

Queensland



# WORKCOVER QUEENSLAND ACT 1996

**Reprinted as in force on 26 March 1999  
(includes amendments up to Act No. 41 of 1998)**

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of earlier reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
- **editorial changes made in earlier reprints.**

# Queensland



## WORKCOVER QUEENSLAND ACT 1996

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# WORKCOVER QUEENSLAND ACT 1996

[as amended by all amendments that commenced on or before 26 March 1999]

**An Act to provide for the workers' compensation scheme and for other matters**

## CHAPTER 1—PRELIMINARY

### PART 1—INTRODUCTION

#### **Short title**

1. This Act may be cited as the *WorkCover Queensland Act 1996*.

#### **Commencement**

2. This Act commences on a day to be fixed by proclamation.

#### **Act binds all persons**

3. This Act binds all persons, including the State, and, so far as the legislative power of Parliament permits, the other States.

## **PART 2—OBJECTS**

### **Objects of Act**

- 4.(1) This part states the main objects of this Act.
- (2) The objects are an aid to the interpretation of this Act.

### **Workers' compensation scheme**

5.(1) This Act establishes a workers' compensation scheme for Queensland providing benefits for workers who sustain injury in their employment, for dependants if a worker's injury results in the worker's death, for persons other than workers, and for other benefits.

(2) The main provisions of the scheme provide the following for injuries sustained by workers in their employment—

- (a) compensation;
- (b) regulation of access to damages;
- (c) employers' liability for compensation;
- (d) employers' obligation to be covered against liability for compensation and damages either under a WorkCover insurance policy or under a licence as a self-insurer;
- (e) management of compensation claims by WorkCover or employers acting as self-raters or self-insurers;
- (f) injury management, emphasising rehabilitation of workers particularly for return to work;
- (g) procedures for assessment of injuries by appropriately qualified persons or by independent medical assessment tribunals;
- (h) rights of review of, and appeal against, decisions made under this Act.

(3) There is some scope for the application of the Act to injuries sustained by persons other than workers, for example under arrangements for specified benefits for specified persons or treatment of specified persons in some respects as workers.

**(4)** It is intended that the scheme should—

- (a) maintain a balance between—
  - (i) providing fair and appropriate benefits for injured workers or dependants and persons other than workers; and
  - (ii) ensuring reasonable premium levels for employers; and
- (b) provide for employers and injured workers to participate in effective return to work programs; and
- (c) provide for flexible insurance arrangements suited to the particular needs of industry; and
- (d) be maintained in a fully funded state that meets insurance industry solvency standards.

**(5)** The scheme is taken to be fully funded if WorkCover is able to meet its liabilities for compensation and damages payable from its funds and accounts and maintains—

- (a) minimum solvency or capital adequacy standards under the *Insurance Act 1973* (Cwlth), section 29; and
- (b) solvency required under a regulation.

**(6)** Because it is in the State's interests that industry remain locally, nationally and internationally competitive, it is intended that compulsory insurance against injury in employment should not impose too heavy a burden on employers and the community.

### **Protection of employers in relation to damages**

**6.(1)** This Act—

- (a) provides for the protection of employers' interests in relation to claims for damages for workers' injuries; and
- (b) makes changes to the law to strengthen workers' obligations for their own safety in employment.

**(2)** It is intended that employers and workers should both endeavour to ensure the safety of workers in the workers' employment and the law of injury liability should reflect this shared obligation.

## **Administration**

7. This Act provides for the efficient and economic administration of the scheme and of this Act through the establishment of WorkCover.

## **PART 3—DEFINITIONS**

### **Definitions**

8. The dictionary in schedule 3 defines particular words used in this Act.<sup>1</sup>

## **PART 4—BASIC CONCEPTS**

### *Division 1—Accident insurance, compensation and damages*

#### **Meaning of “accident insurance”**

9. “**Accident insurance**” is insurance by which an employer is indemnified against all amounts for which the employer may become legally liable, for injury sustained by a worker employed by the employer for—

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<sup>1</sup> In some Acts, definitions are contained in a dictionary that appears as the last schedule and forms part of the Act—*Acts Interpretation Act 1954*, section 14(4).

Words defined elsewhere in the Act are generally signposted by entries in the dictionary. However, if a section has a definition applying only to the section, or a part of the section, it is generally not signposted by an entry in the dictionary and is generally set out in the last subsection of the section.

Signpost definitions in the dictionary alert the reader to the terms defined elsewhere in the Act and tell the reader where the definitions can be found. For example, the definition “**accident insurance**” tells the reader there is a definition of accident insurance in the section.

- (a) compensation; and
- (b) damages.

### **Meaning of “compensation”**

**10. “Compensation”** is compensation under this Act, that is, amounts for a worker’s injury payable under chapters 3 and 4<sup>2</sup> by WorkCover or a self-insurer to a worker, a dependant of a deceased worker or anyone else, and includes compensation paid or payable under a former Act.

### **Meaning of “damages”**

**11.(1) “Damages”** is damages for injury sustained by a worker in circumstances creating, independently of this Act, a legal liability in the worker’s employer to pay the damages to—

- (a) the worker; or
- (b) if the injury results in the worker’s death—a dependant of the deceased worker.

**(2)** A reference in subsection (1) to the liability of an employer does not include a liability against which the employer is required to provide under—

- (a) another Act; or
- (b) a law of another State, the Commonwealth or of another country.

## ***Division 2—Workers***

### **Who is a “worker”**

**12.(1)** A “worker” is an individual who—

- (a) works under a contract of service; and
- (b) is a PAYE taxpayer in relation to the remuneration or other benefit received for the performance of work under the contract of service.

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<sup>2</sup> Chapters 3 (Compensation) and 4 (Injury management)

(2) However, for subsection (1)(a), a person is not a worker because the person performs work under any of the following contracts of service—

- (a) a contract of service with a corporation of which the person is a director;
- (b) a contract of service with a trust of which the person is a trustee;
- (c) a contract of service with a partnership of which the person is a member;
- (d) a contract of service with the Commonwealth.

(3) Also, a person who performs work under a contract of service as a professional sportsperson is not a worker while—

- (a) participating in a sporting or athletic activity as a contestant; or
- (b) training or preparing for participation in a sporting or athletic activity as a contestant; or
- (c) performing promotional activities offered to the person because of the person's standing as a sportsperson; or
- (d) engaging on any daily or other periodic journey in connection with the participation, training or performance.

### **Meaning of “PAYE taxpayer”**

**13.** A “PAYE taxpayer” is—

- (a) a worker in relation to whom the worker's employer makes deductions from amounts paid to the worker for work performed for, or services provided to, the employer under the *Income Tax Assessment Act 1936* (Cwlth), part 6, division 2;<sup>3</sup> or
- (b) a worker in relation to whom, when the worker sustained an injury, the worker's employer had not made the deductions mentioned in paragraph (a) only because the employer was not required to make the deductions because of—

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<sup>3</sup> *Income Tax Assessment Act 1936* (Cwlth), part 6, division 2 (Collection by instalments of tax on persons other than companies)

- (i) the length of time during which the worker had been in the employer's employment; or
- (ii) the amount of money paid to the worker; or
- (iii) a written direction or certificate from the Taxation Commissioner under the *Income Tax Assessment Act 1936* (Cwlth), section 221D or 221E.<sup>4</sup>

### ***Division 3—Persons entitled to compensation other than workers***

#### ***Subdivision 1—Volunteers etc.***

#### **Entitlements of persons mentioned in sdiv 1**

**14.(1)** A person mentioned in this subdivision who is covered under a contract of insurance entered into with WorkCover for this subdivision has, subject to this subdivision—

- (a) an entitlement to weekly payments of compensation under chapter 3, part 8, division 4, subdivision 3 and division 5;<sup>5</sup> and
  - (b) for all other entitlements—the same entitlements to compensation as a worker.
- (2)** The contract does not cover payment of damages for injury sustained by the person.
- (3)** For the purpose of the contract, in the application of the definition “injury” to the person—
- (a) the activity covered by the contract is taken to be the person's employment; and

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<sup>4</sup> *Income Tax Assessment Act 1936* (Cwlth), sections 221D (Variation of deductions) and 221E (Certificates of exemption)

<sup>5</sup> Chapter 3 (Compensation), part 8 (Weekly payment of compensation), division 4 (Entitlement for total incapacity), subdivision 3 (Persons entitled to compensation other than workers and students) and division 5 (Entitlement for partial incapacity)

- (b) the party with whom WorkCover enters the contract is taken to be the person's employer.

### **Counterdisaster volunteer**

**15.(1)** WorkCover may enter into a contract of insurance for this subdivision with the chief executive of the department within which the *State Counter-Disaster Organisation Act 1975* is administered.

**(2)** The contract may cover a member of—

- (a) a body acting under the authority of the State Counterdisaster Organisation; or
- (b) the State Emergency Service; or
- (c) a local emergency service.

**(3)** A person covered by the contract is entitled to compensation for injury sustained only while engaged in a counterdisaster operation or an emergency related function, or participating in an activity arising out of, or in the course of, a counterdisaster operation or an emergency related function, including training, under the control of—

- (a) a member of the State Counterdisaster Organisation or a person acting under the member's authority; or
- (b) the executive director (counterdisaster services) or a person acting under the director's authority; or
- (c) a member of a local emergency service or a person acting under the member's authority.

**(4)** In this section—

**“counterdisaster”** see the *State Counter-Disaster Organisation Act 1975*, section 6.<sup>6</sup>

**“director (counterdisaster services)”** see the *State Counter-Disaster Organisation Act 1975*, section 6, definition “director”.

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<sup>6</sup> Under the *State Counter-Disaster Organisation Act 1975*, section 6, definition “director”, the chief executive of the department within which the Act is administered nominates an officer of the department as the executive director (counterdisaster services).

**“emergency related function”** see the *State Counter-Disaster Organisation Act 1975*, section 6.

**“local emergency service”** see the *State Counter-Disaster Organisation Act 1975*, section 6.

### **Rural fire brigade member**

**16.(1)** WorkCover may enter into a contract of insurance for this subdivision with the authority responsible for management of a rural fire brigade under the *Fire Service Act 1990*.

**(2)** The contract may cover a member of the rural fire brigade.

**(3)** A person covered by the contract is entitled to compensation for injury sustained only while performing duties, including being trained, as a member of the rural fire brigade.

### **Volunteer fire fighter or volunteer fire warden**

**17.(1)** WorkCover may enter into a contract of insurance for this subdivision with the authority responsible for the management of the State’s fire services.

**(2)** The contract may cover a volunteer fire fighter or a volunteer fire warden (**“volunteer”**).

**(3)** A person covered by the contract is entitled to compensation for injury sustained only while attending at a fire, or practising, or performing any other duty, as a volunteer.

### **Statutory or industrial body member**

**18.(1)** WorkCover may enter into a contract of insurance for this subdivision with a local government, statutory body, industrial union of employees or employers or an association of employers or a similar body of a public nature (**“public body”**).

**(2)** The contract may cover a councillor, member, delegate or similar person of the public body (**“member”**).

(3) A person covered by the contract is entitled to compensation for injury sustained only while attending meetings of the public body or performing any other duty of office as a member.

### **Honorary ambulance officers**

19.(1) WorkCover may enter into a contract of insurance for this subdivision with the authority responsible for the State's ambulance transport.

(2) The contract may cover an honorary ambulance officer (“volunteer”).

(3) A person covered by the contract is entitled to compensation for injury sustained only while performing a duty required of the person as a volunteer.

### **Person in voluntary or honorary position with religious, charitable or benevolent organisation**

20.(1) WorkCover may enter into a contract of insurance for this subdivision with a church, nonprofit charitable organisation or benevolent institution (“institution”).

(2) The contract may cover a person in a voluntary or honorary position with the institution (“volunteer”).

(3) A person covered by the contract is entitled to compensation for injury sustained only while engaged on a specific capital undertaking of the institution and performing a duty required by or for the institution for the undertaking, as a volunteer.

### **Person in voluntary or honorary position with nonprofit organisation**

21.(1) WorkCover may enter into a contract of insurance for this subdivision with a non-profit organisation.

(2) The contract may cover a person in a voluntary or honorary position with the organisation (“volunteer”).

(3) A person covered by the contract is entitled to compensation for injury sustained only while attending meetings and performing any other duty the organisation requires, as a volunteer.

*Subdivision 2—Persons performing community service etc.*

**Entitlements of persons in sdiv 2**

**22.(1)** A person mentioned in this subdivision who is covered under a contract of insurance entered into with WorkCover for this subdivision has, subject to this subdivision—

- (a) an entitlement to weekly payments of compensation under chapter 3, part 8, division 4, subdivision 3 and division 5;<sup>7</sup> and
- (b) for all other entitlements—the same entitlements to compensation as a worker.

(2) The contract does not cover payment of damages for injury sustained by the person.

(3) For the purpose of the contract, in the application of the definition “injury” to the person—

- (a) the activity covered by the contract is taken to be the person’s employment; and
- (b) the party with whom WorkCover enters the contract is taken to be the person’s employer.

**Persons performing community service or unpaid duties**

**23.(1)** WorkCover may enter into a contract of insurance for this subdivision with the authority responsible for directing the performance of—

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<sup>7</sup> Chapter 3 (Compensation), part 8 (Weekly payment of compensation), division 4 (Entitlement for total incapacity), subdivision 3 (Persons entitled to compensation other than workers and students) and division 5 (Entitlement for partial incapacity)

*Workcover Queensland Act 1996*

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- (a) community service under a community service order or fine option order under the *Penalties and Sentences Act 1992*; or
- (b) a work-related activity or program as part of an order or program under the *Juvenile Justice Act 1992*, other than an activity or program performed while in the custody of the Queensland Corrective Services Commission.

(2) The contract may cover a person performing the community service or the work-related activity or program.

(3) A person covered by the contract is entitled to compensation for injury sustained only while performing the community service or the workrelated activity or program.

***Subdivision 3—Students***

**Students**

**24.(1)** WorkCover may enter into—

- (a) a contract of insurance for this subdivision with the authority through which is administered the *Education (Student Work Experience) Act 1978* or the *Education (Work Experience) Act 1996* in relation to a State student; or
- (b) a contract of insurance for this subdivision with the person having control of a non-State school in relation to a student enrolled at the school who is 14 or over; or
- (c) a contract of insurance for this subdivision with the college attended by an industry placement student.

(2) The contract may cover the student for injury arising out of, or in the course of, work experience or industry placement as provided under a regulation but must not cover a student for damages.

(3) The student has the entitlement to compensation for injury that is provided under a regulation.

(4) In this section—

“college” means a college under the *Vocational Education and Training (Industry Placement) Act 1992*.

**“industry placement student”** means an industry placement student under the *Vocational Educational and Training (Industry Placement) Act 1992*.

**“non-State school”** means a non State school under the *Education (General Provisions) Act 1989*.

**“State student”** means a student to which the *Education (Student Work Experience) Act 1978*, section 10<sup>8</sup> applies or a student defined in the *Education (Work Experience) Act 1996*, dictionary.

### *Subdivision 4—Eligible persons*

#### **Meaning of “eligible person”**

**25.** An **“eligible person”** is an individual who, other than as a worker, receives remuneration or other benefit for performing work, or providing services as—

- (a) a contractor; or
- (b) a self-employed individual; or
- (c) a director of a corporation; or
- (d) a trustee; or
- (e) a member of a partnership.

#### **Eligible person may apply to be insured**

**26.** WorkCover must enter into a contract of insurance for this subdivision with an eligible person who wishes to enter into a contract of insurance with WorkCover for this subdivision.

#### **Entitlements of eligible persons**

**27.(1)** A person mentioned in this subdivision who is covered under a contract of insurance entered into with WorkCover for this subdivision has,

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<sup>8</sup> *Education (Student Work Experience) Act 1978*, section 10 (Workers' compensation)

subject to this subdivision—

- (a) an entitlement to weekly payments of compensation under chapter 3, part 8, division 4, subdivision 3 and division 5;<sup>9</sup> and
- (b) for all other entitlements—the same entitlements to compensation as a worker.

(2) The contract does not cover payment of damages for injury sustained by the person.

### *Subdivision 5—Other persons*

#### **Other persons**

**28.(1)** WorkCover may enter into a contract of insurance for this subdivision with a person (the “**insured person**”), whether or not an employer, for injury sustained by other persons.

(2) The contract may cover a person who performs work or provides a service from which the insured person gains a benefit for the same entitlements provided to a worker under this Act.

(3) Cover under the contract must not exceed the cover available under this Act for—

- (a) compensation; or
- (b) damages.

### *Division 4—Spouses, members of the family and dependants*

#### **Meaning of “dependant”**

**29.** A “**dependant**”, of a deceased worker, is a member of the deceased worker’s family who was completely or partly dependent on the worker’s

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<sup>9</sup> Chapter 3 (Compensation), pt 8 (Weekly payment of compensation), div 4 (Entitlement for total incapacity), sdiv 3 (Persons entitled to compensation other than workers and students) and div 5 (Entitlement for partial incapacity)

earnings at the time of the worker's death or, but for the worker's death, would have been so dependent.

### **Meaning of “member of the family”**

**30.** A person is a “**member of the family**” of a deceased worker, if the person is—

- (a) the worker's—
  - (i) spouse; or
  - (ii) parent, grandparent and stepparent; or
  - (iii) child, grandchild and stepchild; or
  - (iv) brother, sister, half-brother and half-sister; or
- (b) if the worker stands in the place of a parent to another person—the other person; or
- (c) if another person stands in the place of a parent to the deceased worker—the other person.

### **Meaning of “spouse”**

**31.(1)** The “**spouse**”, of a deceased worker, includes a person who, although not legally married to the deceased worker, lived with the worker as the worker's husband or wife—

- (a) for a continuous period of at least 1 year immediately before the worker's death; or
- (b) if the worker left a dependant who is a child of the relationship—immediately before the worker's death.

**(2)** In this section—

“**child of the relationship**” means a child of the deceased worker and the other person, and includes a child born after the worker's death.

“**dependant**” includes a child born after the worker's death who would have been completely or partly dependent on the worker's earnings after the child's birth if the worker had not died.

*Division 5—Employers***Meaning of “employer”**

**32.(1)** An “**employer**” is a person who employs a worker and includes—

- (a) a government entity that employs a worker; and
- (b) a deceased employer’s legal personal representative.

**(2)** A reference to an employer of a worker who sustains an injury is a reference to the employer out of whose employment, or in the course of whose employment, the injury arose.

*Division 6—Injuries and impairment**Subdivision 1—Event resulting in injury***Meaning of “event”**

**33.(1)** An event is anything that results in injury, including a latent onset injury, to a worker.

**(2)** An event includes continuous or repeated exposure to substantially the same conditions that results in an injury to a worker.

**(3)** A worker may sustain 1 or multiple injuries as a result of an event whether the injury happens or injuries happen immediately or over a period.

**(4)** If multiple injuries result from an event, they are taken to have happened in 1 event.

**(5)** In this section—

“**latent onset injury**” means an insidious disease.

### ***Subdivision 2—Injury***

#### **Meaning of “injury”**

**34.(1)** An “**injury**” is personal injury arising out of, or in the course of, employment if the employment is the major significant factor causing the injury.

**(2)** However, employment need not be the major significant factor causing the injury if section 36(2) or 37(2)<sup>10</sup> applies.

