



Australian Capital Territory

Corrections Management Regulation 2010

Subordinate Law SL2010-52

The Australian Capital Territory Executive makes the following regulation under the *Corrections Management Act 2007*.

Dated 15 December 2010.

SIMON CORBELL
Minister

KATY GALLAGHER
Minister



Australian Capital Territory

Corrections Management Regulation 2010

Subordinate Law SL2010-52

made under the

Corrections Management Act 2007

Contents

		Page
Part 1	Preliminary	
1	Name of regulation	1
2	Commencement	1
3	Dictionary	1
4	Notes	1
5	Offences against regulation—application of Criminal Code etc	2

Part 2	Compensation and injury management for detainees etc—Act, s 220 (2)	
Division 2.1	Preliminary	
6	Definitions—pt 2	3
7	Meaning of <i>injury</i> —pt 2	4
Division 2.2	Entitlement to compensation	
8	General entitlement to compensation for injury	4
Division 2.3	Compensation for loss	
9	Compensation for loss generally	5
10	Compensation for 2 or more losses	6
11	Compensation and left-handedness	6
12	Compensation for combination of items	7
13	Compensation for only arm, leg, hand or foot	7
14	Compensation for loss of sexual organs	7
15	Loss of bowel function	8
16	Proportionate loss of use	8
17	Special provisions for HIV/AIDS	9
18	Deduction for previous injury or pre-existing condition	9
19	Further loss and deductible proportions	10
20	Loss of hearing because of age	10
21	No compensation for less than 6% hearing loss	11
22	Limited entitlement if death happens within 3 months	12
Division 2.4	Compensation for medical treatment, damage and other costs	
23	Liability for medical treatment etc	13
24	Reimbursement for costs of medical certificate and examination	14
Division 2.5	Compensation for death	
25	Death benefits	15
26	Payment to public trustee of lump sum death benefits	16
Division 2.6	Exceptions to entitlements to compensation	
27	When is compensation generally not payable?	16

	Page
Division 2.7	Injury management process
Subdivision 2.7.1	Preliminary
28	Definitions—div 2.7 17
Subdivision 2.7.2	General obligations
29	Register of injuries 18
30	Injury notice 18
31	Liability not affected 19
Subdivision 2.7.3	Obligations in relation to personal injury plans
32	Personal injury plan for injured person with significant injury 20
33	Vocational rehabilitation 20
34	Injured person's personal injury plan obligations 21
Subdivision 2.7.4	Compensation and common law damages
35	No compensation if damages received 21
Division 2.8	Making a claim for compensation
36	Making a claim 22
37	Time for making claim 22
38	Medical assessment 23
39	Assessment by medical specialist—request by other than nominated treating doctor 23
40	Specialist's report about assessment 24
Division 2.9	Resolving compensation disputes
41	Application to ACAT 25
42	Medical referees 25
43	Only 1 medical referee for application 25
44	Medical referee to review medical evidence etc 25
45	Medical referee's report 26
Part 3	Miscellaneous
46	Information about entitlements and obligations—Act, s 66 (1) (f) 27
47	Case management plans—scope etc—Act, s 78 (3) (h) 27
48	Meaning of <i>disciplinary breach</i> —Act, s 152 (y) 27
49	Reparation—Act, s 185 (3) (b) 28

Contents

	Page
50 Prescribed entity—Act, s 222 (3) (f)	28
51 Approved dogs—Act, dict, def <i>corrections dog</i>	29
Schedule 1 Compensation for loss	30
Dictionary	34

Part 1 Preliminary

1 Name of regulation

This regulation is the *Corrections Management Regulation 2010*.

2 Commencement

This regulation commences on the day after its notification day.

Note The naming and commencement provisions automatically commence on the notification day (see Legislation Act, s 75 (1)).

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation, and includes references (*signpost definitions*) to other terms defined elsewhere in this regulation.

For example, the signpost definition '*compensable injury*, for part 2 (Compensation and injury management for detainees etc—Act, s 220 (2))—see section 6.' means that the term 'compensable injury' is defined in that section for part 2.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see Legislation Act, s 155 and s 156 (1)).

4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the Legislation Act, s 127 (1), (4) and (5) for the legal status of notes.

5 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note 1 Criminal Code

The Criminal Code, ch 2 applies to all offences against this regulation (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg **conduct**, **intention**, **recklessness** and **strict liability**).

