

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

INSURANCE COMPENSATION FRAMEWORK BILL (2002)

EXPLANATORY MEMORANDUM

**Circulated by authority of
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Outline

This Bill implements a regulatory framework for public liability in the ACT. At present public liability is covered by a melange of common and tort laws, this Bill sets out a comprehensive framework to regulate the area, imposing obligations on injured parties, insurers, business operators and legal practitioners.

The bill will, in effect, establish a “no fault” system, similar to that in Worker’s Compensation, of dealing with public liability claims, with the focus shifting to the rehabilitation of injured parties rather than monetary restitution. While the focus will change to that of getting injured people better, compensation will be available under the table of maims and as weekly compensation for lost earnings.

Chapters

Chapter 1 (clauses 1-4)

This chapter covers formal requirements which set out the name of the Act, commencement provisions, dictionary and notes.

Chapter 2 (clauses 5 –13)

This chapter covers the object of the act, its application and important concepts including definitions of “injury”, “commercial premises”, “business operator”, “insurer,” ”CPI indexed and AWE indexed”, “total incapacity” and “partial incapacity”

Chapter 3 (clauses 14 – 19)

This chapter obliges a business operator to obtain compulsory insurance and provides penalties for non-compliance.

Chapter 4 (clauses 20 – 29)

This chapter describes the entitlement a person has to compensation for personal injury on commercial premises. Clause 23 allows for the business operator to claim contribution(s) from another person in relation to an injury. Clauses 24 - 28 explain how pre incapacity weekly earnings are worked out and clause 29 allows for the gradual onset of incapacity.

Chapter 5 (clauses 30 – 32)

This chapter defines exceptions to entitlements to compensation. Clause 30 covers exceptions due to intentional self-harm and wilful misconduct (including the abuse of alcohol or other drugs). Clause 31 excepts those who are imprisoned as a result of committing

offences against a law of the Territory, the Commonwealth or another territory. Clause 32 excepts professional sportspeople from compensation if the injury is sustained because of their engagement in a professional sporting activity.

Chapter 6 (clauses 33-43)

This chapter establishes a regime for the payment of weekly compensation to an injured person. Clause 34 explains when payments begin. Clause 35 deals with payments to totally incapacitated people. Clauses 36, 37 & 38 deal with payments to partially incapacitated people. Clause 39 deals with the effect on payment period of loss of entitlement to weekly compensation. Clauses 40 & 41 deal with persons living outside of Australia. Clause 42 deals with the effect of weekly compensation on other benefits, whilst clause 43 prohibits the assignment of weekly compensation.

Chapter 7 (clauses 44 – 59)

This chapter codifies the amounts to be paid as compensation for permanent injuries. Clause 44 defines “loss”, clause 45 defines the “single loss” amount as \$100,000 CPI indexed and clause 46 defines the “maximum loss” amount as \$150,000 CPI indexed. Clauses 47 – 57 cover the various types of permanent injury covered by the Act. Clause 58 provides for reimbursement of costs for medical certificate and examination. Clause 59 imposes limitations on compensation under this chapter if death occurs within three months of injury.

Chapter 8 (clauses 60 – 67)

This chapter covers compensation for medical treatment, damage and other costs for the injured person. Clause 60 defines the application of this chapter, clause 61 outlines the business operator’s liability for medical treatment and damage, clause 62 defines the way in which a person may make a claim under this chapter. Clause 63 allows the business operator to obtain a second medical opinion where a person makes a claim under this chapter. Clauses 64, 65, 66 and 67 cover payment of costs for treatment received in hospital, transport costs other than by private car, transport costs by private car, and the cost of accommodation and meals.

Chapter 9 (clauses 68 – 69)

This chapter sets out the statutory benefits available as compensation for death. Clause 68 sets the single lump sum payment to the dependants of the person as \$150,000 CPI indexed, clause 69 covers the payment of the lump sum into the Magistrates Court if necessary.

Chapter 10 (clauses 70 – 72)

This chapter covers the registration of agreements for compensation and provides for structured settlements. Clause 70 describes how if an injured person agrees to receive compensation for a loss under section 118 for the commutation of a right, a party to the agreement may apply to the Magistrates Court to register the agreement. This clause also allows the Court to refuse the registration if it deems the compensation to be inadequate or the injured person did not receive adequate legal advice. Clause 71 covers the effect of

registration of agreements and clause 72 covers the cancellation or amendment of registered agreements.

Chapter 11 (clauses 73 – 98)

This chapter sets out the injury management process that will apply under the act. This is a central theme and a fundamental component of the insurance reform process.