**(3) “Injury”** includes the following—

- (a) a disease contracted in the course of employment, whether at or away from the place of employment, if the employment is the major significant factor causing the disease;
- (b) an aggravation of a disease if the employment is the major significant factor causing the aggravation;
- (c) loss of hearing resulting in industrial deafness if the employment is the major significant factor causing the loss of hearing;
- (d) death from injury arising out of, or in the course of, employment if the employment is the major significant factor causing the injury;
- (e) death from a disease mentioned in paragraph (a), or an aggravation of a disease mentioned in paragraph (b), if the employment is the major significant factor causing the disease or aggravation.

**(4) “Injury”** does not include a personal injury, disease, or aggravation of a disease sustained by a worker if the injury is a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances—

- (a) reasonable management action taken in a reasonable way by the employer in connection with the worker’s employment;

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<sup>10</sup> Section 36 (Injury while at a place of employment or another place of employment) or 37 (Other circumstances)

- (b) the worker's expectation or perception of reasonable management action being taken against the worker;
- (c) action by WorkCover or a self-insurer in connection with the worker's application for compensation;
- (d) circumstances in which a reasonable person, in the same employment as the worker, would not have been expected to sustain the injury.

*Examples of actions that may be reasonable management actions taken in a reasonable way—*

- action taken to transfer, demote, discipline, redeploy, retrench or dismiss the worker
- a decision not to award or provide promotion, reclassification or transfer of, or leave of absence or benefit in connection with, the worker's employment.

(5) For subsection (4), in deciding in a particular case whether management action was reasonable or whether management action was taken in a reasonable way—

- (a) regard must be had to what action or way of taking action would have been reasonable for a worker of ordinary susceptibility to psychiatric or psychological disorder; and
- (b) regard must not be had to a particular worker's susceptibility to a psychiatric or psychological disorder.

***Subdivision 3—When injury arises out of, or in the course of, employment***

**Application of sdiv 3**

**35.** This subdivision does not limit the circumstances in which an injury to a worker arises out of, or in the course of, the worker's employment.

**Injury while at place of employment or another place of employment**

**36.(1)** An injury to a worker is taken to arise out of, or in the course of, the worker's employment if the event happens on a day on which the

worker has attended at the place of employment as required under the terms of the worker's employment—

- (a) while the worker is at the place of employment and is engaged in an activity for, or in connection with, the employer's trade or business; or
- (b) while the worker is away from the place of employment in the course of the worker's employment; or
- (c) while the worker is temporarily absent from the place of employment during an ordinary recess if the event is not due to the worker voluntarily subjecting themselves to an abnormal risk of injury during the recess.

(2) For subsection (1)(c), employment need not be the major significant factor causing the injury.

### **Other circumstances**

**37.(1)** An injury to a worker is also taken to arise out of, or in the course of, the worker's employment if the event happens while the worker—

- (a) is on a journey between the worker's home and place of employment; or
- (b) is on a journey between the worker's home or place of employment and a trade, technical or other training school—
  - (i) that the worker is required under the terms of the worker's employment to attend; or
  - (ii) that the employer expects the worker to attend; or
- (c) for an existing injury for which compensation is payable to the worker—is on a journey between the worker's home or place of employment and a place—
  - (i) to obtain medical or hospital advice, attention or treatment; or
  - (ii) to undertake rehabilitation; or
  - (iii) to submit to examination by a registered person under a provision of this Act or to a requirement under this Act; or
  - (iv) to receive payment of compensation; or

- (d) is on a journey between the worker's place of employment with 1 employer and the worker's place of employment with another employer; or
- (e) is attending a school mentioned in paragraph (b) or a place mentioned in paragraph (c).

(2) For subsection (1), employment need not be the major significant factor causing the injury.

(3) For subsection (1), the journey—

- (a) must be by the shortest convenient route; and
- (b) for a journey from or to a worker's home—starts or ends at the boundary of the land on which the home is situated.

(4) In this section—

“**home**”, of a worker, means the worker's usual place of residence, and includes a place where the worker—

- (a) temporarily resided before starting a journey mentioned in this section; or
- (b) intended to temporarily reside after ending a journey mentioned in this section.

### **Injury that happens during particular journeys**

**38.(1)** This section applies if a worker sustains an injury in an event that happens during a journey mentioned in section 37.

(2) The injury to the worker is not taken to arise out of, or in the course of, the worker's employment if the event—

- (a) is completely or partly caused by a worker's action in which the worker—
  - (i) voluntarily subjects themselves to a risk of injury; or
  - (ii) while in control of a vehicle, contravenes the *Traffic Act 1949*, section 16, if the contravention is the major significant factor causing the event; or
  - (iii) contravenes the Criminal Code, section 328A; or

(b) happens during or after—

- (i) a substantial delay before the worker starts the journey; or
- (ii) a substantial interruption of, or deviation from, the journey.

(3) However, subsection (2)(b) does not apply if—

- (a) the reason for the delay, interruption or deviation is connected with the workers' employment; or
- (b) the delay, interruption or deviation arises because of circumstances beyond the worker's control.

(4) In subsection (2)(a)—

“**action**”, of a worker, includes—

- (a) negligence or other tort by the worker; and
- (b) the worker's failure to take reasonable care for the worker's own safety.

#### *Subdivision 4—Impairment from injury*

#### **Meaning of “impairment”**

**39.** An “**impairment**”, from injury, is a loss of, or loss of efficient use of, any part of a worker's body.

#### **Meaning of “permanent impairment”**

**40.** A “**permanent impairment**”, from injury, is an impairment that is stable and stationary and not likely to improve with further medical or surgical treatment.

#### **Meaning of “work related impairment”**

**41.(1)** A worker's “**work related impairment**” from injury is the worker's entitlement to lump sum compensation under section 198<sup>11</sup> expressed as a percentage of statutory maximum compensation calculated

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<sup>11</sup> Section 198 (Calculation of lump sum compensation)

under section 201.<sup>12</sup>

(2) To prevent doubt, it is declared that a work related impairment only relates to injury arising out of, or in the course of, the worker's employment within the meaning of this division.

### *Subdivision 5—Certificate injury*

#### **Meaning of “certificate injury”**

**42.(1)** A “certificate injury” is—

- (a) a psychiatric or psychological injury from an event that results in a WRI of a worker of 20% or more; or
- (b) another injury from an event that results in a WRI of a worker of 20% or more.

(2) The worker's WRI for a psychiatric or psychological injury and the worker's WRI for another injury must not be combined in calculating the WRI for the worker's certificate injury.

### *Subdivision 6—Non-certificate injury*

#### **Meaning of “non-certificate injury”**

**43.(1)** A “non-certificate injury” is—

- (a) a psychiatric or psychological injury from an event that results in a WRI of a worker of less than 20%; or
- (b) another injury from an event that results in a WRI of a worker of less than 20%; or
- (c) an injury that does not result in any WRI of a worker.

(2) The worker's WRI for a psychiatric or psychological injury and the worker's WRI for another injury must not be combined in calculating the WRI for the worker's non-certificate injury.

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<sup>12</sup> Section 201 (Calculation of WRI)

***Division 7—Rehabilitation*****Meaning of “rehabilitation”**

**44.(1) “Rehabilitation”**, of a worker, is—

- (a) necessary and reasonable—
  - (i) suitable duties programs; or
  - (ii) services provided by a registered person; or
  - (iii) services approved by WorkCover or a self-insurer; or
- (b) the provision of necessary and reasonable aids or equipment to the worker.

(2) The purpose of rehabilitation is to ensure the worker’s earliest possible return to work or to maximise the worker’s independent functioning.

**Meaning of “rehabilitation coordinator”**

**45.** A “rehabilitation coordinator” is a person who—

- (a) has attended a workplace rehabilitation course approved by WorkCover; and
- (b) has a current certificate issued by WorkCover for satisfactorily completing the course.

**Meaning of “suitable duties”**

**46.** “Suitable duties”, in relation to a worker, are work duties for which the worker is suited having regard to the following matters—

- (a) the nature of the worker’s incapacity and pre-injury employment;
- (b) relevant medical information;
- (c) the rehabilitation plan for the worker;
- (d) the provisions of the employer’s workplace rehabilitation policy and procedures;
- (e) the worker’s age, education, skills and work experience;

- (f) if duties are available at a location (the “**other location**”) other than the location in which the worker was injured—whether it is reasonable to expect the worker to attend the other location;
- (g) any other relevant matters.

### **Meaning of “workplace rehabilitation”**

**47. “Workplace rehabilitation”** is a system of rehabilitation accredited by WorkCover that is initiated or managed by an employer.

### **Meaning of “workplace rehabilitation policy and procedures”**

**48. “Workplace rehabilitation policy and procedures”** are written policy and procedures for workplace rehabilitation that are accredited by WorkCover.

### **Meaning of “accredited workplace”**

**49.** An “**accredited workplace**” is a workplace that has workplace rehabilitation policy and procedures.

## **CHAPTER 2—EMPLOYER’S OBLIGATIONS**

### **PART 1—EMPLOYER’S LEGAL LIABILITY**

#### **Employer’s legal liability**

**50.(1)** An employer is legally liable for compensation for injury sustained by a worker employed by the employer.

**(2)** This Act does not impose any legal liability on an employer for

damages for injuries sustained by a worker employed by the employer, though chapter 5<sup>13</sup> regulates access to damages.

### **WorkCover's liability confined to compensation**

**51.** WorkCover is not taken to be an employer of a worker because WorkCover has paid, is paying, or is liable to pay compensation to, or on account of, the worker.

## **PART 2—EMPLOYER'S INSURANCE REQUIREMENTS**

### *Division 1—General obligations*

#### **Employer's obligation to insure**

**52.(1)** Every employer must, for each worker employed by the employer, insure and remain insured, that is, be covered to the extent of accident insurance, against injury sustained by the worker for—

- (a) the employer's legal liability for compensation; and
- (b) the employer's legal liability for damages.

**(2)** The obligation to insure under subsection (1)(b) does not include an obligation to insure for an employer's legal liability for damages for which WorkCover is not authorised to indemnify the employer.

**(3)** The employer's liability must be provided for—

- (a) under a licence as a self-insurer under part 5;<sup>14</sup> or
- (b) under a WorkCover policy.

**(4)** An employer is not required by subsection (1) to insure against legal

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<sup>13</sup> Chapter 5 (Access to damages)

<sup>14</sup> Part 5 (Employer's self insurance)

liability for injury sustained by a seafarer employed by the employer, unless the seafarer is employed on a Queensland ship.

### **Exemption if employer has other insurance**

**53.(1)** The board may exempt an employer from insuring under this Act if the board is satisfied that the employer has similar insurance for the employer's workers under another law.

**(2)** To exempt an employer, the board must first be satisfied that—

- (a) the employer's workers will not be disadvantaged; and
- (b) the exemption will not adversely affect the workers' compensation scheme.

### ***Division 2—Contravention of employer's general obligation and associated provisions***

### **When an employer contravenes the general obligation to insure**

**54.** An employer who is not a self insurer contravenes section 52<sup>15</sup> if—

- (a) before or immediately after the employer starts to employ any worker or workers, the employer does not apply in the approved form to WorkCover for the policy required under section 52; or
- (b) having taken out a policy required under section 52, the employer does not maintain it in force at all times while being an employer by—
  - (i) making at the time and in the way required every annual or other periodic return required for all workers employed by the employer; and
  - (ii) paying at the time and in the way required every premium payable for the policy or for its renewal for any year.

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<sup>15</sup> Section 52 (Employer's obligation to insure)

**Offence of contravening general obligation to insure**

**55.** An employer must not contravene section 52.

Maximum penalty—275 penalty units.

**Offence to charge worker for compensation or damages for injury**

**56.** A person must not, directly or indirectly, take or receive from a worker, whether by way of deduction from wages or otherwise, an amount for anyone's legal liability as an employer for—

- (a) compensation for injury that is, or may be, sustained by the worker; or
- (b) damages for injury that is, or may be, sustained by the worker.

Maximum penalty—20 penalty units.

**Recovery of unlawful charge for compensation or damages for injury**

**57.(1)** An amount taken or received from a worker in contravention of section 56 with or without the worker's consent, may be recovered by the worker as a debt from—

- (a) the person who took or received the amount; and
- (b) if that person was acting for the worker's employer in taking or receiving the money—the worker's employer.

**(2)** A worker is not entitled to recover the amount more than once.

## **PART 3—INSURANCE UNDER WORKCOVER POLICIES GENERALLY**

### *Division 1—Premium setting generally*

#### **Setting of premium**

**58.(1)** WorkCover must set the premium payable under a policy.

(2) The premium payable for the policy, other than a self-rater’s policy, for a period of insurance must be assessed according to the method (the “**method**”) and at the rate (the “**rate**”) specified by WorkCover by industrial gazette notice.

(3) If no rate is specified in the notice for an employer’s industry or business, WorkCover must decide the rate to be the rate applying to the industry or business classification specified in the notice that most closely describes the employer’s industry or business.

(4) Before WorkCover publishes the industrial gazette notice, it must notify the Minister of the proposed specification of method or rate.

(5) The specification is subject to any direction the Minister may make under section 375.<sup>16</sup>

(6) An assessment of premium, other than a premium under a self-rater’s policy, must be made on the following basis—

- (a) wages paid or estimated to be paid during the period of insurance—
  - (i) are taken to have been paid in equal weekly instalments during the period; or
  - (ii) if the employer establishes to WorkCover’s satisfaction the wages were paid by the employer in another way, are paid in the other way during the period;

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<sup>16</sup> Section 375 (Reserve power of Minister to give directions in public interest)

- (b) the premium payable for the period of insurance is according to the method and at the rate in force from time to time during the period.

(7) An employer to whom a premium notice is given must pay the premium as assessed by the due date.

(8) If an employer is aggrieved by WorkCover's decision, the employer may apply to have the decision reviewed under chapter 9.<sup>17</sup>

### **Setting premium on change of ownership of business**

**59.(1)** This section applies if a person (a **“new employer”**) acquires the whole or a part of a business from an employer (a **“former employer”**) who is currently insured under a policy with WorkCover.

(2) In calculating the premium payable by the new employer, WorkCover must have regard to the claims experience of the business under the former employer.

(3) However, subsection (2) applies only if the predominant industry activity and location of the business remain the same as under the former employer.

### **Reassessment of premium for policy**

**60.(1)** This section applies if in either the latest period of insurance for an employer's policy or any of the 3 preceding periods of insurance—

- (a) WorkCover has made an assessment for an employer's policy for the period of insurance; and
- (b) WorkCover considers that the assessment does not accurately reflect the employer's liability under the Act for the period.

(2) WorkCover may reassess the premium for the period and issue a reassessment premium notice for the period.

(3) WorkCover must reassess the premium—

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<sup>17</sup> Chapter 9 (Reviews and appeals)

- (a) for a period after the commencement of this chapter—under section 58;<sup>18</sup> or
- (b) for a period before the commencement of this chapter—under the *Workers' Compensation Act 1990*.

(4) If, after the premium is reassessed, WorkCover is satisfied that premium for the period has been overpaid, WorkCover must refund or credit the amount of overpayment to the employer to whom the reassessment premium notice is given.

(5) If, after the premium is reassessed, WorkCover is satisfied that premium for the period has been underpaid, the employer to whom the reassessment premium notice is given must pay the premium as reassessed.

(6) If an employer is aggrieved by WorkCover's decision, the employer may apply to have the decision reviewed under chapter 9.<sup>19</sup>

(7) This section does not limit another provision of this Act that—

- (a) allows WorkCover to recover an amount, whether by way of penalty or otherwise; or
- (b) creates an offence for a contravention of this Act.

### ***Division 2—Assessments on contravention of general obligation to insure***

#### **Recovery of compensation and unpaid premium**

**61.(1)** This section applies if an employer contravenes section 52.<sup>20</sup>

(2) WorkCover may recover from the employer—

- (a) the amount of unpaid premium together with a penalty equal to 100% of the unpaid premium; and
- (b) if WorkCover has paid compensation or damages for an injury sustained by a worker when the employer was in contravention of

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<sup>18</sup> Section 58 (Setting of premium)

<sup>19</sup> Chapter 9 (Reviews and appeals)

<sup>20</sup> Section 52 (Employer's obligation to insure)

section 52 in relation to the worker—the amount of the payment made together with a penalty equal to 50% of the payment.

(3) The employer may apply in writing to WorkCover to waive or reduce the penalty because of extenuating circumstances.

(4) The application must specify the extenuating circumstances and the reasons the penalty should be waived or reduced in the particular case.

(5) WorkCover must consider the application and may—

- (a) waive or reduce the penalty; or
- (b) refuse to waive or reduce the penalty.

(6) If the employer is aggrieved by WorkCover’s decision, the employer may apply to have the decision reviewed under chapter 9.<sup>21</sup>

(7) In this section—

“**worker**” means a worker employed by the employer.

### **Default assessment on reasonable suspicion**

**62.(1)** This section applies if WorkCover suspects on reasonable grounds, that an employer has contravened section 52.<sup>22</sup>

(2) WorkCover may make a default assessment of premium based on the amounts WorkCover considers to be adequate cover.

(3) For subsection (2), WorkCover may have regard to—

- (a) the probable wages paid or to be paid by the employer during the period of insurance for which the default assessment is made; and
- (b) the nature of the employer’s industry or business.

(4) The amount of premium to be paid by the employer under the default assessment must be calculated according to the method and at the rate mentioned in section 58.<sup>23</sup>

(5) As soon as practicable after a default assessment is made,

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<sup>21</sup> Chapter 9 (Reviews and appeals)

<sup>22</sup> Section 52 (Employer’s obligation to insure)

<sup>23</sup> Section 58 (Setting of premium)

WorkCover must give the employer written notice of the assessment and of the amount of premium.

(6) The employer may, by written notice given to WorkCover, object to the default assessment within 21 days of receiving the premium notice.

(7) The objection must specify the reasons that the employer considers the assessment is excessive.

(8) WorkCover must consider the objection and may—

- (a) reassess the default assessment; or
- (b) refuse to reassess the default assessment.

(9) If the employer is aggrieved by WorkCover's decision under subsection (8), the employer may apply to have the decision reviewed under chapter 9.<sup>24</sup>

(10) If the employer does not object to the default assessment within 21 days of receiving the premium notice, the amount of premium assessed and notified to the employer becomes payable immediately at the end of the 21 days.

(11) WorkCover may act under this section even if WorkCover knows the employer has contravened section 52.<sup>25</sup>

### **Further assessment and recovery after payment of default assessment**

**63.** Payment by an employer of the amount of a default assessment, or the amount as varied on objection, review or appeal by the employer, does not stop WorkCover—

- (a) if WorkCover considers that the assessment does not accurately reflect the employer's liability under the Act for the period—reassessing the default assessment; and
- (b) if compensation has or damages have been paid for an injury sustained by a worker employed by the employer, recovering the

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<sup>24</sup> Chapter 9 (Reviews and appeals)

<sup>25</sup> Section 52 (Employer's obligation to insure)

amount paid together with a penalty equal to 50% of the payment mentioned in section 61.<sup>26</sup>

### **Employer's separate liabilities for 1 period of default**

**64.** For any period an employer contravenes section 52,<sup>27</sup> the employer is liable—

- (a) to a proceeding for an offence under section 55;<sup>28</sup> and
- (b) to a proceeding to recover an amount of premium or another amount under section 61 or 62<sup>29</sup> with or without a charge imposed by WorkCover, whether or not a proceeding is taken for an offence under section 55.

### *Division 3—Additional premiums*

#### **Additional premium payable if premium not paid**

**65.(1)** An employer must pay WorkCover an additional premium calculated as prescribed under a regulation if—

- (a) the employer is given a premium notice; and
- (b) the employer does not pay WorkCover the amount specified in the notice on or before the due date.