Note 2 Penalty units

The Legislation Act, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

Part 2 Compensation and injury management for detainees etc— Act, s 220 (2)

Division 2.1 Preliminary

6 Definitions—pt 2

In this part:

compensable injury means an injury in relation to which compensation is payable under this part.

injured person means a person who suffers a compensable injury.

loss, in relation to a thing—

(a) means—

- (i) the loss of the thing; or
- (ii) the permanent loss of the use, or efficient use, of the thing; and

(b) includes the following:

- (i) permanent musculoskeletal impairment, or another permanent impairment;
- (ii) a loss, damage, impairment, disfigurement or disease mentioned in schedule 1 (Compensation for loss).

maximum loss amount means the amount that would be the maximum loss amount under the *Workers Compensation Act 1951*, section 50 if compensation were payable for the compensable injury under that Act.

rehabilitation services includes training and retraining services.

single loss amount means the amount that would be the single loss amount under the *Workers Compensation Act 1951*, section 49 if compensation were payable for the compensable injury under that Act.

7 Meaning of *injury*—pt 2

- (1) In this part:

injury means a physical or mental injury (including stress), and includes aggravation, acceleration or recurrence of a pre-existing injury.

- (2) In this section:

mental injury (including stress) does not include a mental injury (including stress) completely or mostly caused by reasonable action taken, or proposed to be taken, by the chief executive, or a corrections officer, in relation to the discipline of a detainee or offender.

Division 2.2 Entitlement to compensation

8 General entitlement to compensation for injury

- (1) The Territory is liable to pay compensation under this part if—
- (a) a detainee suffers an injury that arises out of, or in the course of, the detainee's detention; or
 - (b) an offender—
 - (i) has been directed to do community service work under the *Crimes (Sentence Administration) Act 2005*, section 91; and
 - (ii) suffers an injury that arises out of, or in the course of, the work.

- (2) However, if the injury is caused by a disease, the injury is taken to have arisen out of, or in the course of, the detainee's detention or the offender's work only if the detention or work substantially contributes to the injury.
- (3) Also, an injury suffered by a detainee or offender partly or completely because the detainee or offender had any of the following pre-existing conditions is taken to have arisen out of, or in the course of, the detainee's detention or the offender's work only if the detention or work substantially contributes to the injury:
 - (a) diseased heart valve;
 - (b) coronary artery disease;
 - (c) aortic aneurism;
 - (d) cerebral aneurism.

Division 2.3 Compensation for loss

9 Compensation for loss generally

- (1) An injured person who has suffered a loss mentioned in an item of schedule 1 as the result of a compensable injury is entitled to receive from the Territory, as compensation for the loss, the percentage of the single loss amount mentioned in that item.
- (2) For this section, the loss is to be worked out when the last of the following happens:
 - (a) the Territory became liable to pay compensation;
 - (b) it is unlikely that there will be an improvement or further improvement in the use, or efficient use, of the injured part of the body.

- (3) If a payment of compensation under this part has been made in relation to a compensable injury, nothing prevents a further payment of compensation under this part from being made in relation to the same injury if there is an increase in the loss of the efficient use of the injured part of the body.

Example—loss of efficient use of injured part of body

a loss, or further loss, of sight in an injured eye

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

10 Compensation for 2 or more losses

An injured person who has suffered 2 or more losses mentioned in schedule 1 (Compensation for loss) because of a compensable injury is not entitled to receive as compensation under this part more than the maximum loss amount for the losses.

11 Compensation and left-handedness

If an injured person's left arm or hand is the person's dominant limb, in working out the loss for the person—

- (a) the loss of the person's left arm, left hand or fingers of left hand is to be compensated as if it is the loss of the person's right arm, right hand or fingers of right hand; and
- (b) the loss of the person's right arm, right hand or fingers of right hand is to be compensated as if it is the loss of the person's left arm, left hand or fingers of left hand.

12 Compensation for combination of items

If a loss (other than the impairment of the back, neck or pelvis) may be compensated by a combination of items in schedule 1 (Compensation for loss) or by a proportionate loss of a single item, the loss is to be compensated by a proportionate loss of the single item.

Examples

- 1 Loss of 2 or more fingers is compensated as a proportionate loss of the hand.
- 2 Loss of a hand includes the loss of the thumb and other fingers of the hand and is compensated as a loss, or proportionate loss, of the hand.
- 3 Loss of an arm at or above the elbow includes the loss of the arm below the elbow and loss of the hand and is compensated as a loss, or a proportionate loss, of the arm at or above the elbow.
- 4 Loss of a leg at or above the knee includes the loss of the leg below the knee and loss of the foot and is compensated as a loss, or a proportionate loss, of the leg at or above the knee.
- 5 Loss of a leg below the knee includes the loss of the foot and is to be compensated as a loss, or a proportionate loss, of the leg below the knee.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

13 Compensation for only arm, leg, hand or foot

Loss of an only arm, leg, hand or foot is treated under schedule 1 as the loss of both arms, legs, hands or feet.

