for example the *Criminal Code 2002* and the *Legislation Act 2001*.

Clause 6 Object

This clause states that the object of the Act is to establish financial and prudential governance in relation to the Territory's obligations as a self-insured licensee under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth) (SRC Act).

Part 2 Public Sector Workers' Compensation Fund

Clause 7 Public Sector Workers' Compensation Fund

This clause establishes the Public Sector Workers' Compensation Fund (the PSWC fund).

Clause 8 PSWC fund directorate

This clause requires the establishment of a directorate as part of an administrative unit for the purposes of maintaining the PSWC fund.

Clause 9 PSWC fund banking accounts

This clause requires the Director-General of the administrative unit responsible for maintaining the PSWC fund to open and keep at least one banking account for the management of the PSWC fund.

Clause 10 Payment of public sector workers' compensation appropriations

This clause provides that money appropriated by a public sector workers' compensation appropriation must be paid into a PSWC fund banking account. It does not prohibit interest or employer contributions being received from other sources.

Clause 11 Appropriation of certain amounts for PSWC fund

This clause provides that the following amounts are appropriated for the purposes of the PSWC fund:

- a) an amount received from the Commonwealth or Comcare in relation to a licence granted to the Territory under the SRC Act;
- b) an amount held by the Australian Capital Territory Insurance Authority in relation to public sector workers' compensation liabilities;
- c) premium amounts;
- d) the interest earned on money held;
- e) money required to be paid into the fund under this Act or any other Act;
- f) all other money received by the PSWC commissioner for payment into the PSWC fund.

Clause 12 Payments from PSWC fund banking accounts

This clause defines the purposes for which money may be paid from the PSWC fund banking account.

Clause 13 Closure of banking accounts

This clause requires that amounts in the PSWC fund be kept in a PSWC fund. This is essential to quarantine the PSWC fund from public monies paid into the Territory banking account under the FMA.

Clause 14 Investment of amounts in PSWC fund banking accounts

This clause provides for the investment of amounts in PSWC fund banking accounts.

Subsection (1) states that funds not immediately needed to meet the payments from the PSWC fund may be invested.

Subsection (2) provides that there may be transfers between the Territory banking account and PSWC fund banking accounts to facilitate investment without need for appropriation.

Subsection (3) provides that any interest received by the Territory for investment of amounts from a PSWC fund banking account can only be paid into a PSWC fund banking

account. This subsection does not prohibit the re-investment of interest or the retention of a management fee by external funds managers.

Subsection (4) allows for the deduction of investment management fees from the interest received by the Territory where the investment is made or managed by another directorate.

Subsection (5) requires that a fee charged by a directorate under subsection (4) must not be more than the costs and expenses incurred by that directorate in making or managing the investment.

Subsection (6) allows for interest to be paid into a PSWC fund banking account directly from an external funds manager or through the Territory banking account.

Clause 15 Interest on amounts appropriated for PSWC fund

This clause relates to the interest earned on PSWC moneys.

Subsection (1) states that a public sector workers compensation appropriation is taken to be both the amount stated in the appropriation and any interest received on the investment of the amount.

Subsection (2) requires that interest earnings can only be paid out for the same purposes as a public sector workers compensation appropriation.

Subsection (3) allows for the deductions of management fees from the interest received by the Territory where the investment is made or managed by another directorate.

Subsection (4) requires that a fee charged by a directorate under subsection (3) must not be more than the costs and expenses incurred by that directorate in making or managing the investment.

Clause 16 Determination of amounts to be contributed to PSWC fund

This clause provides that before the beginning of each financial year, or any other period determined by the PSWC commissioner (the contribution period), the PSWC commissioner must determine, in writing, the amount needed to be paid by the Territory into the PSWC fund in the contribution period (the premium amount) to:

- a) fully fund the present and likely future liabilities of the Territory under the SRC Act in relation to a particular injury, loss or damage suffered by, or in relation to the death of, some or all of its employees under the SRC Act during the contribution period; and
- b) meet the payments needed to be made from the PSWC fund (other than under the SRC Act) during the contribution period; and
- c) provide for any other matters the PSWC commissioner should, in all the circumstances, prudently make provision for in relation to liabilities of the Territory under the SRC Act.

The premium amount must be an amount that the PSWC commissioner reasonably believes will result in an acceptable funding ratio for the PSWC fund consistent with the guidelines.

In determining the premium amount, the PSWC commissioner must take into account actuarial advice for the contribution period.

Clause 17 PSWC fund management guidelines

This clause provides for the making of guidelines in relation to:

- the investment of amounts in PSWC fund banking accounts;
- the acceptable funding ratio for the fund and the period of time in which the fund must return to an acceptable funding ratio if the fund is in deficit;
- how the PSWC Commissioner must determine the premium amount;
- how premium amounts must be paid to the fund;
- reporting requirements; and
- financial and governance requirements that must be met by any contracted claims manager.

This section also states that a guideline is a notifiable instrument for the purposes of the Legislation Act.

Part 3 Administration

Clause 18 Appointment of PSWC commissioner

This clause allows for the Public Sector Workers Compensation Commissioner of the Australian Capital Territory (the PSWC commissioner) to be appointed. The commissioner is to be a public servant appoint by the Minister responsible for the Act, for a term not longer than three years.

Clause 19 Functions of PSWC commissioner

This clause sets out the functions of the PSWC commissioner. These are:

- a) managing the PSWC fund;
- b) advising the Minister about the administration, efficiency and effectiveness of the PSWC fund;
- c) in relation to a licence granted to the Territory under the SRC Act, section 103 – managing:
 - i. the Territory's liability under the SRC Act; and
 - ii. claims under the SRC Act.
- d) any other function given to the PSWC commissioner under this Act or another Territory law.