**(2)** WorkCover may recover the amount of premium and additional premium payable to it by the employer.

**(3)** Until the employer has paid WorkCover the full amount specified in the notice and any additional premium payable, the employer is not covered by a policy.

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<sup>26</sup> Section 61 (Recovery of compensation and unpaid premium)

<sup>27</sup> Section 52 (Employer's obligation to insure)

<sup>28</sup> Section 55 (Offence of contravening general obligation to insure)

<sup>29</sup> Section 61 (Recovery of compensation and unpaid premium) or 62 (Default assessment on reasonable suspicion)

**Further additional premium payable after appeal to industrial magistrate**

**66.(1)** An employer must pay WorkCover an additional premium calculated as prescribed under a regulation if—

- (a) the employer's liability in relation to an assessment has been decided by an industrial magistrate or the Industrial Court; and
- (b) the employer fails to pay WorkCover the amount by which the assessment is more than the amount of premium paid under section 490(4)<sup>30</sup> as a condition of the appeal to an industrial magistrate within 21 days after the day the decision is made.

**(2)** WorkCover may recover the amount of the increase in assessment and additional premium payable to it by the employer.

**(3)** Until the employer has paid WorkCover the full amount of the increase in assessment and any additional premium payable, the employer is not covered by a policy.

**Additional premium for out-of-State workers**

**67.(1)** This section applies if a worker's employment is not completely performed in the State.

**(2)** WorkCover may, from time to time, charge an additional premium on a policy issued to the worker's employer in an amount that WorkCover considers necessary towards—

- (a) providing for compensation or damages payable for injury to the worker; and
- (b) covering the cost of administration of this Act in relation to the worker.

**WorkCover may waive or reduce additional premium**

**68.(1)** This section applies if an employer is liable to pay WorkCover an additional premium.

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<sup>30</sup> Section 490 (Appeal to industrial magistrate from decision on assessment)

(2) The employer may apply in writing to WorkCover to waive or reduce the additional premium because of extenuating circumstances.

(3) The application must specify the extenuating circumstances and the reasons the additional premium should be waived or reduced in the particular case.

(4) WorkCover must consider the application and may—

- (a) waive or reduce the additional premium; or
- (b) refuse to waive or reduce the additional premium.

(5) If the employer is aggrieved by WorkCover’s decision, the employer may apply to have the decision reviewed under chapter 9.<sup>31</sup>

#### *Division 4—Employer’s liability for excess period*

#### **Meaning of “excess period”**

69. In this division—

“**excess period**” means the period of up to 4 days, calculated under a regulation, that starts on the day that compensation under chapter 3, part 7 is payable to the worker.<sup>32</sup>

#### **Employer’s liability for excess period**

70.(1) This section applies to—

- (a) an employer who is not a self-insurer and who is, or is required to be, insured under a WorkCover policy; and
- (b) a worker, other than a household worker employed by the employer, who sustains an injury for which compensation is payable.

(2) The employer must pay the worker an amount equal to the compensation that, if this section did not apply, would be payable to the

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<sup>31</sup> Chapter 9 (Reviews and appeals)

<sup>32</sup> Chapter 3 (Compensation), part 7 (Payment of compensation)  
The time from which compensation is payable is dealt with under section 168.

worker by WorkCover for the excess period.

**(3)** WorkCover is not required to pay the compensation to the worker, subject to subsection (5).

**(4)** If the worker is employed by more than 1 employer when the worker sustains an injury, the amount under subsection (2)—

- (a) must be paid by the employer in whose employment the injury was sustained; and
- (b) is the amount that relates to the amount payable to the worker under the contract of service with that employer.

**(5)** If the employer fails to pay the amount to the worker within 14 days after receiving notice from WorkCover that the worker's application for compensation has been allowed, WorkCover must make the payment to the worker on the employer's behalf.

**(6)** WorkCover may recover from the employer the amount of the payment made by it together with a penalty equal to 50% of the payment—

- (a) as a debt under section 526;<sup>33</sup> or
- (b) as an addition to a premium payable by the employer.

**(7)** The employer may apply in writing to WorkCover to waive or reduce the penalty because of extenuating circumstances.

**(8)** The application must specify the extenuating circumstances and the reasons the penalty should be waived or reduced in the particular case.

**(9)** WorkCover must consider the application and may—

- (a) waive or reduce the penalty; or
- (b) refuse to waive or reduce the penalty.

**(10)** If the employer is dissatisfied with WorkCover's decision, the employer may ask that the decision be reviewed under chapter 9.<sup>34</sup>

**(11)** This section does not limit section 54.<sup>35</sup>

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<sup>33</sup> Section 526 (Recovery of debts under this Act)

<sup>34</sup> Chapter 9 (Reviews and appeals)

<sup>35</sup> Section 54 (When an employer contravenes the general obligation to insure)

**Employer may insure against payment for excess period**

**71.(1)** An employer may elect to insure with WorkCover against the employer's liability to pay for the excess period.

**(2)** The employer must—

- (a) make written application to WorkCover; and
- (b) pay the amount at the rate prescribed under a regulation—
  - (i) at the start of a new policy; or
  - (ii) on renewal of the policy.

**(3)** If an employer insures with WorkCover against the employer's liability to pay a worker for the excess period, WorkCover must pay the worker for the excess period.

**PART 4—SELF-RATING***Division 1—Preliminary***What is self-rating**

**72.(1)** Self-rating allows an employer, who is registered under this part, to pay a premium for a policy based on their own claims experience, rather than the experience of their industry or business.

**(2)** Certain functions and powers of WorkCover may be provided to a self-rater to enable the self-rater to manage their own claims for compensation and provide injury management.

**(3)** The way the self-rater performs the functions and exercises the powers is regulated under WorkCover's supervision.

*Division 2—Issue of registration of self-rater***Who may apply to be a self-rater**

**73.(1)** The following employers may apply, in the approved form, to be

registered as a self-rater—

- (a) a single employer;
- (b) a group employer.

(2) A body corporate may only apply as a single employer if no other related bodies corporate to which it is related employ workers in Queensland.

(3) A related bodies corporate group employer may only apply for registration if all related bodies corporate are included in the application.

(4) WorkCover may register an employer as a self-rater only if the employer can satisfy the requirements stated in this part.

### **Premium and surcharge payable**

74.(1) A self-rater must pay a premium and surcharge for each period of insurance.

(2) WorkCover must give a self-rater written notice of the amount of the premium and surcharge.

(3) A regulation may prescribe—

- (a) the way the premium and surcharge are calculated; and
- (b) the time within which the premium and surcharge must be paid.

(4) If a self-rater is aggrieved with WorkCover's decision about the amount of the premium payable, the self-rater may apply to have the decision reviewed under chapter 9.<sup>36</sup>

### **Issue of registration to single employer**

75. WorkCover may register a single employer to be a self-rater only if satisfied that—

- (a) the number of fulltime workers employed in Queensland by the employer is at least 500; and
- (b) the employer's deemed premium would be at least \$1M; and

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<sup>36</sup> Chapter 9 (Reviews and appeals)

- (c) the registration will cover all workers, employed in Queensland, of the employer; and
- (d) the employer has given WorkCover the unconditional bank guarantee or cash deposit required under section 84;<sup>37</sup> and
- (e) all workplaces of the employer—
  - (i) are accredited workplaces; or
  - (ii) if not accredited workplaces—
    - (A) are adequately serviced by a rehabilitation coordinator who is in Queensland and employed under a contract of service by the employer; and
    - (B) have workplace rehabilitation policies and procedures; and
- (f) the employer is fit and proper to be a self-rater.

### **Issue of registration to group employer**

**76.** WorkCover may register a group employer to be a self-rater only if satisfied that—

- (a) the applicant is a group employer; and
- (b) the combined number of fulltime workers employed in Queensland by the group employer is at least 500; and
- (c) the combined deemed premium of all members of the group would be at least \$1M; and
- (d) the registration will cover all workers, employed in Queensland, of the group employer; and
- (e) the group employer has given Workcover the unconditional bank guarantee or cash deposit required under section 84;<sup>38</sup> and
- (f) all workplaces of each member of the group—
  - (i) are accredited workplaces; or

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<sup>37</sup> Section 84 (Bank guarantee or cash deposit)

<sup>38</sup> Section 84 (Bank guarantee or cash deposit)

- (ii) if not accredited workplaces—
  - (A) are adequately serviced by a rehabilitation coordinator who is in Queensland and employed under a contract of service by the group employer or a member of the group; and
  - (B) have workplace rehabilitation policies and procedures; and
- (g) the group employer is fit and proper to be a self-rater.

### **Calculation of the number of fulltime workers**

**77.(1)** For sections 75(a) and 76(b),<sup>39</sup> the number of fulltime workers is calculated by—

- (a) calculating the total number of ordinary time hours worked by the workers employed during a continuous 6 month period in the 1 year immediately before the application is given to WorkCover; and
- (b) dividing the number of hours by 910.

**(2)** The whole number resulting from the division is the number of fulltime workers.

**(3)** The continuous 6 month period is the period chosen by the applicant.

### **Workers employed in Queensland**

**78.** For sections 75 and 76, a worker is employed in Queensland if the worker would have an entitlement for an injury under section 139.<sup>40</sup>

### **Whether applicant fit and proper**

**79.(1)** This section applies when WorkCover is deciding whether a single employer or group employer is fit and proper to be registered as a self-rater.

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<sup>39</sup> Sections 75 (Issue of registration to single employer) and 76 (Issue of registration to group employer)

<sup>40</sup> Section 139 (Entitlements depends on where injury is sustained)

(2) WorkCover may consider any relevant matter but must consider the following matters—

- (a) whether the single employer or group employer has complied with the Act or a former Act;
- (b) if the single employer or group employer is applying to be registered to perform functions and powers mentioned in section 88<sup>41</sup>—
  - (i) the resources and systems that the single employer or group employer has in Queensland for administering claims for compensation and managing rehabilitation for workers;
  - (ii) whether the single employer or group employer will be able to give the information WorkCover may require in the way WorkCover may require.

### **Audit of self-rater**

**80.(1)** WorkCover may carry out an audit of an applicant for self-rating or a self-rater to decide whether the applicant or self-rater—

- (a) satisfies section 75 or 76; and
- (b) is fit and proper under section 79; and
- (c) satisfies the conditions of registration.

(2) WorkCover may engage the services of a person who, in WorkCover's opinion, has appropriate qualifications and experience to carry out the audit.

### **Refusal of application for registration**

**81.(1)** This section applies if WorkCover refuses an application for the issue of registration.

(2) WorkCover must give the applicant a written notice stating—

- (a) it has refused the application; and

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<sup>41</sup> Section 88 (Conditions giving a self-rater some WorkCover functions and powers)

- (b) the reasons for the refusal; and
- (c) the applicant may make a written submission to WorkCover in further support of the application.

(3) The applicant may make a submission within 28 days after the notice is given.

(4) If a submission is made, WorkCover must—

- (a) consider it; and
- (b) decide whether to confirm or change the decision to refuse the application.

(5) WorkCover must advise the applicant of its decision under subsection (4)(b) within 28 days after the submission is made.

(6) If WorkCover does not change its decision, WorkCover must advise the applicant that the applicant may appeal against the refusal under chapter 9.<sup>42</sup>

### **Duration of registration**

82. Registration continues in force until cancelled.

### **Conditions of registration**

83.(1) Registration may be subject to—

- (a) the conditions prescribed under a regulation; and
- (b) any conditions, not inconsistent with this Act, imposed by WorkCover—
  - (i) on registration; or
  - (ii) at any time during the period of registration.

(2) Conditions may include the conditions mentioned in section 88.<sup>43</sup>

(3) WorkCover, by written notice to a self-rater, may—

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<sup>42</sup> Chapter 9 (Reviews and appeals)

<sup>43</sup> Section 88 (Conditions giving a self-rater some workCover functions and powers)

- (a) impose conditions on the registration; or
- (b) impose further conditions on the registration; or
- (c) vary conditions imposed on the registration.

(4) A condition may be imposed in relation to a particular employer who is a member of a group employer.

### **Bank guarantee or cash deposit**

**84.(1)** A self-rater must lodge an unconditional bank guarantee or cash deposit with WorkCover before the issue of registration.

(2) The guarantee or deposit must be for at least 50% of the self-rater's estimated claims liability.

(3) The estimated claims liability must be assessed annually by an actuary approved by WorkCover.

(4) The guarantee must remain in force or WorkCover must hold the deposit—

- (a) at all times during the period of registration; and
- (b) after cancellation of registration, as required by section 96.<sup>44</sup>

(5) The guarantee or deposit is not liable to be attached or levied on or made the subject of any debts or claims against the self-rater by a person other than WorkCover.

(6) In this section—

**“estimated claims liability”** means the actuarial estimate of—

- (a) the liability for—
  - (i) claims expected to arise in the 12 months after the assessment; and
  - (ii) existing claims incurred by the self-rater; less
- (b) the total amount expected to be paid in the 12 months after the assessment.

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<sup>44</sup> Section 96 (Assessing residual liability after cancellation)

**Investing cash deposit**

**85.(1)** WorkCover may invest a cash deposit in an authorised investment decided by WorkCover.

(2) Interest on the deposit must be paid to the self-rater at the end of each financial year.

(3) WorkCover may deduct from the interest the reasonable costs of administering the investment.

(4) In this section—

**“authorised investment”** means an investment authorised under the *Statutory Bodies Financial Arrangements Act 1982*.

**Liability of group employers**

**86.** The members of a group employer are jointly and severally liable for any liability or duty imposed by this Act on the group or a member of the group.

**Change in group self-rater’s membership**

**87.** A self-rater that is a group employer may change the group membership on the registration with WorkCover’s written consent.

*Division 3—Functions, powers and obligations of self-raters***Conditions giving a self-rater some WorkCover functions and powers**

**88.(1)** A condition of a self-rater’s registration may give to a self-rater any of the following functions, powers and roles under WorkCover’s supervision—

(a) a function or power of WorkCover under—

(i) chapter 3 (other than sections 136(5), 160, 163 and 188, and

part 11);<sup>45</sup> or

(ii) chapter 4 (other than sections 235(3)(a) and 238, and part 4);<sup>46</sup> or

(iii) chapter 7, parts 3 and 5, and section 450;<sup>47</sup>

(b) a function or power of WorkCover mentioned in paragraph (a) for the purpose only of helping WorkCover to perform a function or exercise a power mentioned in paragraph (a);

(c) a role convenient for WorkCover's management of its functions and powers.

(2) If a self-rater is given a function or power of WorkCover under a provision of this Act, a reference to WorkCover in the provision is taken to include a reference to the self-rater, subject to the conditions of the self-rater's registration.

(3) WorkCover's functions and powers are not limited by a condition under this section.

(4) The self-rater must perform and exercise the functions and powers reasonably.

(5) If a single employer or group employer stops being a self-rater, the employer no longer has the functions and powers.

### **Documents that must be kept by self-rater**

**89.(1)** This section applies if a self-rater's notice of registration specifies functions and powers to be performed and exercised.

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<sup>45</sup> Chapter 3 (Compensation) other than sections 136 (Compensation entitlement can not be relinquished, assigned or subject to execution), 160 (Employer's duty to report injury), 163 (Worker must notify return to work or engagement in a calling), 188 (Recovery of compensation overpaid) and part 11 (Automatic variation of compensation payable)

<sup>46</sup> Chapter 4 (Injury management) other than sections 235 (Cost of hospitalisation), 238 (WorkCover's responsibility for worker's rehabilitation) and part 4 (Employer's obligation for rehabilitation)

<sup>47</sup> Chapter 7 (Medical assessment tribunals), parts 3 (Jurisdiction of tribunals), 5 (Proceedings for exercise of tribunals' jurisdiction) and section 450 (Assessment of additional compensation for prescribed disfigurement)

(2) The self-rater must keep the following documents—

- (a) documents relating to all claims made including, for example, documents about—
  - (i) a worker’s application for compensation; or
  - (ii) compensation paid for injury sustained by a worker; or
  - (iii) medical management of an injured worker; or
  - (iv) rehabilitation of an injured worker;
- (b) documents that may assist in assessing the quality and timeliness of the claims and rehabilitation management;
- (c) any other documents required to be kept under the conditions of the registration.

(3) The self-rater may only dispose of a document required to be kept under subsection (2) with WorkCover’s written consent.

### **Documents must be given to WorkCover on request**

**90.(1)** WorkCover may, by written notice, ask a self-rater to give WorkCover the documents, copies of the documents or details from the documents, mentioned in section 89.

(2) The notice must state the documents required and state a time within which the documents must be given to WorkCover.

(3) The self-rater must comply with the notice unless the self-rater has a reasonable excuse.

### ***Division 4—Cancellation of self-rater’s registration***

#### **When registration may be cancelled**

**91.** WorkCover may cancel a registration if—

- (a) any of the following persons contravenes this Act or a condition of the registration—
  - (i) the self-rater;

- (ii) for a group employer—
  - (A) a member employer of the group; or
  - (B) if the group employer is made up of related bodies corporate—1 of the related bodies corporate; or
- (b) the registration was issued because of a materially false or misleading representation or declaration (made either orally or in writing).

### **Procedure for cancellation**

**92.(1)** If WorkCover considers grounds exist to cancel a registration, WorkCover must give the self-rater written notice—

- (a) stating the grounds for the cancellation and outlining the facts and circumstances forming the basis for the grounds; and
- (b) inviting the self-rater to show, within a stated time of at least 28 days, why the registration should not be cancelled.

**(2)** If, after considering all written representations made within the stated time, WorkCover still considers that the registration should be cancelled, WorkCover may cancel the registration.

**(3)** WorkCover must give the self-rater written notice of its decision to cancel the self-rater's registration within 10 days after making the decision.

**(4)** The notice under subsection (3) must state—

- (a) the reasons for the decision; and
- (b) that the self-rater may appeal against the decision under chapter 9.<sup>48</sup>

**(5)** The decision takes effect on the day stated in the notice.

**(6)** WorkCover must record particulars of the cancellation.

### **Self-rater may ask for cancellation**

**93.(1)** A self-rater may, by written notice, ask for cancellation of its

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<sup>48</sup> Chapter 9 (Reviews and appeals)

registration.

(2) The notice must specify a date from which the cancellation is requested, being not less than 28 days after the date the notice is given to WorkCover.

(3) Cancellation takes effect—

- (a) from the day specified in the self-rater's notice; or
- (b) if another day is decided by WorkCover—from the other day.

### **Premium payable after cancellation**

94. If a self-rater's registration is cancelled, the premium payable by the former self-rater is to be calculated in the way prescribed under a regulation.

### **Transfer to WorkCover after cancellation**

95. On cancellation of registration, the former self-rater must immediately give WorkCover all documents relating to claims held by the former self-rater.

Maximum penalty—200 penalty units.

### **Assessing residual liability after cancellation**

96.(1) This section applies if registration is cancelled.

(2) The former self-rater's residual liability is the amount assessed by an actuary appointed by WorkCover.

(3) WorkCover may ask an actuary to assess the residual liability after the cancellation.

(4) After the assessment is made, WorkCover may, under section 74,<sup>49</sup> reassess the premium and surcharge for the policy for the period of registration.

(5) If the former self-rater fails to pay the premium within the time prescribed under a regulation made under section 74, WorkCover may

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<sup>49</sup> Section 74 (Premium and surcharge payable)

recover the debt from the unconditional bank guarantee or cash deposit.

(6) WorkCover must retain the deposit or bank guarantee until it is satisfied that the former self-rater's residual liability has been discharged or adequately provided for.

(7) In this section—

**“residual liability”** means the total of the accrued, continuing, future and contingent liabilities for claims incurred during the registration period.