14 Compensation for loss of sexual organs

The following percentages of the single loss amount are payable for the loss of sexual organs (subject to the maximum percentage of 47% and without limiting compensation for the loss of another sexual organ):

- (a) the percentage payable for loss of the penis is 47%;
- (b) the percentage payable for loss of 1 testicle is 10%;

- (c) the percentage payable for loss of 2 testicles or an only testicle is 47%.

15 Loss of bowel function

To work out whether and to what extent an injured person has suffered permanent loss of bowel function—

- (a) the bowel is taken to include the anal sphincter; and
- (b) permanent ileostomy and permanent colostomy are each taken to constitute permanent loss of bowel function for which the maximum percentage is payable.

16 Proportionate loss of use

- (1) If a loss suffered by an injured person consists of the loss of a proportion, but not all, of a thing mentioned in schedule 1 (Compensation for loss), a percentage of the compensation payable for the total loss of the thing equal to the percentage lost by the person is payable as compensation under section 9 (Compensation for loss generally).

Note This section does not apply to a loss that is HIV infection or AIDS (see s 17).

- (2) In working out the extent of the loss of the thing, the extent to which the loss, or the effect of the loss, may be reduced or limited by an external removable aid or appliance is not to be taken into account.
- (3) The amount of compensation payable for a particular case must, unless decided by agreement, be worked out by conciliation or arbitration under this part.

17 Special provisions for HIV/AIDS

- (1) Compensation is not payable under section 9 (Compensation for loss generally) for a loss that is related to HIV infection or AIDS if the HIV or AIDS was contracted during voluntary sexual activity or illicit drug use.
- (2) Section 16 does not apply to a loss that is HIV infection or AIDS.
- (3) In this section:

AIDS means Acquired Immune Deficiency Syndrome.

HIV infection means an infection by the Human Immunodeficiency Virus.

18 Deduction for previous injury or pre-existing condition

- (1) In working out the compensation payable under this part for a loss (the *initial loss*), an amount must be deducted from the compensation (the *deductible proportion*) for any proportion of the loss attributable to—
 - (a) a previous injury (whether or not it is an injury for which compensation has been paid, or is payable, under this part); or
 - (b) a pre-existing condition or abnormality.
- (2) In subsection (1), it does not matter whether the initial loss is a total or partial loss.

- (3) If there is a deductible proportion for a loss but the extent of the deductible proportion (or a part of it) will be difficult or costly to work out, it is to be assumed that the deductible proportion for the loss (or the relevant part of the loss) is 10% of the loss, unless this assumption is contrary to the available evidence.

Example

If this subsection requires it to be assumed that the deductible proportion in relation to a particular loss is 10% and the loss is 30% of the loss of the use of the right arm, the deductible proportion for the loss is 3% (that is, 10% of 30%).

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (4) However, section 20 must be used to work out how much (if any) of an injured person's hearing loss is caused by age.

19 Further loss and deductible proportions

- (1) This section applies in working out the compensation payable for a further loss (the *further loss*) resulting from an initial loss.
- (2) An amount proportionate to the deductible proportion of the initial loss must be deducted from the compensation payable for the further loss.
- (3) A deduction under subsection (2) in relation to a further loss is in addition to, not in substitution for, any deductible proportion for the further loss.

20 Loss of hearing because of age

- (1) This section applies in working out the percentage of the decrease of hearing in relation to boilermakers deafness of an injured person who is the prescribed age or older, but does not apply to total hearing loss in either of the person's ears.

- (2) For this part, it is to be conclusively presumed that the injured person's loss of hearing to be attributed to loss of hearing because of age is 0.5 decibels for each complete year of the person's age over the prescribed age.
- (3) In this section:
prescribed age means—
 - (a) for a male—55 years old; or
 - (b) for a female—65 years old.

21 No compensation for less than 6% hearing loss

- (1) An injured person is not entitled to compensation under section 9 (Compensation for loss generally) for a loss of hearing because of boilermakers deafness (the *hearing loss*) if the person's total hearing loss is less than 6%.
- (2) However, the injured person is entitled to compensation for the hearing loss if the total hearing loss reaches 6% or more.

Example

Assume all hearing losses mentioned in this example are because of boilermakers deafness.

An injured person suffers a hearing loss of 3% (the first hearing loss that the person has suffered). No compensation is payable under section 9 for the loss because it is less than 6%, although notice of injury may be given or a claim may be made for the hearing loss.

The injured person suffers a further hearing loss of 6%, bringing the total loss to 9%. The total loss has now passed the 6% threshold and compensation is payable for the full 9%. Compensation for the initial 3% hearing loss will be payable for the earlier incident if the person made a claim or gave notice of injury for the initial hearing loss.

The injured person suffers a further hearing loss of 6%. The person is entitled in the usual way to compensation for the 6% further loss because the 6% threshold has already been passed (the total loss is now 15%).