Clause 20 Delegation by PSWC commissioner

This clause authorises the PSWC commissioner to delegate, or subdelegate, its functions under the Act to authorised persons. An authorised person is a public employee for the purposes of the Legislation Act or a person prescribed by regulation.

Clause 21 Arrangements for staff

This clause allows the PSWC commissioner to arrange with the head of service to use the services of a public servant or Territory facilities.

Clause 22 Power to engage consultants and contractors including claims manager

This clause authorises the PSWC commissioner to engage consultants and contractors, including a third-party claims manager.

Subsection (1) states that the PSWC commissioner may engage the consultants and contractors that may be necessary or convenient to exercise the PSWC commissioner's functions.

Subsection (2) states that, without limiting subsection (1), the PSWC commissioner may engage an entity (a claims manager) to manage injuries in relation to which claims may be, or have been, made against the Territory under the SRC Act.

Subsection (3) provides that the PSWC commissioner must not engage a third-party claims manager unless satisfied that it has the experience and expertise necessary to exercise the functions of a claims manager.

Subsection (4) states that the conditions of a consultant's or contractor's engagement are the conditions agreed between the PSWC commissioner and the consultant or contractor.

Subsection (5) provides that, to remove any doubt, this section does not give the PSWC commissioner the power to enter into a contract of employment.

Clause 23 Claims manager's functions

This clause sets out the functions of a third-party claims manager.

Subsection (1) states that this section applies if the PSWC commissioner engages a claims manager.

Subsection (2) sets out that in managing claims, including individual claims, a claims manager may:

- a) investigate claims
- b) assess the Territory's liability in relation to claims under the SRC Act, including initial liability and ongoing liability;
- c) calculate benefits and authorise payments under the SRC Act;
- d) pay an amount in relation to a provisional liability medical cost;
- e) pay an amount in relation to a claim;
- f) manage claims data;
- g) manage disputes in relation to claims made against the Territory under the SRC Act;
- h) perform other functions prescribed by regulation.

Subsection (3) states that a claims manager may also exercise any other function given to the claims manager under this Act or any other territory law.

Clause 24 Establishment of PSWC fund advisory committee

This clause establishes the PSWC fund advisory committee.

Clause 25 Functions of advisory committee

This clause sets out the functions of the advisory committee.

Clause 26 Membership of advisory committee

This clause sets out the membership of the advisory committee.

Subsection (1) states that the advisory committee consists of:

- a) the PSWC commissioner; and
- b) three members appointed by the Minister to represent the interests of workers; and
- c) two members appointed by the Minister to represent the interests of public sector bodies and Territory instrumentalities.

Subsection (2) sets out that an appointment to the advisory committee (under subsection (1)) must not be for longer than three years.

Clause 27 Quorum for advisory committee meetings

This clause sets out the quorum for advisory committee meetings. Business may be carried on at an advisory committee meeting only if the members present include:

- a) the PSWC commissioner; and
- b) 1 member appointed by the Minister to represent the interests of workers; and
- c) 1 member appointed by the Minister to represent the interests of public sector bodies and territory instrumentalities; and
- d) at least 1 other member appointed by the Minister either, to represent the interests of workers, or, to represent the interests of public sector bodies and territory instrumentalities.

Clause 28 Use and disclosure of protected information

This clause deals with the use and disclosure of protected information.

Subsection (1) states that an information holder commits an offence if the information holder uses information, and the information is protected information about someone else, and the information holder is reckless about whether the information is protected information about someone else. The maximum penalty is 50 penalty units, imprisonment for six months or both.

Subsection (2) states that an information holder commits an offence if the information holder does something that discloses information; and the information is protected information about someone else; and the information holder is reckless about whether the information is protected information about someone else and doing the thing would result in the information being disclosed to someone else. The maximum penalty is 50 penalty units, imprisonment for six months or both.

Subsection (3) states that subsections (1) and (2) do not apply if the information holder uses or discloses protected information about someone else (the protected person): under this Act or another law applying in the ACT; or in relation to the exercise of a function, as an information holder, under this Act or another law applying in the ACT; or in a court proceeding; or with the protected person's consent.

Subsection (4) states that an information holder need not disclose protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the ACT.

Subsection (5) defines certain terms for the purposes of this section.

Clause 29 Protection from liability

This clause deals with liability of the Commissioner. Specifically, it states the circumstances in which the Commissioner is not civilly liable and attaches liability instead to the Territory.

Clause 30 Transitional—engagement of claims manager

This clause inserts a transitional provision to ensure that an entity that is engaged by the Territory prior to the commencement of the Act is taken to be an entity engaged by the PSWC Commissioner as a claims manager under the Act.

Schedule 1 Financial Management Act 1996 – Consequential amendments

Clause 1.1 New section 37 (2) (aa)

This clause inserts the *Public Sector Workers Compensation Fund Act 2018* under section 37 (2) (a) of the FMA to enable the transfer of funds between the territory banking account and the PSWC fund banking accounts without appropriation to facilitate the investment of public sector workers' compensation funds.

Clause 1.2 Section 38 (9)

This clause inserts the words, 'or a PSWC fund banking account' after 'superannuation banking account' under Section 28 (9) of the FMA to exclude the Treasurer from being able to invest amounts held in PSWC fund banking accounts.

Clause 1.3 Section 38 (10), new definition of PSWC fund banking account

This clause inserts a reference, under Section 38 (10) of the FMA, to Section 8 of the *Workers Compensation Fund Act 2018* (which is about PSWC fund banking accounts).