### **Return of bank guarantee or cash deposit after cancellation**

**97.(1)** This section applies if—

- (a) a self-rater's registration is cancelled; and
- (b) the former self-rater considers that all accrued, continuing, future and contingent liabilities of the self-rater have been discharged or adequately provided for.

(2) The former self-rater may, by written notice given at least 1 year after the cancellation, ask WorkCover to return the balance of the bank guarantee or cash deposit.

(3) WorkCover must, within 90 days after being given the request—

- (a) return the balance; or
- (b) if WorkCover considers that all accrued, continuing, future and contingent liabilities of the self-rater have not been discharged or adequately provided for—give the former self-rater a written notice refusing to return the balance and stating the reasons for the refusal.

(4) If WorkCover refuses to return the balance, the former self-rater may appeal under chapter 9.<sup>50</sup>

(5) In this section—

**“return”** includes relinquish.

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<sup>50</sup> Chapter 9 (Reviews and appeals)

## **PART 5—EMPLOYER’S SELF-INSURANCE**

### *Division 1—Preliminary*

#### **What is self-insurance**

**98.(1)** Self-insurance allows an employer, under a licence under this part, to provide their own accident insurance for their workers, instead of insuring with WorkCover.

**(2)** A self-insurer has all the liabilities that WorkCover would have, if this part did not apply, for injuries sustained by the self-insurer’s workers arising out of events that happen during the period of the licence.

**(3)** Certain functions and powers of WorkCover are provided to a self-insurer to enable the self-insurer to meet obligations in providing accident insurance.

**(4)** The way the self-insurer performs the functions and exercises the powers is regulated by WorkCover.

### *Division 2—Issue and renewal of self-insurer’s licence*

#### **Who may apply to be a self-insurer**

**99.(1)** The following employers may apply to be licensed as a self-insurer—

- (a) a single employer;
- (b) a group employer.

**(2)** A body corporate may only apply as a single employer if no other related bodies corporate to which it is related employs workers in Queensland.

**(3)** A related bodies corporate group employer may only apply for a licence if all related bodies corporate are included in the application.

**(4)** WorkCover may issue a licence to an employer only if the employer can satisfy the requirements stated in this part.

**How the application is made**

**100.** The application must—

- (a) be made to WorkCover in the approved form; and
- (b) for a group employer—be made by all the members of the group wanting to be licensed; and
- (c) be accompanied by the fee prescribed under a regulation.

**Issue or renewal of licence to a single employer**

**101.** WorkCover may issue or renew a licence to be a self-insurer to a single employer only if satisfied that—

- (a) the number of fulltime workers employed in Queensland by the employer is at least 500; and
- (b) the net tangible assets of the employer are at least \$100M; and
- (c) the licence will cover all workers, employed in Queensland, of the employer; and
- (d) the employer has given WorkCover the unconditional bank guarantee or cash deposit required under section 113;<sup>51</sup> and
- (e) the employer has the reinsurance cover required under section 115;<sup>52</sup> and
- (f) all workplaces of the employer—
  - (i) are accredited workplaces; or
  - (ii) if not accredited workplaces—
    - (A) are adequately serviced by a rehabilitation coordinator who is in Queensland and employed under a contract of service by the employer; and
    - (B) have workplace rehabilitation policies and procedures; and
- (g) the employer is fit and proper to be a self-insurer.

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<sup>51</sup> Section 113 (Bank guarantee or cash deposit)

<sup>52</sup> Section 115 (Reinsurance)

**Issue or renewal of licence to a group employer**

**102.** WorkCover may issue or renew a licence to be a self-insurer to a group employer only if satisfied that—

- (a) the applicant is a group employer; and
- (b) the combined number of fulltime workers employed in Queensland by all members of the group is at least 500; and
- (c) the combined total net tangible assets of all members of the group is at least \$100M; and
- (d) the licence will cover all workers, employed in Queensland, of the group employer; and
- (e) the group employer has given WorkCover the unconditional bank guarantee or cash deposit required under section 113;<sup>53</sup> and
- (f) the group employer has the reinsurance cover required under section 115;<sup>54</sup> and
- (g) all workplaces of each member of the group—
  - (i) are accredited workplaces; or
  - (ii) if not accredited workplaces—
    - (A) are adequately serviced by a rehabilitation coordinator who is in Queensland and employed under a contract of service by the group employer or a member of the group; and
    - (B) have workplace rehabilitation policies and procedures; and
- (h) the group employer is fit and proper to be a self-insurer.

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<sup>53</sup> Section 113 (Bank guarantee or cash deposit)

<sup>54</sup> Section 115 (Reinsurance)

**Calculation of the number of fulltime workers**

**103.(1)** For sections 101(a) and 102(b),<sup>55</sup> the number of fulltime workers is calculated by—

- (a) calculating the total number of ordinary time hours worked by the workers employed during a continuous 6 month period in the 1 year immediately before the application is given to WorkCover; and
- (b) dividing the number of hours by 910.

**(2)** The whole number resulting from the division is the number of fulltime workers.

**(3)** The continuous 6 month period is the period chosen by the applicant.

**Workers employed in Queensland**

**104.** For sections 101 and 102, a worker is employed in Queensland if the worker would have an entitlement for an injury under section 139.<sup>56</sup>

**Whether applicant fit and proper**

**105.(1)** This section applies when WorkCover is deciding whether a single employer or group employer is fit and proper to be licensed or to have a licence renewed.

**(2)** WorkCover may consider any relevant matter and must consider the following matters—

- (a) whether the single employer or group employer is, and is likely to continue to be, able to meet its liabilities;
- (b) the long term financial viability of the single employer or group employer evidenced by any relevant consideration including, for example, its level of capitalisation, profitability and liquidity;
- (c) the resources and systems that the single employer or group

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<sup>55</sup> Sections 101 (Issue or renewal of licence to a single employer) and 102 (Issue or renewal of licence to a group employer)

<sup>56</sup> Section 139 (Entitlement depends on where injury is sustained)

employer has in Queensland for administering claims for compensation and managing rehabilitation of workers;

- (d) whether the single employer or group employer will be able to give the information WorkCover may require in the way WorkCover may require;
- (e) for an application for renewal of a licence—whether the self-insurer has performed the functions, or exercised the powers, under section 119<sup>57</sup> reasonably.

### **Audit of self-insurer**

**106.(1)** WorkCover may carry out an audit of an applicant for self-insurance or a self-insurer to decide whether the applicant or self-insurer—

- (a) satisfies section 101 or 102;<sup>58</sup> and
- (b) is fit and proper under section 105;<sup>59</sup> and
- (c) satisfies the conditions of the licence.

**(2)** WorkCover may engage the services of a person who, in WorkCover's opinion, has appropriate qualifications and experience to carry out the audit.

### **Decision on application for the issue of a licence**

**107.(1)** WorkCover must decide an application within 6 months of receiving it.

**(2)** If WorkCover refuses an application for the issue of a licence, WorkCover must give the applicant a written notice stating—

- (a) it has refused the application; and
- (b) the reasons for the refusal; and

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<sup>57</sup> Section 119 (Powers of self-insurers)

<sup>58</sup> Section 101 (Issue or renewal of licence to a single employer) or 102 (Issue or renewal of licence to a group employer)

<sup>59</sup> Section 105 (Whether applicant fit and proper)

(c) the applicant may make a written submission to WorkCover in further support of the application.

(3) The applicant may make a submission within 28 days after the notice of refusal is given.

(4) WorkCover must consider the submission within 3 months of receiving it and decide whether to confirm or change the decision to refuse the application.

(5) WorkCover must advise the applicant of its decision under subsection (4) within 7 days after the decision is made.

(6) If WorkCover does not change its decision, WorkCover must advise the applicant that the applicant may appeal against the refusal under chapter 9.<sup>60</sup>

### **Duration of licence**

**108.(1)** Unless sooner cancelled, a licence continues in force for a period of not more than 2 years.

(2) The period must be stated in the licence.

### **Renewal of licence**

**109.(1)** A licence may be renewed by application to WorkCover in the approved form.

(2) The self-insurer must apply to WorkCover at least 90 days before the current licence period ends.

(3) If the self-insurer does not intend to renew the licence, the self-insurer must advise WorkCover of that fact at least 90 days before the current licence period ends.

(4) In considering an application, WorkCover must consider whether the self-insurer has—

(a) complied with this Act and the conditions of the licence; and

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<sup>60</sup> Chapter 9 (Reviews and appeals)

- (b) acted reasonably in relation to the functions and powers under section 119.<sup>61</sup>

### **Refusal of application for renewal of a licence**

**110.(1)** This section applies if WorkCover intends to refuse an application for the renewal of a licence.

**(2)** Before refusing the application, WorkCover must give the applicant a written notice stating—

- (a) it proposes to refuse the application; and
- (b) the reasons for the refusal; and
- (c) the applicant may make a written submission to WorkCover in further support of the application; and
- (d) a period, of at least 42 days, at the end of which the refusal is to take effect (the “**review period**”).

**(3)** The applicant may make a submission within 21 days after the notice is given.

**(4)** If a submission is made, WorkCover must—

- (a) consider it; and
- (b) decide whether to accept or refuse the application.

**(5)** WorkCover must advise the applicant of its decision before the end of the review period.

**(6)** If no submission is made within the time mentioned in subsection (3), the application is taken to be refused at the end of the review period.

**(7)** If WorkCover refuses the application, WorkCover must advise the applicant that the applicant may appeal against the refusal under chapter 9.<sup>62</sup>

**(8)** Despite section 108,<sup>63</sup> if the period stated on the licence expires before

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<sup>61</sup> Section 119 (Powers of self-insurers)

<sup>62</sup> Chapter 9 (Reviews and appeals)

<sup>63</sup> Section 108 (Duration of licence)

the end of the review period, the licence period is taken to be extended to the end of the review period.

### **Annual levy and surcharge payable**

**111.(1)** A self-insurer must pay a levy and surcharge for each year of a licence.

**(2)** WorkCover must give a self-insurer written notice of the amount of the levy and surcharge.

**(3)** A regulation may prescribe—

- (a) the way the levy and surcharge are calculated; and
- (b) the time within which the levy and surcharge must be paid.

**(4)** If a self-insurer is aggrieved with WorkCover's decision about the amount of annual levy payable, the self-insurer may apply to have the decision reviewed under chapter 9.

### **Conditions of licence**

**112.(1)** A licence may be subject to—

- (a) the conditions prescribed under a regulation; and
- (b) any conditions, not inconsistent with this Act, imposed by WorkCover—
  - (i) on the issue or renewal of a licence; or
  - (ii) at any time during the period of the licence.

**(2)** WorkCover, by written notice to a self-insurer, may—

- (a) impose conditions on the licence; or
- (b) impose further conditions on the licence; or
- (c) vary conditions imposed on the licence.

**(3)** A condition imposed is effective whether or not it is endorsed on the licence.

**(4)** A condition may be imposed in relation to a particular employer who is a member of a group employer.

**Bank guarantee or cash deposit**

**113.(1)** A self-insurer must lodge an unconditional bank guarantee or cash deposit with WorkCover before the issue or renewal of a licence.

**(2)** The guarantee or deposit must be the greater of—

- (a) \$5M; or
- (b) 150% of the self-insurer's estimated claims liability.

**(3)** The estimated claims liability must be assessed annually by an actuary approved by WorkCover.

**(4)** The guarantee must remain in force or WorkCover must hold the deposit—

- (a) at all times during the period of the licence; and
- (b) after cancellation of the licence, as required by section 129.<sup>64</sup>

**(5)** The guarantee or deposit is not liable to be attached or levied on or made the subject of any debts or claims against the self-insurer by a person other than WorkCover.

**(6)** In this section—

**“estimated claims liability”** means the actuarial estimate of—

- (a) the liability for—
  - (i) claims expected to arise in the 12 months after the assessment; and
  - (ii) if the licence is being renewed—existing claims incurred by the self-insurer; less
- (b) the total amount expected to be paid in the 12 months after the assessment.

**Investing cash deposit**

**114.(1)** WorkCover may invest a cash deposit in an authorised investment decided by WorkCover.

**(2)** Interest on the deposit must be paid to the self-insurer at the end of

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<sup>64</sup> Section 129 (Assessing residual liability after cancellation)

each financial year.

(3) WorkCover may deduct from the interest the reasonable costs of administering the investment.

(4) In this section—

**“authorised investment”** means an investment authorised under the *Statutory Bodies Financial Arrangements Act 1982*.

### **Reinsurance**

**115.(1)** A self-insurer must, before the issue or renewal of a licence—

- (a) effect, with an approved insurer, a contract of reinsurance of liabilities approved by WorkCover; and
- (b) give WorkCover a copy of the contract certified by the approved insurer.

(2) The self-insurer’s liability under the contract must be an amount chosen by the self-insurer that is not less than \$300 000 or more than \$1M.

(3) The contract must be for an unlimited amount in excess of the self-insurer’s liability for each event that may happen during the period of reinsurance.

(4) The contract—

- (a) must be current for the period of the licence; and
- (b) must not be cancelled or varied by the self-insurer, or the approved insurer, without WorkCover’s consent.

(5) The approved insurer must endorse the contract to the effect that it can not be cancelled or varied without WorkCover’s consent.

(6) In this section—

**“approved insurer”** means an insurer approved by the Insurance and Superannuation Commissioner under the *Insurance Act 1973* (Cwlth).

### **Self-insurer replaces WorkCover in liability for injury**

**116.** A self-insurer is liable, to the exclusion of WorkCover’s liability, for compensation and damages for all injuries sustained by workers

employed by the self-insurer arising from events happening during the period of the licence.

### **Liability of group employers**

**117.** The members of a group employer are jointly and severally liable for any liability or duty imposed by this Act on the group or a member of the group.

### **Change in self-insurer's membership**

**118.(1)** A self-insurer that is a group employer may change the group membership on the licence with WorkCover's written consent.

**(2)** A member who leaves the group remains jointly and severally liable for payment of compensation or damages arising out of an injury sustained by a worker of the member when the member was in the group.

## *Division 3—Powers, functions and obligations of self-insurers*

### **Powers of self-insurers**

**119.(1)** A self-insurer has, in relation to the self-insurer's workers, the functions and powers of WorkCover under the following provisions—

- (a) chapter 3 (other than sections 136(5), 160, 163 and 188(3), and part 11);<sup>65</sup>
- (b) chapter 4 (other than sections 235(3)(a) and 238, and part 4);<sup>66</sup>

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<sup>65</sup> Chapter 3 (Compensation) other than sections 136 (Right to compensation can not be relinquished), 160 (Employer's duty to report injury), 163 (Worker must notify return to work or engagement in a calling), 188 (Recovery of compensation overpaid) and part 11 (Automatic variation of compensation payable)

<sup>66</sup> Chapter 4 (Injury management) other than sections 235 (Cost of hospitalisation), 238 (WorkCover's responsibility for worker's rehabilitation) and part 4 (Employer's obligation for rehabilitation)

(c) chapter 5 (other than sections 284, 306 and 319);<sup>67</sup>

(d) chapter 7, parts 3 and 5, and section 450.<sup>68</sup>

(2) The functions and powers must not be performed or exercised by WorkCover in relation to the self-insurer's workers.

(3) A reference to WorkCover in the provisions mentioned in subsection (1) is taken to be a reference to the self-insurer.

(4) The self-insurer must perform and exercise the functions and powers reasonably.

(5) If a single employer or group employer ceases to be a self-insurer, the employer no longer has the functions and powers, except to the extent stated in section 127.<sup>69</sup>

### **Documents that must be kept by self-insurer**

**120.(1)** A self-insurer must keep the following documents—

- (a) documents relating to all claims made, including, for example, documents about—
  - (i) a worker's application for compensation; or
  - (ii) compensation paid for injury sustained by a worker; or
  - (iii) medical management of an injured worker; or
  - (iv) rehabilitation of an injured worker;
- (b) documents that may assist in assessing the quality and timeliness of the claims and rehabilitation management;
- (c) documents that may assist in assessing the self-insurer's financial situation;

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<sup>67</sup> Chapter 5 (Access to damages) other than sections 284 (Employer to cooperate with WorkCover), 306 (Carriage of proceedings) and 319 (Exemplary damages)

<sup>68</sup> Chapter 7 (Medical assessment tribunals), parts 3 (Jurisdiction of tribunals) and 5 (Proceedings for exercise of tribunals' jurisdiction) and section 450 (Assessment of additional compensation for prescribed disfigurement)

<sup>69</sup> Section 127 (Certain functions and powers may be held by former self-insurer after cancellation)

(d) any other documents required to be kept under the conditions of the licence.

(2) A self-insurer may only dispose of a document required to be kept under subsection (1) with WorkCover's written consent.

### **Documents must be given to WorkCover on request**

**121.(1)** WorkCover may, by written notice, ask a self-insurer to give WorkCover the documents, copies of the documents or details from the documents, mentioned in section 120.

(2) The notice must state the documents required and state a time within which the documents must be given to WorkCover.

(3) The self-insurer must comply with the notice, unless the self-insurer has a reasonable excuse.

### *Division 4—Cancellation of self-insurer's licence*

#### **When licence may be cancelled**

**122.** WorkCover may cancel a licence if—

- (a) any of the following persons contravenes this Act or a condition of the licence—
  - (i) the self-insurer;
  - (ii) for a group employer—
    - (A) a member employer of the group; or
    - (B) if the group employer is made up of related bodies corporate—1 of the related bodies corporate; or
- (b) the licence was issued because of a materially false or misleading representation or declaration (made either orally or in writing); or
- (c) the self-insurer decides not to renew the self-insurer's licence.

**Procedure for cancellation**

**123.(1)** If WorkCover considers grounds exist to cancel a licence, WorkCover must give the self-insurer written notice—

- (a) stating the grounds for the cancellation and outlining the facts and circumstances forming the basis for the grounds; and
- (b) inviting the self-insurer to show, within a stated time of at least 28 days, why the licence should not be cancelled.

**(2)** If, after considering all written representations made within the stated time, WorkCover still considers that the licence should be cancelled, WorkCover may cancel the licence.

**(3)** WorkCover must give the self-insurer written notice of the decision to cancel the self-insurer's licence within 10 days after making the decision.

**(4)** The notice under subsection (3) must state—

- (a) the reasons for the decision; and
- (b) that the self-insurer may appeal against the cancellation under chapter 9.<sup>70</sup>

**(5)** The decision takes effect on the day stated in the notice.

**(6)** WorkCover must record particulars of the cancellation.

**Self-insurer may ask for cancellation**

**124.(1)** A self-insurer may, by written notice, ask for cancellation of its licence.

**(2)** The notice must specify a date from which the cancellation is requested, being not less than 28 days after the date the notice is given to WorkCover.

**(3)** Cancellation takes effect—

- (a) from the day specified in the self-insurer's notice; or
- (b) if another day is decided by WorkCover—from the other day.

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<sup>70</sup> Chapter 9 (Reviews and appeals)

**Premium payable after cancellation**

**125.** If a self-insurer's licence is cancelled, the premium payable by the former self-insurer is to be calculated in the way prescribed under a regulation.

**Transfer to WorkCover after cancellation**

**126.** Other than as provided by section 127, on cancellation of a licence—

- (a) the self-insurer's functions and powers under section 119<sup>71</sup> end; and
- (b) for all applications for compensation held by the former self-insurer immediately before the cancellation—
  - (i) the former self-insurer must immediately give WorkCover all documents relating to the applications; and
  - (ii) WorkCover has all its functions and powers; and
- (c) an application for compensation that, other than for this section, would have been lodged with the self-insurer, must be lodged with WorkCover; and
- (d) WorkCover replaces the self-insurer for any proceeding being taken, or that may be taken, by a worker or claimant against, or by, the self-insurer as an insurer; and
- (e) WorkCover has the rights, and assumes the obligations, of the self-insurer under the contract of reinsurance.