Note 1 Section 30 (Injury notice) applies to a hearing loss even if it is not immediately compensable because of this section.

Note 2 An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) In working out the percentage hearing loss because of boilermakers deafness, the loss of hearing is to be worked out as a proportionate loss of hearing of both ears, even if the loss is in 1 ear only.
- (4) A lawyer or agent who acts for an injured person on a claim for compensation for loss of hearing because of boilermakers deafness is not entitled to recover costs from the person or the Territory in relation to the claim if no compensation is payable on the claim because the person's total hearing loss is less than 6%.
- (5) In this section:

total hearing loss means the total of the present loss and all previous losses of hearing because of boilermakers deafness.

22 Limited entitlement if death happens within 3 months

- (1) This section applies if—
 - (a) an injured person has received a compensable injury; and
 - (b) the person dies within 3 months after receiving the compensable injury because of the compensable injury or another injury received at the same time.
- (2) The injured person is not entitled to receive compensation for the compensable injury under the following items of schedule 1 (Compensation for loss):
 - (a) item 2 (loss of sense of taste or smell);
 - (b) item 3 (loss of senses of taste and smell);

- (c) item 41 (loss of sexual organs);
- (d) item 42 (loss of both breasts);
- (e) item 43 (loss of 1 breast);
- (f) item 44 (permanent and total loss of capacity to engage in sexual intercourse);
- (g) item 49 (severe facial disfigurement);
- (h) item 50 (severe bodily disfigurement).

Division 2.4 Compensation for medical treatment, damage and other costs

23 Liability for medical treatment etc

- (1) The Territory is liable to pay—
 - (a) in relation to the cost of medical treatment reasonably received in relation to a compensable injury—an amount of compensation appropriate for the provision of the medical treatment, having regard to the charges customarily made for similar medical treatment where the treatment is received; and
 - (b) in relation to the cost of rehabilitation services received by an injured person in relation to the injury under the person's personal injury plan—the cost of the services in accordance with the plan; and
 - (c) in relation to any damage to, or loss of, an injured person's clothing sustained in association with the injury—compensation of a reasonable amount for the repair or replacement of the damaged or lost clothing.

Note 1 Rehabilitation services include training and retraining services—see s 6, def **rehabilitation services**.

Note 2 Div 2.7 (Injury management process) deals with personal injury plans.

Note 3 The chief executive may make a corrections policy in relation to the payment of transport and accommodation expenses associated with treatment (see Act, s 14).

- (2) This section does not entitle an injured person to claim an amount as compensation for the cost of medical treatment if the Territory has provided the treatment without cost to the person.

- (3) In this section:

personal injury plan—see section 28.

24 Reimbursement for costs of medical certificate and examination

- (1) Obtaining a medical certificate, and any examination required for the certificate, is taken to be medical or related treatment for this part if an injured person gives the chief executive a copy of the certificate.

- (2) In this section:

medical certificate means a report or certificate, from a doctor, that certifies—

- (a) that an injured person has suffered a loss mentioned in schedule 1 (Compensation for loss); or
(b) the extent of the loss to allow the amount of compensation payable for the loss to be worked out.

Division 2.5 Compensation for death

25 Death benefits

- (1) This section applies to the death of an injured person for which compensation is payable under this part.
- (2) The dependants of the injured person are entitled to the following:
 - (a) a single lump sum payment to be divided between the dependants equal to the amount that would be payable under the *Workers Compensation Act 1951*, section 77 (2) (a) if compensation were payable for the death under that Act;
 - (b) for each dependant who is a child—weekly compensation equal to the amount that would be payable under the *Workers Compensation Act 1951*, section 77 (2) (b) if compensation were payable for the death under that Act;
 - (c) the funeral expenses of the injured person to a maximum of the amount that would be payable under the *Workers Compensation Act 1951*, section 77 (2) (c) if compensation were payable for the death under that Act.
- (3) In working out for this part whether or not a child is, or was, dependent on the earnings of the injured person, any family tax benefit within the meaning of the *A New Tax System (Family Assistance) Act 1999* (Cwlth), section 3 (definitions) in relation to the child must be disregarded.
- (4) A dependant may apply to the ACAT to divide the lump sum payment under subsection (2) (a).
- (5) On application by a dependant, the ACAT may divide the lump sum payment under subsection (2) (a) between the dependants as the ACAT considers appropriate.
- (6) Compensation under subsection (2) (b) is payable only while the person receiving it is a child.

- (7) If the injured person did not have dependants, the personal representative of the person is entitled to a maximum of \$4 000 *cpi indexed* for the funeral expenses of the person.
- (8) In this section:
cpi indexed—see the *Workers Compensation Act 1951*, section 20.