Division 11.1 (clauses 73 & 74) sets out the object of the chapter and the definitions for terms used.

Division 11.2 sets out the general obligations of insurers to provide an injury management program and provide prompt payment for it (clauses 75 – 77). Clause 78 sets out the insured person's obligations and provides a penalty for non-compliance. Clause 79 requires that a business operator maintain a register of injuries that occur on commercial premises (excluding injuries covered under the Worker's Compensation Act) and provides penalties for non-compliance.

Division 11.3 (clauses 80-84) sets out the obligations for notification of injury for injured persons, business operators and insurers and makes provisions for non-compliance.

Division 11.4 (clauses 85-91) sets out the obligations entailed under personal injury plans including the provision of information and the requirement for the insurer to provide vocational rehabilitation. Clause 88 lists the injured person's obligations under the personal injury plan; clause 89 requires the injured person to nominate a doctor as the treating doctor for the plan. Clause 91 explains how the costs of the plan will be paid for.

Division 11.5 (clauses 92 – 93) covers other obligations of the parties.

Division 11.6 (clauses 94 – 98) covers compliance arrangements for the chapter. Clause 94 obliges the minister to monitor compliance, clause 95 makes it a condition of the insurers approval that the insurer must comply with this part. Clause 96 outlines the compliance obligations for injured people and clause 97 defines unreasonableness in stopping payment. Clause 98 explains that participation in an injury management plan by an insurer or a business operator is not an admission of liability.

Chapter 12 (clauses 99 – 119)

This chapter sets out the process for making, accepting or rejecting claims. It also sets out liability and settlement arrangements.

Division 12.1 (clauses 99-107) covers the process for making a claim and sets time limits for making a claim.

Division 12.2 (clauses 108-113) sets time limits for accepting or rejecting claims.

Division 12.3 (clauses 114-116) discusses liability on claims.

Division 12.4 (clauses 117-119) provides provisions for the settlement of claims, including the commutation of rights and restrictions on assignment of compensation.

Chapter 13 (clauses 120-124)

This chapter sets out a process for vocational rehabilitation. Clauses 120 – 122 cover definition of terms while clause 123 obliges the insurer to provide vocational rehabilitation. Clause 124 provides a penalty for false representation as an approved rehabilitation provider.

Chapter 14 (clauses 125-130)

This chapter gives the minister the power to approve insurers for the act by regulation (clause 125). Clause 126 determines the effect of revocation or suspension of approval, clause 127 prohibits insurers from refusing to issue a compulsory insurance policy. Clause 128 imposes obligations on an insurer cancelling a policy and clause 129 governs the issuing of cover notes.

Clause 130 is significant as it forces insurance companies to provide information on claims to the minister and obliges the minister to maintain records of this information. This clause was originally intended as a stand alone act but has been incorporated into the ICFB.

Chapter 15 (clauses 131 – 150)

This chapter establishes a nominal insurer for public liability claims in the ACT and sets out its appointment, how it operates, claims made on it, timing arrangements, payments, decision making, the power of the supreme court, apportionment of liability, limitations and agreements.

Chapter 16 (clauses 151 – 157)

This chapter provides for compensation and common law remedies. Injured persons may take action at common law under this part of the act. Injured persons who sue for damages under common law and receive a payment, must repay any statutory benefit or compensation they have received under other parts of the act. This chapter provides the same limitations and obligations to common law as the Workers Compensation Act.

Chapter 17 (clauses 158-160)

This chapter provides a procedure for payment of compensation. Clause 158 obliges parties to enter conciliation or arbitration, in accordance with the regulations, in order to resolve matters and questions. Clause 159 covers the admissibility of statements by injured people and clause 160 allows for appeals to the Magistrates Court.

Chapter 18 (clauses 161-162)

This chapter allows for review of decisions by the Administrative Appeals Tribunal.

Chapter 19 (clauses 163 – 171)

This chapter provides temporary provisions for acts of terrorism.

Chapter 20 (clauses 172 – 185)

This is a miscellaneous chapter and covers, maximum rates for premiums, injured peoples' rights to information, confidentiality, medical referees, time for prosecutions for certain

offences, false claims, acts and omissions of representatives, criminal liability of executive officers of corporation, rules of court, directions about procedure, funds for administration of Act, determination of fees, approved forms, regulation making power.

Schedule 1

This schedule sets out amounts of compensation for permanent injuries and is commonly known as the Table of Maims.

Dictionary

Provides definitions for terms used in the bill.