Maximum penalty for paragraph (b)(i)—200 penalty units.

**Certain functions and powers may be held by former self-insurer after cancellation**

**127.(1)** The purpose of this section is to authorise a former self-insurer to perform functions and exercise powers to manage claims arising during the period when the former self-insurer was a self-insurer.

**(2)** If WorkCover considers it appropriate, WorkCover may, at the

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<sup>71</sup> Section 119 (Powers of self-insurers)

request of a former self-insurer, allow the former self-insurer to continue to have functions and powers previously had by the former self-insurer under section 119.<sup>72</sup>

(3) WorkCover must give the former self-insurer written notice of the functions and powers continued.

(4) WorkCover may impose conditions on the functions and powers continued.

(5) The former self-insurer has the functions and powers as stated in the notice.

### **Recovery of ongoing costs from former self-insurer**

**128.(1)** This section applies if—

- (a) a licence is cancelled; and
- (b) after the cancellation, WorkCover—
  - (i) pays compensation for a worker for an application for compensation allowed during the licence period; or
  - (ii) incurs management costs in managing the applications for compensation.

(2) The compensation payments and management costs—

- (a) are a debt due to WorkCover by the former self-insurer; and
- (b) are payable within 28 days of WorkCover’s written demand for payment, or a further period allowed by WorkCover.

(3) WorkCover may recover the debt from the unconditional bank guarantee or cash deposit if the former self-insurer—

- (a) fails to pay the debt within the period; or
- (b) authorises WorkCover to do so.

(4) In this section—

**“management costs”** means the reasonable costs of administering the former self-insurer’s claims.

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<sup>72</sup> Section 119 (Powers of self-insurers)

**Assessing residual liability after cancellation**

**129.(1)** This section applies if a licence is cancelled.

(2) The former self-insurer's residual liability is the amount assessed by an actuary appointed by WorkCover.

(3) WorkCover may ask an actuary to assess the residual liability after the cancellation.

(4) The amount of liability assessed and management costs—

- (a) are a debt due to WorkCover by the former self-insurer; and
- (b) are payable within 28 days of the date of assessment, or a further period allowed by WorkCover.

(5) Without limiting subsection (4), if the former self-insurer fails to pay the debt within the period, WorkCover may recover the debt from the unconditional bank guarantee or cash deposit.

(6) WorkCover must retain the deposit or bank guarantee until it is satisfied that the former self-insurer's residual liability has been discharged or adequately provided for.

(7) In this section—

**“management costs”** means the reasonable costs of—

- (a) administering the former self-insurer's claims; and
- (b) the actuarial assessment of liability.

**“residual liability”** means the total of the accrued, continuing, future and contingent liabilities for claims incurred during the licence period.

**Return of bank guarantee or cash deposit after cancellation**

**130.(1)** This section applies if—

- (a) a self-insurer's licence is cancelled; and
- (b) the former self-insurer considers that all accrued, continuing, future and contingent liabilities of the self-insurer have been discharged or adequately provided for.

(2) The former self-insurer may, by written notice given at least 1 year after the cancellation, ask WorkCover to return the balance of the bank

guarantee or cash deposit.

(3) WorkCover must, within 90 days after being given the request—

- (a) return the balance; or
- (b) if WorkCover considers that all accrued, continuing, future and contingent liabilities of the self-insurer have not been discharged or adequately provided for—give the former self-insurer a written notice refusing to return the balance and stating the reasons for the refusal.

(4) If WorkCover refuses to return the balance, the former self-insurer may appeal under chapter 9.<sup>73</sup>

(5) In this section—

“**return**” includes relinquish.

### **Contingency account**

**131.(1)** WorkCover may establish and maintain a contingency account to meet any future liability against a former self-insurer.

(2) A regulation may prescribe that a specified percentage of the self-insurer’s annual levy may be paid to the account.

(3) Payments may be made from the contingency account if—

- (a) a self-insurer’s licence is cancelled; and
- (b) the bank guarantee or cash deposit lodged by a former self-insurer is exhausted or has been returned; and
- (c) WorkCover is unable to recover claims costs from the former self-insurer.

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<sup>73</sup> Chapter 9 (Reviews and appeals)

## CHAPTER 3—COMPENSATION

### PART 1—INTERPRETATION FOR CHAPTER 3

#### Meaning of “amount payable under an industrial instrument”

**132.(1)** An amount payable under an industrial instrument to a worker is the weekly rate of wages to which the worker is entitled for the time being under the industrial instrument.

**(2)** However, if a worker is employed in an industry that is seasonal in nature, the amount payable must reflect the relevant season under the industrial instrument.

#### Meaning of “normal weekly earnings”

**133.(1)** “Normal weekly earnings” are the normal weekly earnings of a worker from employment (continuous or intermittent) had by the worker in the 12 months immediately before the day the worker sustained an injury.

**(2)** If a worker has not had employment for the 12 months immediately before the day the worker sustained an injury, “normal weekly earnings” are the normal weekly earnings of the worker from employment (continuous or intermittent) had by the worker in the period in which the worker has had the employment.

**(3)** “Normal weekly earnings” are calculated as prescribed under a regulation.

#### Meaning of “QOTE”

**134.** “QOTE”, for a financial year, is the seasonally adjusted amount of Queensland full time adult persons ordinary time earnings as declared by the Australian Statistician in the statistician’s report about average weekly earnings published immediately before the start of the financial year.<sup>74</sup>

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<sup>74</sup> The publication is currently entitled ‘Average Weekly Earnings States and Australia’.

## **PART 2—COMPENSATION ENTITLEMENTS OF WORKERS GENERALLY**

### *Division 1—General statement of entitlement*

#### **Compensation entitlement and source of payments**

**135.(1)** Compensation is payable under and subject to this Act for an injury sustained by a worker.

(2) The compensation must be paid by the employer if the employer is a self-insurer.

(3) Otherwise the compensation must be paid by WorkCover.

#### **Compensation entitlement can not be relinquished, assigned or subject to execution**

**136.(1)** A worker or another person can not relinquish an entitlement to compensation for an injury sustained by the worker or the person.

(2) An agreement made by the worker or the person purporting to relinquish the entitlement is of no force or effect.

(3) Compensation can not be assigned, charged, taken in execution, or attached, and a worker's entitlement to compensation can not pass to another person by operation of law or otherwise, and no claim can be set off against the amount.

(4) Subsection (3) is subject to subsection (5) and section 188(2)(b).<sup>75</sup>

(5) If an employer pays to a worker an amount, for example wages, to which the worker is entitled as compensation for an injury, WorkCover may reimburse the employer for the amount paid to the extent of the worker's entitlement for the injury instead of paying the worker.

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<sup>75</sup> Section 188 (Recovery of compensation overpaid)

**Public trustee may act for claimant**

**137.** If asked by a claimant, the public trustee may make and prosecute an application for compensation, and act for the claimant, for any purpose of the application.

**Public trustee may receive payments for minors**

**138.(1)** This section applies if a person entitled to payment of lump sum compensation or a redemption payment is under 18 years.

**(2)** WorkCover may pay the amount of the lump sum compensation or redemption payment to the public trustee.

*Division 2—Entitlement in relation to place where injury is sustained***Entitlement depends on where injury is sustained**

**139.** This Act confers an entitlement to compensation for an injury sustained by a worker only if—

- (a) the worker is in Queensland when the injury is sustained, unless section 140(2) applies; or
- (b) the worker is outside Queensland when the injury is sustained and section 140(1) applies.

**Interstate and overseas arrangements**

**140.(1)** If—

- (a) an injury is sustained by a worker in another State or country in circumstances that, had the injury been sustained in Queensland, compensation would have been payable; and
- (b) at the time of the injury, the worker's principal place of employment was in Queensland;

compensation is payable as if the injury were sustained in Queensland.

**(2)** If—

- (a) an injury is sustained by a worker in Queensland; and

- (b) at the time of the injury, the worker's principal place of employment was in another State or country;

compensation is not payable for the injury.

(3) For this section, a worker's principal place of employment is in a State or country if—

- (a) the worker usually works in that State or country; or
- (b) for a worker who usually works in more than 1 State or country—the employer's principal place of business is in that State or country.

(4) In deciding whether a worker usually works in a State or country, regard must be had to the worker's work history with the employer and the intention of the worker and employer.

(5) However, regard must not be had to any temporary arrangement under which the worker works in a State or country for a continuous period of not longer than 6 months.

### *Division 3—Relationship of entitlement to other compensation*

#### **Entitlement ends if compensated under corresponding laws**

**141.(1)** This section applies if, for an injury, payment (by whatever name called) that corresponds to compensation under this Act is made to, or on account of, a person under an entitlement under a law of the Commonwealth or of a place other than Queensland.

(2) The person's entitlement to compensation under this Act for the injury stops.

#### **Compensation recoverable if later paid under corresponding laws**

**142.(1)** This section applies if, for an injury—

- (a) payment of compensation is made under this Act to, or on account of, a person; and
- (b) subsequently payment (by whatever name called) that corresponds to compensation under this Act is made to, or on

account of, the person under an entitlement under a law of the Commonwealth or of a place other than Queensland for the injury.

(2) WorkCover may recover the amount paid as compensation under this Act from the person to whom, or on whose account, it was paid.

### **Condition on compensation application if compensation available under this Act and corresponding law**

**143.(1)** This section applies if, for an injury, a person is entitled to—

- (a) payment of compensation under this Act; and
- (b) payment that corresponds to compensation payable under this Act under an entitlement under a law of the Commonwealth or of a place other than Queensland.

(2) An application for compensation under this Act is duly made, and is to be acted on, only if the claimant gives WorkCover the claimant's statutory declaration that—

- (a) a claim for payment for the injury under the entitlement under the law of the Commonwealth or of the place other than Queensland has not been made; and
- (b) a claim mentioned in paragraph (a) will not be made.

### **Entitlement to compensation ends if damages claim is finalised**

**144.(1)** This section applies if, for an injury, there is—

- (a) an entitlement to compensation; and
- (b) an entitlement to recover damages against an employer or another person.

(2) An entitlement to compensation ends when settlement for damages is agreed or judgment for damages is given.

(3) In this section—

“**damages**” includes damages under a legal liability existing independently of this Act, whether or not within the meaning of section 11.

## **PART 3—COMPENSATION ENTITLEMENTS OF PARTICULAR WORKERS**

### *Division 1—Seafarers*

#### **Application of div 1**

**145.** This division applies to an injury sustained by a worker who was a seafarer when the injury was sustained.

#### **Meaning of “seafarer”**

**146. “Seafarer”** means a worker employed on a ship by the owner or charterer of the ship—

- (a) as a master or an officer; or
- (b) as crew or an apprentice; or
- (c) in any other capacity.

#### **Entitlements of seafarers**

**147.** A seafarer is entitled to compensation for an injury sustained only if the seafarer is employed—

- (a) on a State ship; or
- (b) on a Queensland ship, if the ship—
  - (i) is not on a voyage interstate or to or from a country other than Australia; and
  - (ii) is not within territorial waters of a country other than Australia for a reason other than mishap, stress of weather or offering assistance to a ship in distress.

#### **Payment on account of seafarers**

**148.(1)** Compensation is not payable for the death of a seafarer who leaves no dependants, if the owner or charterer of the ship on which the

seafarer was employed when the injury was sustained is, under an Act or law in force in the State, liable to pay the expenses of the seafarer's funeral.

(2) Compensation is not payable for injury sustained by a seafarer for a period during which the owner or charterer of the ship on which the seafarer was employed when the injury was sustained is, under another Act or law in force in the State, liable to pay the expenses, maintenance or wages of the seafarer.

(3) Compensation payable for injury sustained by a seafarer must be paid in full, despite any limitation of liability prescribed by another law.

(4) Subsection (3) applies subject to section 141.<sup>76</sup>

### *Division 2—Miners*

#### **Application of div 2**

**149.** This division applies to an injury sustained by a worker who was a miner when the injury was sustained and the injury is the disease silicosis or anthraco-silicosis.

#### **Entitlements of miners**

**150.(1)** The worker is entitled to compensation only if subsection (2) or (3) applies.

(2) Compensation is payable for the injury if the worker—

- (a) has been continuously resident in the State during the 5 years immediately before—
  - (i) the onset of incapacity due to the disease; or
  - (ii) death due to the disease, if it happens without the onset of incapacity due to the disease; and
- (b) during the period of residency, has been employed in employment in mining, quarrying, stone crushing or stone cutting in the State for at least 300 days.

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<sup>76</sup> Section 141 (Entitlement ends if compensated under corresponding laws)

(3) If subsection (2) does not apply, compensation is payable for the injury if the worker—

- (a) has been resident in the State for periods totalling at least 5 years during the 7 years immediately before—
  - (i) the onset of incapacity due to the disease; or
  - (ii) death due to the disease, if it happens without the onset of incapacity due to the disease; and
- (b) during the period of residency, has been employed in employment in mining, quarrying, stone crushing or stone cutting in the State for at least 500 days.

### *Division 3—Workers with industrial deafness*

#### **Application of div 3**

**151.** This division applies to a worker who has sustained an injury that is industrial deafness.

#### **Entitlements for industrial deafness**

**152.(1)** The worker is entitled to compensation for the industrial deafness under part 9 and section 229(1)(a)<sup>77</sup> and not under any other provision.

(2) The application for compensation for industrial deafness must be made—

- (a) while the claimant is a worker under this Act; or
- (b) if the claimant would ordinarily be a worker under this Act but is temporarily unemployed; or
- (c) within 12 months after the claimant's formal retirement from employment.

(3) The worker is entitled to compensation for industrial deafness that is attributable to the worker's employment in the State as a worker if the

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<sup>77</sup> Part 9 (Entitlement to compensation for permanent impairment) and section 229 (Extent of liability for medical treatment)

worker—

- (a) has been employed in an industry in the State for a period of, or for periods totalling, at least 5 years; and
- (b) the employment was at a location, or at locations, where the noise level was the major significant factor causing the industrial deafness.

(4) The worker is not entitled to lump sum compensation for the first 5% of the worker's diminution of hearing.

(5) WorkCover must ask that the worker's degree of permanent impairment resulting from the diminution of hearing be assessed under section 197.<sup>78</sup>

### **Further application for compensation for industrial deafness**

**153.(1)** This section applies if a worker has lodged an application for compensation for industrial deafness.

(2) The worker is entitled to lodge a further application for compensation for industrial deafness only if it is lodged more than 3 years after the previous application was lodged with WorkCover.

(3) The worker is entitled to further lump sum compensation if the worker has sustained a further diminution of hearing of more than 5%.

(4) The further application must be decided under section 152.

### ***Division 4—Workers with prescribed disfigurement***

#### **Application of div 4**

**154.** This division applies to a worker who has sustained an injury that results in prescribed disfigurement.

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<sup>78</sup> Section 197 (Assessment of permanent impairment)

**Entitlements of worker who sustains prescribed disfigurement**

**155.(1)** The worker is entitled to compensation under this division in addition to compensation to which the worker is entitled under another provision of this Act.

(2) In no case is weekly payment of compensation to be made for prescribed disfigurement.

(3) Compensation for prescribed disfigurement is payable as lump sum compensation in an amount calculated having regard to the severity of the worker's prescribed disfigurement and the table of injuries.

**PART 4—COMPENSATION AFFECTED BY  
WORKERS' CONDUCT****Self-inflicted injuries**

**156.** Compensation is not payable for an injury sustained by a worker if the injury is intentionally self-inflicted.

**Injuries caused by misconduct**

**157.(1)** Compensation is payable for an injury sustained by a worker that is caused by the worker's serious and wilful misconduct only if—

- (a) the injury results in death; or
- (b) WorkCover considers that the injury could result in a WRI of 50% or more.

(2) However, compensation is not payable if the injury could result in a WRI of 50% or more arising from—

- (a) a psychiatric or psychological injury; or
- (b) combining a psychiatric or psychological injury and another injury.

(3) If WorkCover and the worker can not agree that the worker's injury could result in a WRI of 50% or more—

- (a) the degree of impairment that could be sustained by the worker may be decided only by a medical assessment tribunal; and
- (b) WorkCover must refer the question of the degree of impairment to a tribunal for decision.

(4) In this section—

“**serious and wilful misconduct**” of a worker does not include conduct engaged in at the express or implied direction of the worker’s employer.

## **PART 5—COMPENSATION APPLICATION AND OTHER PROCEDURES**

### **Time for applying**

**158.(1)** An application for compensation is valid and enforceable only if the application is lodged within 6 months after the entitlement to compensation arises.

(2) If an application is lodged more than 28 days after the entitlement to compensation arises, the extent of WorkCover’s liability to pay compensation starts on the day the valid application is lodged.

(3) Subsection (2) does not apply if death is, or results from, the injury.

(4) WorkCover may waive subsection (1) for a particular application if it is satisfied that special circumstances of a medical nature, decided by a medical assessment tribunal, exist.

(5) WorkCover may waive subsection (2) for a particular application if it is satisfied that special circumstances exist.

### **Applying for compensation**

**159.(1)** An application for compensation must be made in the approved form by the claimant.

(2) The application must be lodged—

- (a) if the claimant's employer is a self-insurer—with the self-insurer;<sup>79</sup> or
- (b) if the claimant's employer is not a self-insurer—with WorkCover.

(3) The application must be accompanied by—

- (a) a certificate in the approved form of a doctor who attended the claimant; and
- (b) any other evidence or particulars prescribed under a regulation.

(4) A registered dentist may issue the certificate mentioned in subsection (3)(a) for an oral injury.

(5) If the claimant can not complete an application because of a physical or mental incapacity, someone else may complete it on the claimant's behalf.

### **Employer's duty to report injury**

**160.(1)** An employer, other than an employer who is a self-insurer, whose worker sustains an injury for which compensation may be payable must complete a report in the approved form and send it to the nearest office of WorkCover.

(2) The employer must send the report immediately after the first of the following happens—

- (a) the employer knows the injury has been sustained;
- (b) the worker reports the injury to the employer;
- (c) the employer receives WorkCover's written request for a report.

(3) If an employer fails to comply with subsection (1) within 10 days after any of the circumstances mentioned in subsection (2), the employer commits an offence, unless the employer has a reasonable excuse.

Maximum penalty—50 penalty units.

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<sup>79</sup> Specific reference to a self-insurer is included for clarity only, as a self-insurer has WorkCover's functions under this chapter.

**Decision about application for compensation**

**161.(1)** An application for compensation must be allowed or rejected in the first instance by WorkCover.

**(2)** If WorkCover does not notify the claimant of its decision on the application within 6 months after the application is lodged with WorkCover, the claimant may apply to have the claimant's application reviewed under chapter 9.<sup>80</sup>

**Examination by registered person**

**162.(1)** WorkCover may at any time require a claimant or a worker to submit to a personal examination by a registered person at a place reasonably convenient for the claimant or worker.

**(2)** Subsection (3) applies if the claimant or worker—

- (a) fails to attend for the examination at the time and place advised by WorkCover; or
- (b) having attended, refuses to be examined by the registered person; or
- (c) obstructs, or attempts to obstruct, the examination.

**(3)** Any entitlement the claimant or worker may have to compensation is suspended until the claimant or worker undergoes the examination.

**Worker must notify return to work or engagement in a calling**

**163.(1)** A worker receiving compensation for an injury must give written notice within 14 days of the worker's—

- (a) return to work; or
- (b) engagement in a calling.