26 Payment to public trustee of lump sum death benefits

- (1) A payment mentioned in section 25 (2) (a) (the *lump sum*) must be paid to the public trustee.
- (2) The public trustee must, until the lump sum is paid to the person entitled to it, deal with it under the *Public Trustee Act 1985*, section 25 (3) (Payment of money etc to public trustee on behalf of person under disability) as if the lump sum were money payable as compensation under the *Workers Compensation Act 1951*.
- (3) The receipt of the public trustee is a sufficient discharge for the amount paid in.

Division 2.6 Exceptions to entitlements to compensation

27 When is compensation generally not payable?

- (1) This section applies if, apart from this section, compensation in relation to an injury to an injured person is payable under this part.
- (2) Compensation is not payable if the injury to, or death of, the injured person is caused by an intentionally self-inflicted injury.
- (3) Compensation is not payable if it is proved that the injury to the injured person is attributable to the person's serious and wilful misconduct.

- (4) In subsection (3), the personal injury received by the injured person is attributable to the serious and wilful misconduct of the person if—
- (a) at the time of the injury, the person was under the influence of alcohol or another drug, unless the alcohol or other drug did not contribute to the injury or was not consumed or taken voluntarily; or
 - (b) the injury was otherwise attributable to the serious and wilful misconduct of the person.
- (5) In this section:
- drug*—see the *Road Transport (Alcohol and Drugs) Act 1977*, dictionary.

Division 2.7 Injury management process

Subdivision 2.7.1 Preliminary

28 Definitions—div 2.7

In this division:

injury management means a process that consists of activities and procedures that are carried out or established to achieve a timely, safe and durable return to working capacity for injured people.

personal injury plan, for an injured person, means a plan for coordinating and managing the aspects of injury management that relate to medical treatment and rehabilitation services for the person to achieve a timely, safe and durable return to working capacity for the person.

Subdivision 2.7.2 General obligations

29 Register of injuries

- (1) The chief executive must keep a register of injuries (the *register*).
- (2) A corrections officer must, if asked by an injured person, or a person acting on the injured person's behalf, enter in the register details of an injury received by the injured person.
- (3) If details of the injury are entered in the register as soon as possible after the injury happens, the entry is taken to be notice of the injury given to the chief executive by the injured person for this part.
- (4) A person must not change, damage, deface, remove or otherwise interfere with the register.

Maximum penalty: 20 penalty units.

- (5) An offence against subsection (4) is a strict liability offence.
- (6) This section does not prevent the alteration of the register to correct an error of fact.

30 Injury notice

- (1) An injured person must tell a corrections officer that the person has been injured as soon as possible after being injured.
- (2) The corrections officer must—
 - (a) help the injured person complete a notice of the injury (an *injury notice*); or
 - (b) if the injured person is unable to complete an injury notice—complete an injury notice for the injured person.
- (3) An injury notice must state—
 - (a) the name and address of the injured person; and
 - (b) the cause of the injury (in ordinary language); and

- (c) the date and time the injury happened; and
 - (d) if the injured person is not a detainee in a correctional centre—the name and address of the person’s treating doctor or, if there is no treating doctor, a doctor who has treated the person for the injury.
- (4) The injured person must, as soon as possible after the injury notice is completed, give a copy of it to—
- (a) the chief executive; and
 - (b) the ACT Insurance Authority; and
 - (c) if the injured person is a detainee in a correctional centre—the doctor appointed for the correctional centre under the Act, section 21 (Doctors—health service appointments); and
 - (d) if the injured person is not a detainee in a correctional centre—the person’s treating doctor or, if there is no treating doctor, a doctor who has treated the person for the injury.

31 Liability not affected

None of the following things done by the chief executive is an admission of liability by the Territory under this part or independently of this part:

- (a) anything done under or for a personal injury plan;
- (b) anything done in relation to the assessment of an injured person for rehabilitation services or employment or the provision or arrangement of services or other measures for the rehabilitation or suitable employment of injured people (whether done under a return-to-work program or otherwise).

Subdivision 2.7.3 Obligations in relation to personal injury plans

32 Personal injury plan for injured person with significant injury

- (1) If it appears to the chief executive that the injury to an injured person is a significant injury, the chief executive must establish a personal injury plan for the person.
- (2) The personal injury plan must be established in agreement with the chief executive and the injured person, to the maximum extent that their cooperation and participation allow.
- (3) The chief executive must give effect to the personal injury plan established for the injured person and, for that purpose, must comply with the obligations imposed on the chief executive under the plan.
- (4) In this section:

significant injury means an injury that is likely to result in the injured person being incapacitated for work for a continuous period of longer than 7 days, whether or not any of those days are business days and whether or not the incapacity is total or partial or a combination of both.