Maximum penalty—50 penalty units.

**(2)** The notice must be given—

- (a) if the worker's employer is a self-insurer—to the self-insurer; or

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<sup>80</sup> Chapter 9 (Reviews and appeals)

(b) if the worker's employer is not a self-insurer—to WorkCover.

(3) The notice may be a certificate in the approved form of a doctor stating the worker's capacity for work.

### **Suspension of compensation during term of imprisonment**

**164.** WorkCover may suspend compensation payable to a worker if the worker is serving a term of imprisonment.

### **Compensation not payable during suspension**

**165.** If an entitlement to compensation is suspended under this chapter or chapter 4, 7 or 9,<sup>81</sup> no compensation is payable for the period of suspension.

## **PART 6—MAXIMUM STATUTORY COMPENSATION**

### **Application of pt 6**

**166.** This part applies to 1 injury or multiple injuries sustained by a worker in any 1 event.

### **Maximum entitlement**

**167.(1)** The maximum amount of compensation payable for 1 injury or multiple injuries sustained in 1 event is—

- (a) for compensation payable as weekly payments under part 8<sup>82</sup>—\$103 100;

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<sup>81</sup> Chapter 4 (Injury management), 7 (Medical assessment tribunals) or 9 (Reviews and appeals)

<sup>82</sup> Part 8 (Weekly payment of compensation)

- (b) for lump sum compensation payable under section 198<sup>83</sup>—\$103 100;
- (c) for the total of compensation payable under paragraphs (a) and (b)—\$103 100.

(2) A worker to whom the maximum amount of compensation is paid is not entitled to further compensation for the injury or multiple injuries arising from the event for any period after the payment is made.

(3) However, subsections (1) and (2) do not limit the power to make additional payment of compensation under part 9, division 4.<sup>84</sup>

## **PART 7—PAYMENT OF COMPENSATION**

### **Time from which compensation payable**

**168.(1)** The entitlement to compensation for an injury arises on the day the worker is assessed by—

- (a) a doctor; or
- (b) if the injury is an oral injury and the worker attends a dentist—the dentist.

(2) However, any entitlement to weekly payment of compensation starts on—

- (a) if a doctor or dentist assesses the injury as resulting in total or partial incapacity for work on the day the worker stops work because of the injury—the day after the worker stops work because of the injury; or
- (b) if a doctor or dentist assesses the injury as resulting in total or partial incapacity for work on a day later than the day the worker stops work because of the injury—the day the doctor or dentist

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<sup>83</sup> Section 198 (Calculation of lump sum compensation)

<sup>84</sup> Part 9 (Entitlement to compensation for permanent impairment), division 4 (Additional lump sum compensation)

assesses the injury.

(3) Subsection (2) is subject to section 158(2).<sup>85</sup>

## **PART 8—WEEKLY PAYMENT OF COMPENSATION**

### *Division 1—Application*

#### **Application and object of pt 8**

**169.(1)** This part applies if a worker is totally or partially incapacitated because of injury for which compensation is payable.

(2) The object of this part is to provide for weekly payments to the worker during the period of incapacity.

### *Division 2—Advances on weekly payments*

#### **Advances on account**

**170.(1)** If WorkCover is satisfied that an application for compensation under this part is well founded, it may from time to time advance to the worker amounts on account of weekly payment of compensation as it considers appropriate in the circumstances.

(2) WorkCover may exercise the power under subsection (1) at any time before the entitlement to compensation is—

- (a) ascertained; or
- (b) reviewed under chapter 9.<sup>86</sup>

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<sup>85</sup> Section 158 (Time for applying)

<sup>86</sup> Chapter 9 (Reviews and appeals)

***Division 3—Adjustment of entitlements under pt 8*****Worker can not receive more than if injury had not been sustained**

**171.(1)** A worker must not receive an amount under this part that is more than the worker would have received from the worker's employment if the worker were at work and the injury had not been sustained.

**(2)** Subsection (1) has effect despite any other provision of this part.

**Regard to other benefits for workers**

**172.** Despite divisions 4 and 5,<sup>87</sup> in assessing the amount of weekly payment of compensation WorkCover—

- (a) may have regard to the amount of an entitlement had by the worker independently of this Act by way of—
  - (i) payment or other benefit that is being, has been, or will be received by the worker; and
  - (ii) payment that is being, has been, or will be made on account of the worker; and
- (b) may reduce the weekly payment of compensation by the equivalent weekly amount of the payment or other benefit mentioned in paragraph (a) for the relevant period of compensation.

***Division 4—Entitlement for total incapacity******Subdivision 1—Application of sdiv 1*****Entitlement to weekly payments**

**173.** Compensation payable to a totally incapacitated worker or person to

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<sup>87</sup> Divisions 4 (Entitlement for total incapacity) and 5 (Entitlement for partial incapacity)

whom subdivision 3<sup>88</sup> applies is a weekly payment under this division.

### *Subdivision 2—Workers*

#### **Total incapacity—workers whose employment is governed by an industrial instrument**

**174.(1)** The compensation payable to a totally incapacitated worker whose employment is governed by an industrial instrument is, for each week—

- (a) for the first 26 weeks of the incapacity, the greater of the following—
  - (i) 85% of the worker's NWE;
  - (ii) the amount payable under the worker's industrial instrument; and
- (b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the greater of the following—
  - (i) 65% of the worker's NWE;
  - (ii) 60% of QOTE; and
- (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
  - (i) if a worker demonstrates to WorkCover that the injury could result in a WRI of more than 15%—the greater of the following—
    - (A) 65% of the worker's NWE;
    - (B) 60% of QOTE; or
  - (ii) otherwise—an amount equal to the single pension rate.

**(2)** However, the amount paid under subsection (1)(b) or (c) must not be more than the amount to which the worker would be entitled under subsection (1)(a).

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<sup>88</sup> Subdivision 3 (Person entitled to compensation other than workers and students)

**Total incapacity—workers whose employment is not governed by industrial instrument**

**175.(1)** The compensation payable to a totally incapacitated worker whose employment is not governed by an industrial instrument is, for each week—

- (a) for the first 26 weeks of the incapacity, the greater of the following—
  - (i) 85% of the worker's NWE;
  - (ii) 70% of QOTE; and
- (b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the greater of the following—
  - (i) 65% of the worker's NWE;
  - (ii) 60% of QOTE; and
- (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
  - (i) if a worker demonstrates to WorkCover that the injury could result in a WRI of more than 15%—the greater of the following—
    - (A) 65% of the worker's NWE;
    - (B) 60% of QOTE; or
  - (ii) otherwise—an amount equal to the single pension rate.

**(2)** However, the amount must not be more than the worker's NWE.

**Total incapacity—certain contract workers**

**176.(1)** The compensation payable to a totally incapacitated contract worker is, for each week—

- (a) for the first 26 weeks of the incapacity, the greater of the following—
  - (i) 85% of the worker's NWE;
  - (ii) the amount payable under the worker's contract of service; and

- (b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the greater of the following—
  - (i) 65% of the worker’s NWE;
  - (ii) 60% of QOTE; and
- (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
  - (i) if a worker demonstrates to WorkCover that the injury could result in a WRI of more than 15%—the greater of the following—
    - (A) 65% of the worker’s NWE;
    - (B) 60% of QOTE; or
  - (ii) otherwise—an amount equal to the single pension rate.

(2) However, the amount paid under subsection (1)(b) or (c) must not be more than the amount to which the worker would be entitled under subsection (1)(a).

(3) In this section—

**“contract worker”** means a worker employed under a contract of service—

- (a) as an officer of the public service; or
- (b) as an officer of a government entity; or
- (c) by a university; or
- (d) as a salaried employee in the electricity industry; or
- (e) by the chief executive of the department within which the *Health Services Act 1991* is administered.

### **Total incapacity—casual or part-time workers**

**177.(1)** The compensation payable to a totally incapacitated worker engaged in casual or part-time employment is a payment under section 174,

175 or 176.<sup>89</sup>

(2) However, the payment must not be more than the worker's NWE.

### **Total incapacity—workers receiving certain benefits under Commonwealth law**

**178.(1)** This section applies if a totally incapacitated worker was receiving an age, disability support or class B widow pension under a Commonwealth law when the injury was sustained.

(2) The compensation payable to the worker is the lesser of the following amounts—

- (a) the amount the worker was earning at the time of the injury;
- (b) the amount the worker is entitled to earn before the maximum pension payable to the worker is reduced.

### **Total incapacity—workers with more than 1 employer**

**179.(1)** This section applies if—

- (a) a totally incapacitated worker is employed by more than 1 employer when the injury is sustained; and
- (b) the worker's employment with 1 employer is other than as a casual employee.

(2) WorkCover may decide that the worker's entitlement to compensation is to be calculated under the industrial instrument that increases the worker's entitlement to compensation.

(3) If WorkCover makes a decision under subsection (2), the entitlement to compensation is calculated under the industrial instrument decided by WorkCover.

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<sup>89</sup> Section 174 (Total incapacity—workers whose employment is governed by an industrial instrument)  
Section 175 (Total incapacity—workers whose employment is not governed by industrial instrument)  
Section 176 (Total incapacity—certain contract workers)

***Subdivision 3—Persons entitled to compensation other than workers and students***

**Application of sdiv 3**

**180.** This subdivision applies to a person entitled to compensation, other than a worker or a student.

**Total incapacity**

**181.(1)** The compensation payable to a totally incapacitated person is a payment under this section.

**(2)** The payment for a person who is not in employment or self-employed is the amount (if any) that WorkCover considers is reasonable.

**(3)** However, the payment under subsection (2) must not be more than 60% of QOTE.

**(4)** The payment for a person who is employed, but not self-employed, is a payment under section 174, 175, 176, 177, 178 or 179.<sup>90</sup>

**(5)** The payment for a person who is self-employed is, for each week—

(a) for the first 26 weeks of the incapacity—

(i) if subparagraph (ii) does not apply—70% of QOTE; or

(ii) if the person replaces the person's labour—the payment under subsection (6); and

(b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the lesser of the following—

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<sup>90</sup> Section 174 (Total incapacity—workers whose employment is governed by an industrial instrument)

Section 175 (Total incapacity—workers whose employment is not governed by a industrial instrument),

Section 176 (Total incapacity—certain contract workers)

Section 177 (Total incapacity—casual or part-time workers)

Section 178 (Total incapacity—workers receiving certain benefits under Commonwealth law)

Section 179 (Total incapacity—workers with more than 1 employer)

- (i) 60% of QOTE;
- (ii) the reasonable cost of labour paid to replace the person; and
- (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
  - (i) if a person demonstrates to WorkCover that the injury could result in a WRI of more than 15%—the greater of the following—
    - (A) 65% of the person’s NWE;
    - (B) 60% of QOTE; or
  - (ii) otherwise—an amount equal to the single pension rate.
- (6) For subsection (5)(a)(ii), the amount is—
  - (a) if paragraph (b) does not apply—85% of the reasonable cost of labour paid to replace the person; or
  - (b) if the reasonable cost of labour paid to replace the person is less than 70% of QOTE—the reasonable cost of labour paid to replace the person.

#### *Subdivision 4—Reference to tribunal*

### **Total incapacity—reference about impairment to medical assessment tribunal**

**182.(1)** This section applies if—

- (a) for section 174(1)(c)(i), 175(1)(c)(i), 176(1)(c)(i) or 181(5)(c)(i),<sup>91</sup> WorkCover and a worker or a person can not agree that the injury could result in a WRI of more than 15%; or
- (b) for section 174(1)(c)(ii), 175(1)(c)(ii), 176(1)(c)(ii) or

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<sup>91</sup> Section 174 (Total incapacity—workers whose employment is governed by an industrial instrument)  
 Section 175 (Total incapacity—workers whose employment is not governed by an industrial instrument),  
 Section 176 (Total incapacity—certain contract workers)  
 Section 181 (Total incapacity)

181(5)(c)(ii), WorkCover and a worker or a person can not agree that the injury could result in a WRI of 15% or less.

(2) The degree of impairment that could result from the injury may be decided only by a medical assessment tribunal.

(3) WorkCover must refer the question of impairment to a tribunal for decision.

(4) In deciding the degree of impairment that could result from the injury, a psychiatric or psychological injury must not be combined with another injury.

### *Division 5—Entitlement for partial incapacity*

#### **Definitions for div 5**

**183.** In this division—

“**LE**” means the worker’s loss of earnings, expressed as a weekly rate, because of the injury.

“**loss of earnings**” means the difference between—

- (a) the amount of the worker’s normal weekly earnings at the time of injury; and
- (b) the amount—
  - (i) of the worker’s weekly earnings from employment during the period of partial incapacity; or
  - (ii) if the worker is not in employment during the period of partial incapacity—that could be reasonably expected to be derived by the worker during the period, having regard to the worker’s incapacity and the availability of employment.

“**MC**” means the maximum compensation expressed as a weekly rate, that would have been payable under this part had total incapacity of the worker resulted from the injury.

“**NWE**” see section 133.<sup>92</sup>

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<sup>92</sup> Section 133 (Meaning of normal weekly earnings)

“**PC**” means the compensation expressed as a weekly rate, payable for the injury on account of the partial incapacity.

### **Partial incapacity**

**184.(1)** Compensation payable to a partially incapacitated worker is a weekly payment under this section.

(2) The weekly payment is an amount calculated under the following formula—

$$\text{PC} = \frac{\text{MC} \times \text{LE}}{\text{NWE.}}$$

(3) However, the amount must not be more than MC.

### **WorkCover may require information from partially incapacitated worker**

**185.(1)** WorkCover may, by written notice given to a partially incapacitated worker, require the worker to give WorkCover information about, and particulars of, the worker’s employment and earnings during a period of partial incapacity.

(2) If a worker fails to give WorkCover the required information or particulars within 14 days after receiving the notice, WorkCover may suspend the worker’s entitlement to weekly payments of compensation until the worker fully complies with the request.

## ***Division 6—Review of compensation***

### **Review of compensation and associated payments**

**186.(1)** WorkCover may, from time to time, review an entitlement to compensation.

(2) On a review, WorkCover may terminate, suspend, decrease or increase an entitlement.

**Review of weekly payments—worker under 18**

**187.(1)** This section applies if a worker receiving weekly payments of compensation—

- (a) was under 18 when the injury was sustained; and
- (b) a review takes place more than 12 months after the injury was sustained.

**(2)** The worker's entitlement to weekly compensation may be increased from the date of the review.

**(3)** The worker's future entitlement to weekly payment of compensation must be calculated having regard to the industrial instrument applying to the worker as if the worker were at work and the injury had not been sustained.

**(4)** This section does not limit another provision of this chapter that provides for a review of the worker's entitlement.

**Recovery of compensation overpaid**

**188.(1)** This section applies if, for an application for compensation, payment has been made to a worker or another person of an amount that is more than the amount to which the worker or person is entitled.

**(2)** WorkCover may—

- (a) recover from the worker or person the difference between the payment and the entitlement; or
- (b) from time to time deduct from weekly payments of compensation that become payable to the worker, whether for that application or a subsequent application for compensation, the difference between the payment and the entitlement, or any part of the difference.

**(3)** If the overpayment has been made because of incorrect information given by a worker's employer, WorkCover may recover the overpaid amount from the employer.

***Division 7—Redemption of weekly payments*****Redemption—worker receiving weekly payments for at least 2 years**

**189.(1)** This section applies if—

- (a) a worker has been receiving weekly payments of compensation for at least 2 years; and
- (b) WorkCover receives a report from a doctor that the worker's injury is not stable and stationary for the purposes of assessing permanent impairment.

(2) WorkCover's liability to make weekly payments of compensation may be discharged by a redemption payment to the worker in an amount agreed between WorkCover and the worker.

**Redemption—worker moves interstate**

**190.(1)** This section applies if—

- (a) a worker receiving weekly payments of compensation moves interstate permanently; and
- (b) WorkCover receives a report from a doctor that the worker's injury is not stable and stationary for the purposes of assessing permanent impairment.

(2) WorkCover's liability to make weekly payments of compensation may be discharged by a redemption payment to the worker in an amount agreed between WorkCover and the worker.

**Redemption—worker moves abroad**

**191.(1)** This section applies if a worker receiving weekly payments of compensation stops ordinarily residing in Australia.

(2) The worker stops being entitled to compensation.

(3) However, if the worker satisfies WorkCover that the worker's incapacity resulting from the injury for which the compensation is payable is permanent, the worker is entitled to a redemption payment in an amount agreed between WorkCover and the worker.

**Calculation of redemption payment**

**192.(1)** The amount of a redemption payment that WorkCover may pay to a worker is an amount that is not more than the amount calculated under the following formula—

$$(156 \times Q) - TWP.$$

(2) In subsection (1)—

“Q” is 60% of QOTE.

“TWP” means the total weekly payments already paid to the worker.

**Review of redemption payment**

**193.(1)** If a worker asks, a redemption payment may be reviewed by WorkCover within 12 months after the payment is made.

(2) On a review, WorkCover may decrease or, subject to section 192, increase the payment.

**No compensation after redemption payment made**

**194.** A worker to whom a redemption payment is made is not entitled to further compensation for the event after the amount of the payment is agreed or decided.

***Division 8—When entitlement to weekly payments stops*****When weekly payments stop**

**195.(1)** The entitlement of a worker to weekly payments under this part stops when the first of the following happens—

- (a) the incapacity because of the work related injury stops;
- (b) the worker has received weekly payments for the incapacity for 5 years;
- (c) compensation under this part reaches the maximum amount

under part 6.<sup>93</sup>

(2) If subsection (1)(b) or (c) applies, the worker's entitlement to further compensation for the injury stops.

(3) This section does not limit another provision of this Act that stops weekly payments.

## **PART 9—ENTITLEMENT TO COMPENSATION FOR PERMANENT IMPAIRMENT**

### *Division 1—General statement*

#### **Entitlement to assessment of permanent impairment and lump sum compensation**

**196.(1)** Under this part, WorkCover or a worker is entitled to ask for an assessment to decide if a worker has sustained a degree of permanent impairment from injury.

(2) If the worker is assessed under this part as having sustained a degree of permanent impairment, the worker is entitled to a payment, or an offer of payment, of lump sum compensation for the permanent impairment.

(3) In particular circumstances, the worker may be entitled to a payment of additional lump sum compensation.

### *Division 2—Assessment of permanent impairment under table of injuries*

#### **Assessment of permanent impairment**

**197.(1)** WorkCover may decide, or a worker may ask WorkCover, to have the worker's injury assessed to decide if the worker's injury has

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<sup>93</sup> Part 6 (Maximum statutory compensation)

resulted in a degree of permanent impairment.

(2) WorkCover must have the degree of permanent impairment assessed—

- (a) for industrial deafness—by an audiologist; or
- (b) for a psychiatric or psychological injury—by a medical assessment tribunal; or
- (c) for another injury—by a doctor.

(3) The degree of permanent impairment must be assessed in the way prescribed under a regulation and a report must be given to WorkCover stating—

- (a) the matters taken into account, and the weight given to the matters, in deciding the degree of permanent impairment; and
- (b) any other information prescribed under a regulation.

### **Calculation of lump sum compensation**

**198.(1)** If, as a result of the assessment, a worker is entitled to lump sum compensation, the amount of the lump sum compensation must be calculated under a regulation having regard to the degree of permanent impairment and the table of injuries.<sup>94</sup>

(2) Without limiting subsection (1), lump sum compensation for injury must not include an amount for a degree of impairment attributable to—

- (a) a condition existing before the injury; or
- (b) a condition for which the worker is not entitled to compensation.