33 Vocational rehabilitation

The chief executive must ensure, as far as possible, that vocational rehabilitation provided or arranged for an injured person under a personal injury plan is of a kind that may reasonably be thought likely to lead to a real prospect of employment for the injured person.

34 Injured person's personal injury plan obligations

- (1) An injured person must take part and cooperate in the establishment of a personal injury plan for the person.
- (2) The injured person must comply with reasonable obligations imposed on the person under the person's personal injury plan, including any obligation to receive medical treatment or rehabilitation services.

Subdivision 2.7.4 Compensation and common law damages

35 No compensation if damages received

- (1) Compensation under this part is not payable in relation to an injured person's injury or death to the extent that, independently of this part, a judgment or agreement for damages (*independent damages*) has been obtained in relation to the injury or death.
- (2) If a person receives compensation in relation to an injured person's injury or death and later receives independent damages in relation to the injury or death, the Territory is entitled to recover from the person the recoverable amount.
- (3) For subsection (2), the recoverable amount is the lesser of the following:
 - (a) the amount of compensation;
 - (b) the amount of the independent damages.
- (4) If an amount of compensation is paid in relation to a lump sum claim, subsection (3) (a) applies as if the reference to the amount of compensation paid by the Territory included a reference to any legal costs as between party and party that the Territory is liable to pay in relation to the claim.

Division 2.8 Making a claim for compensation

36 Making a claim

- (1) An injured person may claim compensation by completing a claim form (a ***claim for compensation***).

Note If a form is approved under the Act, s 228 for this provision, the form must be used.

- (2) The injured person must give the claim for compensation to—
- (a) the chief executive; and
 - (b) the ACT Insurance Authority; and
 - (c) if the injured person is a detainee in a correctional centre—the doctor appointed for the correctional centre under the Act, section 21 (Doctors—health service appointments); and
 - (d) if the injured person is not a detainee in a correctional centre—the person’s treating doctor or, if there is no treating doctor, a doctor who has treated the person for the injury.
- (3) The claim for compensation must be accompanied by a medical assessment of the injured person.
- (4) A claim is made on the day the claim for compensation is given to the ACT Insurance Authority.

37 Time for making claim

- (1) A claim for compensation in relation to an injury may not be made earlier than 2 years after the injury.
- (2) However, the claim may be made earlier than 2 years after the injury if—
- (a) the ACAT allows the claim to be made; or
 - (b) the injury has stabilised.

- (3) The ACAT may allow the claim to be made earlier than 2 years after the injury only if satisfied that an early application is justified by the severity of the injury or the prospect of the injured person's imminent death.

38 Medical assessment

A medical assessment of an injured person must be carried out using medical guidelines approved under the *Workers Compensation Regulation 2002*, section 5 (1) (b).

39 Assessment by medical specialist—request by other than nominated treating doctor

- (1) This section does not apply to a request by an injured person's treating doctor for a medical assessment of the worker by a medical specialist.
- (2) The following (the *requesting person*) may ask a medical specialist to do a medical assessment of an injured person:
- (a) the injured person;
 - (b) the injured person's lawyer;
 - (c) the chief executive;
 - (d) the ACT Insurance Authority.
- (3) At least 2 weeks before the day of the medical assessment, written notice of the request must be given—
- (a) if the request is made by the injured person or the person's lawyer—to the chief executive and the ACT Insurance Authority; or
 - (b) if the request is made by the chief executive or the ACT Insurance Authority—to the injured person and the person's lawyer.

- (4) Subsection (3) does not prevent a medical assessment of the injured person happening with less than the 2 weeks notice if the parties agree to the shorter notice.
- (5) The notice must state—
 - (a) the reasons for the request (including a brief description of any particular thing that led to the request); and
 - (b) why the medical specialist is the appropriate specialist to do the medical assessment.
- (6) The requesting person, and each person given notice under subsection (3), must give all medical evidence about the injured person to which they have access to the medical specialist at least 2 working days before the day of the medical assessment.

Note **Medical evidence**, for an injured person—see the dictionary.

40 Specialist's report about assessment

- (1) A medical specialist who assesses an injured person following a request under section 39 (2) must prepare a report about the medical assessment.
- (2) If the medical specialist's assessment differs from the medical evidence about the injured person, the report must state—
 - (a) how the assessment differs and why; and
 - (b) why the medical specialist's assessment is preferable.
- (3) If there is no difference between the medical specialist's assessment and the medical evidence, the report must say there is no difference.
- (4) The requesting person must give a copy of the report to each person to whom the requesting person must give notice under section 39 (3) within 5 working days after the day the report is given to the requesting person.

Division 2.9 Resolving compensation disputes

41 Application to ACAT

- (1) This section applies if an injured person and the chief executive cannot agree on the amount of compensation the Territory is liable to pay the person under this part.
- (2) The injured person may apply to the ACAT to determine the amount of compensation the Territory is liable to pay.

42 Medical referees

- (1) The ACAT may ask a medical referee to help the tribunal to assess a medical matter in an application.
- (2) The ACAT may ask a medical referee to report on a medical matter in, or arising from, an application.

43 Only 1 medical referee for application

- (1) The same medical referee must help the tribunal throughout an application.
- (2) However, another medical referee may help the tribunal if the medical referee is unavailable for any reason.

44 Medical referee to review medical evidence etc

A medical referee for an application must—

- (a) review the medical evidence about the injured person; and
- (b) review any relevant approved medical guidelines or clinically relevant research about the person's injury; and
- (c) apply the referee's clinical expertise to the review under paragraphs (a) and (b); and
- (d) do a medical assessment of the injured person, unless the referee considers it unnecessary; and

- (e) prepare a referee's report for the application.

45 Medical referee's report

- (1) A medical referee's report for an application must state—
 - (a) the results of the referee's assessment of the injured person's injury; and
 - (b) if the referee's assessment differs from the medical evidence about the injured person's injury—
 - (i) how the assessment differs and why; and
 - (ii) why the referee's assessment is preferable; and
 - (c) if the referee considered it unnecessary to assess the injured person—why the referee did not consider it necessary.

Example—why assessment may differ

The medical evidence does not take into account relevant approved medical guidelines or clinically relevant research.

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (2) If there is no difference between the medical referee's assessment and the medical evidence, the report must say there is no difference.

Part 3 Miscellaneous

46 Information about entitlements and obligations—Act, s 66 (1) (f)

The procedure for reporting work-related injuries and claiming compensation is prescribed.

47 Case management plans—scope etc—Act, s 78 (3) (h)

A personal injury plan under division 2.7 (Injury management process) is prescribed.

48 Meaning of *disciplinary breach*—Act, s 152 (y)

The following are prescribed:

- (a) failing to maintain an acceptable standard of behaviour towards people, including behaving in an obscene, indecent, offensive, racist or disorderly manner;
- (b) failing to comply with health, hygiene and dress standards, including keeping a cell, room or cottage in good order, and keeping clothing and bedding, and any other article issued to the detainee, clean and in good order;
- (c) reporting for periodic detention without the following:
 - (i) suitable clothing, headgear and footwear for outdoor work;
 - (ii) a change of clothing;
 - (iii) toiletries and a towel for personal use;
- (d) leaving a location without the approval of the chief executive or a corrections officer;
- (e) feigning illness;

- (f) entering another detainee's cell, room or cottage unit without a corrections officer's approval;
- (g) going within 10 metres of a fence separating different areas of the Alexander Maconochie Centre without a corrections officer's approval;
- (h) if the detainee is housed in a cottage—going within 10 metres of a cell block without a corrections officer's approval;
- (i) if the detainee is housed in a cottage—passing an item to, or receiving an item from, a detainee housed in a cell block;
- (j) failing to attend a muster;
- (k) failing to comply with the *Corrections Management (Visits) Policy 2009* (NI2009-166);
- (l) failing to comply with the *Corrections Management (Prisoner Telephone) Policy 2009* (NI2009-154).

49 Reparation—Act, s 185 (3) (b)

The amount of \$500 is prescribed.

50 Prescribed entity—Act, s 222 (3) (f)

The Commonwealth Services Delivery Agency (Centrelink) is prescribed for the following protected information about a detainee:

- (a) full name and address;
- (b) date of birth;
- (c) address or area in which the detainee lived before being detained;
- (d) offender identification number;
- (e) Centrelink card number.

51 Approved dogs—Act, dict, def *corrections dog*

- (1) A dog is approved if it has completed a training course approved by the chief executive.
- (2) An approval of a training course is a notifiable instrument.

Note A notifiable instrument must be notified under the Legislation Act.

- (3) In this section:

training course means a detector dog training course.

Schedule 1 Compensation for loss

(see s 6, def *loss* and s 9)

column 1 item	column 2 nature of injury	column 3 % of single loss amount payable
	Speech loss	
1	loss of power of speech	60
	Sensory loss	
2	loss of sense of taste or smell	17
3	loss of senses of taste and smell	34
	Hearing loss	
4	loss of hearing of both ears	65
5	loss of hearing of 1 ear	20
	Loss of vision	
6	loss of sight of both eyes	100
7	loss of sight of an only eye	100
8	loss of sight of 1 eye, together with serious diminution of the sight of the other eye	75
9	loss of sight of 1 eye	40
10	loss of binocular vision (if not otherwise compensable under this schedule)	40
11	loss of eyeball (in addition to compensation for loss of sight of the eye)	22
	Arm injuries	
12	loss of right arm at or above elbow	80
13	loss of right arm below elbow	75