(3) The amount of lump sum compensation is to be calculated as at the day WorkCover makes an offer of lump sum compensation to the worker under section 205.<sup>95</sup>

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<sup>94</sup> For the maximum amount of lump sum compensation payable under section 198, see part 6 (Maximum statutory compensation).

<sup>95</sup> Section 205 (Offer of lump sum compensation)

**Regard to previous entitlement to lump sum compensation for injury other than industrial deafness**

**199.(1)** This section applies if—

- (a) a worker has previously had an entitlement to lump sum compensation for injury (other than industrial deafness) to a part of the worker's body; and
- (b) the worker sustains a further injury to the same part of the body (the "**later injury**").

**(2)** Lump sum compensation under section 198 for the later injury must be reduced by the worker's previous entitlement.

*Example—*

A worker loses the distal joint of the right index finger in a work related event and has an entitlement to lump sum compensation for the permanent impairment. The worker loses the remaining part of the right index finger in a subsequent work related event. The entitlement for the second permanent impairment must be reduced by the entitlement from the first permanent impairment.

**Regard to previous assessment for industrial deafness**

**200.(1)** This section applies if—

- (a) a worker has previously had an entitlement to lump sum compensation for industrial deafness; and
- (b) the worker sustains further industrial deafness.

**(2)** In deciding the lump sum compensation under section 198<sup>96</sup> for the further industrial deafness, the assessed percentage loss of hearing must be reduced by the previously assessed percentage loss of hearing.

**Calculation of WRI**

**201.(1)** If the worker is assessed as having a degree of permanent impairment, WorkCover must calculate the worker's WRI.

**(2)** The WRI must be calculated under a regulation having regard to—

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<sup>96</sup> Section 198 (Amount of lump sum compensation)

- (a) the worker's entitlement to lump sum compensation calculated under section 198; and
- (b) if the worker had a previous entitlement to lump sum compensation for a similar injury other than industrial deafness—the previous entitlement; and
- (c) if the worker previously had an entitlement to lump sum compensation for industrial deafness—the previous percentage loss of hearing.

### ***Division 3—Notification of assessment of permanent impairment***

#### **Application of div 3**

**202.** This division applies if an assessment of permanent impairment of a worker's injury has been made under section 197.<sup>97</sup>

#### **WorkCover to give notice of assessment of permanent impairment**

**203.(1)** WorkCover must, within 28 days after receiving the assessment of the worker's permanent impairment, give the worker a notice of assessment in the approved form.

**(2)** However, if a worker sustains multiple injuries in an event, WorkCover must give the notice only after the worker's degree of permanent impairment from all the injuries has been assessed.

**(3)** The notice must state—

- (a) whether the worker has sustained permanent impairment from the injury; and
- (b) if the worker has sustained permanent impairment—
  - (i) the degree of permanent impairment attributable to the injury; and
  - (ii) the WRI calculated for the injury resulting in either—
    - (A) a certificate injury; or

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<sup>97</sup> Section 197 (Assessment of permanent impairment)

- (B) a non-certificate injury; and
- (iii) the amount of lump sum compensation under section 198<sup>98</sup> to which the worker is entitled for the injury; and
- (c) if the worker has a WRI of 50% or more—the worker’s entitlement to—
  - (i) additional lump sum compensation under section 210;<sup>99</sup> and
  - (ii) additional lump sum (if any) for gratuitous care under section 211.<sup>100</sup>

(4) If the notice states the worker has not sustained a degree of permanent impairment, WorkCover must also give the worker a copy of sections 11, 259, 260 and 325.<sup>101</sup>

### **Worker’s disagreement with assessment of permanent impairment**

**204.(1)** This section applies if—

- (a) the worker’s degree of permanent impairment has not been assessed by a medical assessment tribunal; and
- (b) the worker does not agree with the degree of permanent impairment stated in the notice of assessment.

(2) The worker must advise WorkCover within 28 days after the notice is given (the “**decision period**”) that the worker does not agree with the degree of permanent impairment.

(3) The degree of permanent impairment may then be decided only by a medical assessment tribunal.

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<sup>98</sup> Section 198 (Amount of lump sum compensation)

<sup>99</sup> Section 210 (Additional lump sum compensation for certain workers)

<sup>100</sup> Section 211 (Additional lump sum compensation for gratuitous care)

<sup>101</sup> Section 11 (Meaning of “damages”)

Section 259 (Claimant may seek damages only on receipt of notice of assessment)

Section 260 (Consequences of seeking damages)

Section 325 (Principles about orders as to costs)

(4) WorkCover must refer the question of degree of permanent impairment to a tribunal for decision.

### **Offer of lump sum compensation**

**205.** If the worker has an entitlement to lump sum compensation under section 198,<sup>102</sup> WorkCover must include, in the notice of assessment, an offer of lump sum compensation to the worker (the “offer”).

### **Certificate injury**

**206.(1)** This section applies if the worker has a certificate injury.

(2) The worker may accept or defer a decision about the offer by giving WorkCover written notice within the decision period.

(3) The worker is taken to have deferred the decision if, within the decision period, the worker does not advise WorkCover that—

- (a) the offer is accepted; or
- (b) the worker wants to defer the decision.

(4) If the worker accepts the offer, WorkCover must pay the worker the amount of lump sum compensation.

### **Non-certificate injury**

**207.(1)** This section applies if the worker has—

- (a) a non-certificate injury; and
- (b) an entitlement to lump sum compensation.

(2) WorkCover must also, when giving the notice of assessment—

- (a) give the worker a copy of sections 11, 259, 260 and 325;<sup>103</sup> and

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<sup>102</sup> Section 198 (Amount of lump sum compensation)

<sup>103</sup> Section 11 (Meaning of “damages”)

Section 259 (Claimant may seek damages only on receipt of notice of assessment)

Section 260 (Consequences of seeking damages)

Section 325 (Principles about order as to costs)

(b) advise the worker that the worker must make an irrevocable election as to whether the worker—

- (i) accepts the offer of payment of lump sum compensation; or
- (ii) seeks damages for the injury.

(3) The worker may accept, reject or defer a decision about the offer by giving WorkCover written notice within the decision period.

(4) The worker is taken to have deferred the decision if, within the decision period, the worker does not advise WorkCover that the offer is accepted or rejected.

(5) If the worker accepts the offer, WorkCover must pay the worker the amount of lump sum compensation.

(6) If the worker fails to give WorkCover notice of the worker's election before the worker seeks damages for the injury, the worker is taken to have rejected lump sum compensation for the injury.

(7) For subsection (6), the worker is taken to seek damages for the injury when the worker lodges a notice of claim under chapter 5.<sup>104</sup>

### **No further compensation after fixed time**

**208.(1)** This section applies to a worker who has been given a notice of assessment.

(2) The worker is not entitled to further compensation for the injury after the first of the following happens—

- (a) the worker notifies WorkCover of the worker's decision about the offer within the decision period;
- (b) 28 days have passed since the worker received the offer.

(3) This section does not limit the worker's entitlement to payment of—

- (a) lump sum compensation under section 206(4) or 207(5);<sup>105</sup> or
- (b) additional compensation, if any, under division 4.

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<sup>104</sup> Chapter 5 (Access to damages)

<sup>105</sup> Section 206 (Certificate injury) or 207 (Non-certificate injury)

***Division 4—Additional lump sum compensation*****Application of div 4**

**209.** This division applies only if a worker's WRI has been calculated.

**Additional lump sum compensation for certain workers**

**210.(1)** This section applies if a worker sustains an injury that results in a WRI of 50% or more.

**(2)** The worker is entitled to additional lump sum compensation of up to \$103 100 for the injury, payable according to a graduated scale prescribed under a regulation.

**(3)** However, the worker is not entitled to additional lump sum compensation if the WRI arises from—

- (a) a psychiatric or psychological injury; or
- (b) combining a psychiatric or psychological injury and another injury.

**Additional lump sum compensation for gratuitous care**

**211.(1)** This section applies if a worker sustains an injury that results in—

- (a) a WRI of 50% or more; and
- (b) a moderate to total level of dependency on day to day care for the fundamental activities of daily living.

**(2)** The worker is entitled to additional lump sum compensation only if—

- (a) day to day care for the fundamental activities of daily living is to be provided at the worker's home on a voluntary basis by another person; and
- (b) the worker resides at home on a permanent basis; and
- (c) the level of care required was not provided to the worker before the worker sustained the impairment; and
- (d) the worker physically demonstrates the level of dependency

mentioned in subsection (1)(b).

(3) However, a worker is not entitled to additional lump sum compensation if the WRI arises from—

- (a) a psychiatric or psychological injury; or
- (b) combining a psychiatric or psychological injury and another injury.

(4) WorkCover must ask that a registered occupational therapist assess the worker's level of dependency resulting from the impairment in the way prescribed under a regulation.

(5) The occupational therapist must give WorkCover an assessment report stating—

- (a) the matters the therapist took into account, and the weight the therapist gave to the matters, in deciding the worker's level of dependency; and
- (b) any other information prescribed under a regulation.

(6) WorkCover must decide the amount of the worker's entitlement to additional compensation of up to \$150 000, payable according to a graduated scale prescribed under a regulation, having regard to—

- (a) the worker's WRI; and
- (b) the worker's level of dependency; and
- (c) any other information prescribed under a regulation.

(7) If the worker does not agree with the level of dependency assessed under subsection (4), WorkCover must refer the matter of the worker's level of dependency to the General Medical Assessment Tribunal for decision.

(8) In this section—

**“home”**, of a worker, means a private dwelling where the worker usually resides.

## **PART 10—COMPENSATION ON WORKER’S DEATH**

### **Application and object of pt 10**

**212.(1)** This part applies if a worker dies because of an injury.

**(2)** The object of this part is to provide for payment by WorkCover of—

- (a) particular expenses arising from the worker’s injury and death; and
- (b) compensation to persons having an entitlement to compensation under this part.

### **Definition for pt 10**

**213.** In this part—

“**student**” means a person who is under 21 and receiving full time education at a school, college, university or similar institution.

### **To whom payments made for death of worker**

**214.(1)** Compensation for the death of a worker is payable—

- (a) to the worker’s legal personal representative; or
- (b) if there is no legal personal representative—
  - (i) so far as the payment is by way of expenses to which a person is entitled—to the person who has incurred the expenses; or
  - (ii) so far as the payment is by way of compensation to the worker’s dependants—to the dependants entitled to compensation.

**(2)** The worker’s legal personal representative must pay or apply the compensation to or for the benefit of the worker’s dependants or other persons entitled to compensation.

**Total and partial dependants**

**215.** If compensation is payable for the death of a worker who is survived by persons totally dependent on the worker and persons partially dependent on the worker, the compensation may be apportioned between the total dependants and the partial dependants.

**Dependant's compensation payable to public trustee**

**216.** WorkCover may pay an amount of compensation payable to a dependant to the public trustee for the dependant's benefit.

**Medical and funeral expenses must be paid by WorkCover**

**217.** WorkCover must pay the reasonable expenses—

- (a) of the medical treatment of, or attendance on, the worker; and
- (b) the worker's funeral.

**Total dependency**

**218.(1)** This section applies if at least 1 of the worker's dependants was, at the time of the worker's death, totally dependent on the worker's earnings.

**(2)** The amount of compensation payable for the worker's dependants is—

- (a) if the worker has left dependent members of the worker's family, for the members—\$164 960; and
- (b) if the worker has left a totally dependent spouse and dependent members of the worker's family who are under 16 or are students, for each member other than the spouse—\$6 190; and
- (c) if the worker has left dependent members of the worker's family or a child of the worker's spouse who was totally dependent on the worker's earnings and who are under 16 or students, for each member or child—a weekly amount equal to 7% of QOTE while the member or child is under 16 or a student.

(3) However, the amount payable under subsection (2)(a) is subject to any reduction made under section 221.<sup>106</sup>

### **Partial dependency**

**219.(1)** This section applies if all of the worker's dependants were, at the time of the worker's death, partially dependent on the worker's earnings.

(2) The amount of compensation payable for the worker's dependants is—

- (a) if the worker has left dependent members of the worker's family, for the members—an amount WorkCover considers is reasonable and proportionate to the monetary value of the loss of dependence by the dependants; and
- (b) if the worker has left dependent members of the worker's family or a child of the worker's spouse who was partially dependent on the worker's earnings and who are under 16 or students, for each member or child—a weekly amount equal to 7% of QOTE while the member or child is under 16 or a student.

(3) However, the amount payable under subsection (2)(a)—

- (a) is subject to any reduction made under section 221; but
- (b) must not be less than 15% of the amount payable under section 218(2)(a); and
- (c) must not be more than the amount payable under section 218(2)(a).

### **Workers under 21**

**220.(1)** This section applies if the worker—

- (a) was under 21; and
- (b) left a parent ordinarily resident in the State but no dependants.

(2) The amount of compensation payable to the parent is \$11 395.

(3) If more than 1 parent is entitled to compensation—

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<sup>106</sup> Section 221 (Reduction of amount payable on death)

- (a) the total amount of compensation payable to the parents is \$11 395; and
- (b) the amount payable to each parent is to be decided by WorkCover.

### **Reduction of amount payable on death**

**221.(1)** This section applies if any of the following payments have been made for an injury sustained by a worker that resulted in the worker's death—

- (a) a weekly payment of compensation;
- (b) a redemption payment;
- (c) a payment of lump sum compensation.

**(2)** The amount of compensation payable under section 218(2)(a) or 219(2)(a)<sup>107</sup> must be reduced by the total of all payments mentioned in subsection (1).

**(3)** However, the amount must not be reduced by more than 50% of the amount payable under section 218(2)(a).<sup>108</sup>

### **Reduced compensation if dependant dies before payment made**

**222.(1)** This section applies if the worker is survived by a dependant who dies before payment of compensation is made for the dependant's benefit.

**(2)** For this section, the dependant is taken to have died before the worker.

**(3)** However, compensation for the period starting on the day of the worker's death and ending on the day of the dependant's death is payable to the dependant's legal personal representative for the benefit of the dependant's estate.

**(4)** The amount of the compensation is a weekly payment under this section.

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<sup>107</sup> Section 218 (Total dependency) or 219 (Partial dependency)

<sup>108</sup> Section 218 (Total dependency)

(5) If the dependant was a spouse who was totally dependent on the worker's earnings—the payment is, for each week, 14% of QOTE.

(6) If the worker has left no surviving spouse and the dependant was a member of the worker's family who was totally dependent on the worker's earnings and was caring for—

(a) another member of the worker's family who was totally dependent on the worker's earnings; or

(b) the worker's child or stepchild who was under 16 or a student;

the payment is, for each week, 14% of QOTE.

(7) If the dependant was a member of the worker's family or a child of the worker's spouse who was under 16 or a student and was totally dependent on the worker's earnings—the payment is, for each week, 7% of QOTE.

## **PART 11—AUTOMATIC VARIATION OF COMPENSATION PAYABLE**

### **Variation of payments for injuries**

**223.(1)** If QOTE varies, each payment or amount under part 6, 9 or 10<sup>109</sup> that is not expressed as a percentage of QOTE must be varied proportionately.

(2) An amount varied under subsection (1) is to be rounded up to the nearest \$5.

(3) Notification of a variation under this section must be published in the industrial gazette.

### **Construing entitlements in light of variation**

**224.(1)** This section applies if an amount is varied under section 223.

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<sup>109</sup> Part 6 (Maximum statutory compensation), 9 (Entitlement to compensation for permanent impairment) or 10 (Compensation on worker's death)

(2) An entitlement to an amount mentioned in section 223 is to be construed as an entitlement to the payment or amount as varied for the time being under section 223.

(3) A reference in part 6, 9 or 10 to the amount is to be construed as a reference to the amount as varied for the time being under section 223.

### **Application of part to existing benefits**

**225.(1)** This part applies to a benefit being paid and an entitlement accrued under a former Act as if they were a benefit paid or an entitlement accrued under this Act.

(2) For subsection (1), the reference in section 224(3) of this Act to part 6, 9 or 10 is to be construed as a reference to the corresponding provision of the former Act under which an entitlement arose.

## **CHAPTER 4—INJURY MANAGEMENT**

### **PART 1—APPLICATION**

#### **Application and object of ch 4**

**226.(1)** This chapter applies if a worker sustains an injury for which compensation is payable.

(2) The object of this chapter is to provide for appropriate medical treatment, hospitalisation and rehabilitation of the worker.

## **PART 2—LIABILITY FOR MEDICAL TREATMENT, HOSPITALISATION AND EXPENSES**

### *Division 1—Application and general statement of liability*

#### **Application of pt 2**

**227.** This part applies if medical treatment or hospitalisation of a worker is required for the management of an injury sustained by the worker.

#### **WorkCover’s liability for medical treatment and hospitalisation**

**228.** WorkCover must pay the cost of the medical treatment or hospitalisation that WorkCover considers reasonable, having regard to the worker’s injury.

### *Division 2—Medical treatment costs*

#### **Extent of liability for medical treatment**

**229.(1)** WorkCover must pay the following costs for medical treatment for an injury, whether provided at 1 time or at different times—

- (a) for medical treatment by a registered person—the cost that WorkCover accepts as reasonable, having regard to the relevant table of costs;
- (b) for nursing, medicines, medical or surgical supplies, curative apparatus, crutches or other assistive devices given to the worker otherwise than as an in-patient at a private hospital—the cost that WorkCover accepts as reasonable.

**(2)** WorkCover’s liability for the cost of medical treatment by a registered chiropractor or a registered osteopath extends only to the cost of treatment involving the manipulation, mobilisation and management of the neuromusculoskeletal system of the human body.

**Extent of liability for prosthetic expenses**

**230.(1)** This section applies if a worker, because of a condition resulting from an injury—

- (a) is fitted with a prosthesis; or
- (b) is dependent on support of a medical aid, or crutches or another assistive device.

**(2)** WorkCover must pay expenses necessarily incurred by the worker that WorkCover accepts as reasonable on account of—

- (a) reasonable wear and tear of the prosthesis, medical aid or device; or
- (b) replacement of the prosthesis, medical aid or device due to reasonable wear and tear; or
- (c) damage to, or destruction of, a prosthesis, medical aid or device as a result of injury in a further event.

**(3)** WorkCover's liability under this section stops when the worker's entitlement to compensation stops.

**Accounts for medical treatment, certificate in approved form**

**231.(1)** This section applies if WorkCover is liable for the costs of medical treatment.

**(2)** Accounts for medical treatment must be sent to WorkCover promptly and within 2 months after the treatment is completed.

**(3)** The accounts must specify—

- (a) the worker's full name, date of birth and residential address; and
- (b) any item number that the medical treatment may have that is listed in the relevant table of costs; and
- (c) the date of each attendance; and
- (d) detailed particulars of treatment; and
- (e) the name and place of business of the worker's employer.

**(4)** A worker who receives medical treatment must be given a certificate in the approved form free of charge.

**Review of costs payable**

**232.(1)** This section applies if a person who provides medical treatment considers that the cost that WorkCover accepts as reasonable, in a particular case, is inadequate because of special circumstances.

(2) The person may apply to WorkCover in writing for an increase in the cost.

(3) The application must specify the special circumstances and the reasons the cost should be increased in the particular case.

(4) WorkCover may approve the increase if, after considering the application, WorkCover accepts that the increase is justified.

***Division 3—Hospitalisation*****Definitions for div 3**

**233.** In this division—

**“elective hospitalisation”** means hospitalisation involving a treatment or procedure decided on by a worker or the worker’s doctor that is of advantage to the worker, but is not fundamental in the treatment of the worker’s injury.

**“private hospital”** means a hospital other than a public hospital, and includes—

- (a) a ward or room of a public hospital that is not a public ward; and
- (b) a day hospital or an emergency centre.