column 1 item	column 2 nature of injury	column 3 % of single loss amount payable
14	loss of left arm at or above elbow	75
15	loss of left arm below elbow	70
	Hand injuries	
16	loss of right hand	70
17	loss of left hand	65
18	loss of thumb of right hand	30
19	loss of thumb of left hand	26
20	loss of a joint of thumb	16
21	loss of forefinger of right hand	21
22	loss of forefinger of left hand	18
23	loss of 2 joints of forefinger of right hand	16
24	loss of 2 joints of forefinger of left hand	12
25	loss of first joint of forefinger of right hand	10
26	loss of first joint of forefinger of left hand	9
27	loss of middle finger of either hand	12
28	loss of 2 joints of middle finger of either hand	10
29	loss of first joint of middle finger of either hand	6
30	loss of little or ring finger of either hand	11
31	loss of 2 joints of little or ring finger of either hand	9
32	loss of first joint of little or ring finger of either hand	6
	Leg injuries	
33	loss of either leg at or above knee	75
34	loss of either leg below knee	70

column 1 item	column 2 nature of injury	column 3 % of single loss amount payable
	Foot injuries	
35	loss of a foot	65
36	loss of great toe of either foot	22
37	loss of a joint of great toe of either foot	10
38	loss of any other toe	6
39	loss of any joint of any other toe	2
	Bowel injury	
40	permanent loss of bowel function	65
	Loss of sexual organs etc	
41	loss of sexual organs	47
42	loss of both breasts	47
43	loss of 1 breast	30
44	permanent and total loss of capacity to engage in sexual intercourse	75
	Brain damage	
45	permanent brain damage if not, or not completely, an injury otherwise compensable under this schedule	100
	Permanent impairment of back, neck, pelvis	
46	permanent impairment of back	60
47	permanent impairment of neck	40
48	permanent impairment of pelvis	15
	Disfigurement	
49	severe facial disfigurement if not, or not completely, an injury otherwise compensable under this schedule	80
50	severe bodily disfigurement if not, or not completely, an injury otherwise compensable under this schedule	50

column 1 item	column 2 nature of injury	column 3 % of single loss amount payable
	Disease	
51	HIV infection (Human Immunodeficiency Virus infection)	100
52	AIDS (Acquired Immune Deficiency Syndrome)	100

Dictionary

(see s 3)

Note 1 The Legislation Act contains definitions and other provisions relevant to this regulation.

Note 2 For example, the Legislation Act, dict, pt 1, defines the following terms:

- ACAT
- chief executive (see s 163)
- doctor
- establish
- in relation to
- lawyer
- public trustee
- the Territory.

Note 3 Terms used in this regulation have the same meaning that they have in the *Corrections Management Act 2007* (see Legislation Act, s 148). For example, the following terms are defined in the *Corrections Management Act 2007*, dict:

- correctional centre
- corrections officer
- detainee (see s 6)
- offender.

ACT Insurance Authority means the Australian Capital Territory Insurance Authority established under the *Insurance Authority Act 2005*.

compensable injury, for part 2 (Compensation and injury management for detainees etc—Act, s 220 (2))—see section 6.

injured person, for part 2 (Compensation and injury management for detainees etc—Act, s 220 (2))—see section 6.

injury, for part 2 (Compensation and injury management for detainees etc—Act, s 220 (2))—see section 7.

injury management, for division 2.7 (Injury management process)—see section 28.

loss, in relation to a thing, for part 2 (Compensation and injury management for detainees etc—Act, s 220 (2))—see section 6.

maximum loss amount, for part 2 (Compensation and injury management for detainees etc—Act, s 220 (2))—see section 6.

medical evidence, for an injured person, means a record (however described) made in relation to the person's injury by—

- (a) a doctor; or
- (b) a rehabilitation provider; or
- (c) a dentist, chiropractor, psychologist, masseur, osteopath, physiotherapist, remedial kinesiologist or speech therapist.

medical referee means a medical referee appointed under the *Workers Compensation Act 1951*, section 201.

medical specialist means a doctor—

- (a) with specialist qualifications and experience in medicine recognised by the relevant Australian specialist medical college; and
- (b) who practises within the specialty.

personal injury plan, for an injured person, for division 2.7 (Injury management process)—see section 28.

rehabilitation services, for part 2 (Compensation and injury management for detainees etc—Act, s 220 (2))—see section 6.

single loss amount, for part 2 (Compensation and injury management for detainees etc—Act, s 220 (2))—see section 6.

Endnotes

1 Notification

Notified under the Legislation Act on 17 December 2010.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

© Australian Capital Territory 2010