**“public hospital”** means a public sector hospital under the *Health Services Act 1991*.

**Extent of liability for period of hospitalisation**

**234.(1)** WorkCover’s liability for the cost of hospitalisation of a worker extends only to the cost of hospitalisation of the worker as an in-patient at a private hospital—

- (a) for non-elective hospitalisation—for not more than 4 days; or

- (b) for non-elective hospitalisation for more than 4 days—to the extent agreed to by WorkCover under arrangements entered into between WorkCover and the worker or someone for the worker before the hospitalisation or any extension of the hospitalisation; or
- (c) for elective hospitalisation—to the extent agreed to by WorkCover under arrangements entered into between WorkCover and the worker or someone for the worker before the hospitalisation.

(2) Before agreeing to arrangements under subsection (1)(b) or (c), WorkCover must be satisfied that—

- (a) a public hospital is not reasonably available to the worker or a public hospital that is reasonably available can not admit the worker as an in-patient to a public ward within a reasonable time; or
- (b) admission of the worker to a private hospital—
  - (i) would relieve prolonged pain and suffering to the worker; or
  - (ii) would result in saving of costs.

### **Cost of hospitalisation**

**235.(1)** The cost for which WorkCover is liable for hospitalisation of a worker as an in-patient is the cost for the provision of the facility at a hospital where a procedure is carried out.

(2) WorkCover must pay the cost of hospitalisation, whether the hospitalisation is provided at 1 time or at different times.

(3) WorkCover must pay the cost of hospitalisation that—

- (a) is published by WorkCover by notice in the industrial gazette; or
- (b) if a cost of hospitalisation is not published—the cost lawfully charged by the hospital.

### **Maximum liability for cost of hospitalisation**

**236.** The maximum amount that WorkCover is liable to pay for hospitalisation of a worker for injury sustained in any 1 event, whether the

hospitalisation occurs at 1 time or at different times, is the amount prescribed under a regulation.

#### ***Division 4—Travelling expenses***

##### **Extent of liability for travelling expenses**

**237.(1)** WorkCover must pay the travelling expenses, that WorkCover considers are necessary and reasonable, incurred by a worker for the injury for—

- (a) obtaining medical treatment; or
- (b) undertaking rehabilitation; or
- (c) attending a medical assessment tribunal; or
- (d) undertaking examination by a registered person.

**(2)** WorkCover must pay the cost of the worker's transportation by ambulance vehicle, irrespective of distance, if—

- (a) the worker is not entitled to ambulance transportation under a subscription to the Queensland Ambulance Service; and
- (b) the transportation—
  - (i) for transportation first provided immediately after the injury is sustained—is from the place where the injury is sustained to a place where appropriate medical treatment is available, to seek the treatment; or
  - (ii) for transportation subsequently provided—is certified in writing by a doctor as necessary because of the worker's physical condition resulting from the injury.

**(3)** WorkCover must also pay the cost of transportation by ambulance vehicle if WorkCover gives written approval for the transportation.

**(4)** Other than as provided by subsection (2), (3) and (5), WorkCover is not liable for travelling expenses incurred by a worker—

- (a) in travelling a distance of less than 20 km one way; or
- (b) if treatment or rehabilitation for the injury was reasonably

available to the worker nearer than the place to which the worker has travelled to seek the treatment or rehabilitation.

(5) WorkCover must reimburse the worker for expenses if—

- (a) the worker is not entitled under subsection (4)(a) to be reimbursed by WorkCover for travelling expenses; and
- (b) in a period of 7 consecutive days, the worker incurs travelling expenses in reasonably travelling at least 150 km to and from a place to seek treatment or rehabilitation.

## **PART 3—RESPONSIBILITY FOR REHABILITATION**

### *Division 1—WorkCover’s responsibility*

#### **WorkCover’s responsibility for worker’s rehabilitation**

**238.(1)** WorkCover must take the steps it considers practicable to secure the rehabilitation and early return to suitable duties of workers who have an entitlement to compensation.

(2) For that purpose, WorkCover must—

- (a) provide or approve workplace rehabilitation training courses for employers; and
- (b) ensure that rehabilitation programs are provided for workers.

### *Division 2—WorkCover’s liability for rehabilitation fees and costs*

#### **Liability for rehabilitation fees and costs**

**239.(1)** This section applies if WorkCover considers rehabilitation is necessary for a worker for whose injury WorkCover has accepted liability.

(2) In addition to compensation otherwise payable, WorkCover must pay the fees or costs of rehabilitation that WorkCover accepts to be reasonable, having regard to the worker’s injury.

(3) WorkCover's liability under this division stops when the worker's entitlement to compensation stops.

### **Extent of liability for rehabilitation fees and costs**

**240.** WorkCover must pay the following fees or costs for rehabilitation for an injury, whether provided at 1 time or at different times—

- (a) for rehabilitation provided by a registered person—the fees or costs accepted by WorkCover to be reasonable, having regard to the relevant table of costs;
- (b) for other rehabilitation—the fees or costs approved by WorkCover.

### *Division 3—Caring allowance*

#### **Liability for caring allowance**

**241.(1)** This section applies if a worker is receiving weekly payments of compensation.

(2) A caring allowance may be paid if WorkCover is satisfied that—

- (a) the worker depends on day to day care for the fundamental activities of daily living; and
- (b) the care is to be provided to the worker at the worker's home on a voluntary basis by another person in relation to whom compensation is not payable.

(3) WorkCover must ask that a registered occupational therapist assess the worker's level of dependency and day to day care requirements resulting from the injury in the way prescribed under a regulation.

(4) The occupational therapist must give WorkCover an assessment report stating—

- (a) the matters the therapist took into account, and the weight the therapist gave to the matters, in deciding the worker's level of dependency and day to day care requirements; and
- (b) any other information prescribed under a regulation.

(5) In this section—

“**home**”, of a worker, means a private dwelling where the worker usually resides.

### **Extent of liability for caring allowance**

**242.** WorkCover may pay the caring allowance—

- (a) in the way prescribed under a regulation; and
- (b) to, or on account of, the person providing the care.

## **PART 4—EMPLOYER’S OBLIGATION FOR REHABILITATION**

### **Employer’s obligation to appoint rehabilitation coordinator**

**243.(1)** An employer must appoint a rehabilitation coordinator if the employer employs 30 or more workers at a workplace.

(2) The rehabilitation coordinator must be employed by the employer under a contract of service at the workplace.

(3) The employer must, unless the employer has a reasonable excuse, appoint the rehabilitation coordinator—

- (a) within 6 months after—
  - (i) establishing a workplace where the employer employs 30 or more workers; or
  - (ii) starting to employ 30 or more workers at a workplace; or
- (b) within a later period approved by WorkCover.

Maximum penalty—50 penalty units.

(4) An employer may, with WorkCover’s written approval, appoint 1 rehabilitation coordinator for more than 1 workplace of 30 or more workers.

**Employer's obligation to have workplace rehabilitation policy and procedures**

**244.(1)** This section applies if an employer employs 30 or more workers at a workplace.

(2) The employer must have workplace rehabilitation policy and procedures.

Maximum penalty—50 penalty units.

(3) The employer must, unless the employer has a reasonable excuse, have workplace rehabilitation policy and procedures—

(a) within 6 months after—

(i) establishing a workplace where the employer employs 30 or more workers; or

(ii) starting to employ 30 or more workers at a workplace; or

(b) within a later period approved by WorkCover.

Maximum penalty—50 penalty units.

(4) The employer must review the employer's workplace rehabilitation policy and procedures at least every 3 years and must comply with reporting requirements as prescribed under a regulation.

**Employer's obligation to assist or provide rehabilitation**

**245.(1)** The employer of a worker who has sustained an injury must take all reasonable steps to assist or provide the worker with rehabilitation for the period for which the worker is entitled to compensation.

(2) The rehabilitation must be of a suitable standard as prescribed under a regulation.

(3) If an employer, other than a self-insurer, considers it is not practicable to provide the worker with suitable duties, the employer must give WorkCover evidence that the suitable duties are not practicable.

**Employer's failure in relation to rehabilitation**

**246.(1)** This section applies if an employer, other than a self-insurer, fails

to take reasonable steps to assist or provide a worker with rehabilitation.

(2) WorkCover may require the employer to pay WorkCover an amount by way of penalty equal to the amount of compensation paid to the worker during the period of non-compliance by the employer.

(3) WorkCover may recover the amount from the employer—

- (a) as a debt; or
- (b) as an addition to a premium payable by the employer.

(4) The employer may apply to WorkCover in writing to waive or reduce the penalty because of extenuating circumstances.

(5) The application must specify the extenuating circumstances and the reasons the penalty should be waived or reduced in the particular case.

(6) WorkCover must consider the application and may—

- (a) waive or reduce the penalty; or
- (b) refuse to waive or reduce the penalty.

(7) If the employer is dissatisfied with WorkCover's decision, the employer may ask that the decision be reviewed under chapter 9.<sup>110</sup>

## **PART 5—WORKER'S MITIGATION AND REHABILITATION OBLIGATIONS**

### **Application of pt 5**

**247.** This part applies to a worker who has sustained an injury and is required to participate in rehabilitation.

### **Worker must mitigate loss**

**248.(1)** The common law duty of mitigation of loss applies to the worker.

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<sup>110</sup> Chapter 9 (Reviews and appeals)

(2) The worker's duty may be discharged by participating in rehabilitation.

### **Worker must participate in rehabilitation**

**249.(1)** The worker must satisfactorily participate in rehabilitation—

- (a) as soon as practicable after the injury is sustained; and
- (b) for the period for which the worker is entitled to compensation.

(2) If a worker fails or refuses to participate in rehabilitation without reasonable excuse, WorkCover may, by written notice given to the worker, suspend the worker's entitlement to compensation until the worker satisfactorily participates in rehabilitation.

(3) If WorkCover suspends the worker's entitlement to compensation, the worker may have the decision reviewed under chapter 9.

## **CHAPTER 5—ACCESS TO DAMAGES**

### **PART 1—INTERPRETATION AND APPLICATION**

#### **Definitions for ch 5**

**250.** In this chapter—

**“claimant”** means a person entitled to seek damages.

**“damages certificate”** means a certificate under section 262, 265 or 270<sup>111</sup> given to a claimant by WorkCover that entitles the claimant to seek damages.

**“worker”** for a claim, means the worker in relation to whose injury the claim is made.

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<sup>111</sup> Section 262 (Claimant may seek damages only after being assessed), 265 (Access to damages if no previous application for compensation) or 270 (Application for damages certificate)

**Meaning of “terminal condition”**

**251.(1)** A “terminal condition”, of a worker, is a condition certified by a doctor as being a condition that is expected to terminate the worker’s life within 2 years after the terminal nature of the condition is diagnosed.

(2) A condition is a terminal condition only if WorkCover accepts the doctor’s diagnosis of the terminal nature of the condition.

**Requirements of chapter to prevail and are substantive law**

**252.(1)** If a provision of an Act or a rule of law is inconsistent with this chapter, this chapter prevails.

(2) All the provisions of this chapter are provisions of substantive law.

(3) However, subsection (2) does not affect minor variations in procedure.

**PART 2—ENTITLEMENT CONDITIONS***Division 1—Limitations on persons entitled to seek damages***General limitation on persons entitled to seek damages**

**253.(1)** The following are the only persons entitled to seek damages for an injury sustained by a worker—

- (a) the worker, if the worker has received a notice of assessment from WorkCover stating that—
  - (i) the worker has sustained a certificate injury; or
  - (ii) the worker has sustained a non-certificate injury; or
- (b) the worker, if the worker’s application for compensation was allowed and the injury sustained by the worker has not been assessed for permanent impairment; or
- (c) the worker, if the worker has not lodged an application for

compensation for the injury; or

- (d) a dependant of the deceased worker, if the injury sustained by the worker results in the worker's death.

(2) The entitlement of a worker, or a dependant of a deceased worker, to seek damages is subject to the provisions of this chapter.

(3) To remove any doubt, it is declared that subsection (1) abolishes any entitlement of a person not mentioned in the subsection to seek damages for an injury sustained by a worker.

### **Worker with terminal condition**

**254.(1)** This section applies to a worker who has a terminal condition and wishes to seek damages.

(2) The following provisions of this chapter do not apply to the worker—

- (a) part 6, other than section 300;<sup>112</sup>  
 (b) part 7, other than sections 306 to 308.<sup>113</sup>

(3) However, this section does not stop the worker from voluntarily complying with the provisions mentioned in subsection (2).

### *Division 2—Claimant who has sustained certificate injury*

#### **Application of div 2**

**255.** This division applies to a claimant who is a person mentioned in section 253(1)(a)(i).<sup>114</sup>

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<sup>112</sup> Part 6 (Settlement of claims) other than section 300 (Settlement of claims for damages)

<sup>113</sup> Part 7 (Start of court proceedings) other than sections 306 (Carriage of proceedings) to 308 (Alteration of period of limitation)

<sup>114</sup> Section 253 (General limitation on persons entitled to seek damages)

**Claimant may seek damages only on receipt of notice of assessment**

**256.** The claimant may seek damages for the injury only after the claimant has received a notice of assessment from WorkCover.

**Consequences of seeking damages**

**257.** Part 11, division 1<sup>115</sup> applies in relation to costs in the claimant's proceeding for damages.

*Division 3—Claimant who has sustained non-certificate injury***Application of div 3**

**258.** This division applies to a claimant who is a person mentioned in section 253(1)(a)(ii).<sup>116</sup>

**Claimant may seek damages only on receipt of notice of assessment**

**259.(1)** The claimant may seek damages for the injury only after the claimant has received a notice of assessment from WorkCover.

**(2)** If, in the notice, the claimant is offered a payment of lump sum compensation for the injury, the claimant is not entitled to both—

- (a) payment of lump sum compensation for the injury; and
- (b) damages for the injury.

**(3)** If, in the notice, a claimant is required to make an election to seek damages for the injury, the claimant can not change the claimant's election—

- (a) if the claimant has elected to seek damages for the injury—after notice of the election is given to WorkCover; or

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<sup>115</sup> Part 11 (Costs), division 1 (Costs applying to worker with certificate injury or dependent)

<sup>116</sup> Section 253 (General limitation on persons entitled to seek damages)

- (b) if the claimant is taken, under section 207(7),<sup>117</sup> to have elected to seek damages for the injury—after the claimant lodges a notice of claim.

(4) If the notice states that the claimant has not sustained any degree of permanent impairment from the injury, the claimant's entitlement is unaffected by subsection (2) or (3).<sup>118</sup>

### **Consequences of seeking damages**

**260.** Part 11, division 2<sup>119</sup> applies in relation to costs in the claimant's proceeding for damages.

### ***Division 4—Claimant whose application for compensation was allowed***

#### **Application of div 4**

**261.** This division applies to a claimant who is a person mentioned in section 253(1)(b).<sup>120</sup>

#### **Claimant may seek damages only after being assessed**

**262.(1)** The injury sustained by the claimant must be assessed in the way provided for under chapter 3, part 9.

(2) The claimant can not seek damages until WorkCover gives the claimant a notice of assessment and the claimant has complied with the requirements of chapter 3, part 9, division 3.<sup>121</sup>

(3) However, WorkCover may give the claimant a conditional damages certificate if there is an urgent need to bring proceedings for damages and

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<sup>117</sup> Section 207 (Non-certificate injury)

<sup>118</sup> This subsection is a necessary consequence of subsections (2) and (3) and is inserted for clarity only.

<sup>119</sup> Part 11 (Costs), division 2 (Costs applying to worker with non-certificate injury)

<sup>120</sup> Section 253 (General limitation on persons entitled to seek damages)

<sup>121</sup> Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

the claimant's permanent impairment has not been assessed or agreed.

(4) If a conditional certificate is given, the claimant may start proceedings for damages for the injury, but the proceedings are stayed until WorkCover makes the certificate unconditional and the claimant complies with parts 5 and 6.<sup>122</sup>

(5) WorkCover must make the certificate unconditional when the claimant has been assessed and has been given a notice of assessment.

### **Consequences of seeking damages**

**263.** If the claimant's notice of assessment states that the claimant has sustained—

- (a) a certificate injury—part 11, division 1<sup>123</sup> applies in relation to costs in the claimant's proceeding for damages; or
- (b) a non-certificate injury—part 11, division 2<sup>124</sup> applies in relation to costs in the claimant's proceeding for damages.

### ***Division 5—Claimant who has not lodged application for compensation***

#### **Application of div 5**

**264.** This division applies to a person mentioned in section 253(1)(c).<sup>125</sup>

#### **Access to damages if no previous application for compensation**

**265.(1)** The person may seek damages for the injury only if WorkCover gives the person a damages certificate under this section.

(2) The person must apply in the approved form to WorkCover for the certificate but only for the purpose of seeking damages.

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<sup>122</sup> Parts 5 (Pre-court procedures) and 6 (Settlement of claims)

<sup>123</sup> Part 11 (Costs), division 1 (Costs applying to worker with certificate injury or dependent)

<sup>124</sup> Division 2 (Costs applying to worker with non-certificate injury)

<sup>125</sup> Section 253 (General limitation on persons entitled to seek damages)

**(3)** WorkCover may only, and must, give the certificate if—

- (a) WorkCover decides that the person was a worker when the injury was sustained; and
- (b) WorkCover decides that the worker has sustained an injury; and
- (c) the worker's degree of permanent impairment has been assessed in the way mentioned for the injury under chapter 3, part 9, division 2.<sup>126</sup>

**(4)** However, WorkCover may give the person a conditional damages certificate if there is an urgent need to bring a proceeding for damages and WorkCover is not satisfied about the matters in subsection (3).

**(5)** If a conditional certificate is given, the person may start a proceeding for damages for the injury, but the proceeding is stayed until WorkCover makes the certificate unconditional and the person complies with parts 5 and 6.<sup>127</sup>

**(6)** WorkCover must make the certificate unconditional when it is satisfied about the matters mentioned in subsection (3).

**(7)** If WorkCover makes a decision under subsection (3)(a), a person aggrieved by the decision may have the decision reviewed under chapter 9.<sup>128</sup>

**(8)** If WorkCover makes a decision about a matter mentioned in subsection (3)(b) and a person does not agree with the decision, WorkCover must refer the matter to a medical assessment tribunal for decision.

**(9)** If WorkCover makes a decision about a matter mentioned in subsection (3)(c) and a person does not agree with the decision, WorkCover must—

- (a) refer the matter to a medical assessment tribunal for decision; and
- (b) ask the tribunal to decide if the claimant has sustained a degree of permanent impairment resulting from the injury.

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<sup>126</sup> Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment), division 2 (Assessment of permanent impairment under table of injuries)

<sup>127</sup> Parts 5 (Pre-court procedures) and 6 (Settlement of claims)

<sup>128</sup> Chapter 9 (Reviews and appeals)

### **Consequences of seeking damages**

**266.(1)** If the claimant's unconditional damages certificate states that the claimant has sustained a certificate injury, part 11, division 1<sup>129</sup> applies in relation to costs in the claimant's proceeding for damages.

**(2)** If the claimant's unconditional damages certificate states that the claimant has sustained a non-certificate injury, part 11, division 2<sup>130</sup> applies in relation to costs in the claimant's proceeding for damages.

### **Proceedings to be discontinued**

**267.(1)** This section applies if WorkCover decides not to make a damages certificate unconditional.

**(2)** A person who has started a proceeding on the basis of a conditional certificate must discontinue the proceeding.

## ***Division 6—Dependants***

### **Application of div 6**

**268.** This division applies to a claimant who is a person mentioned in section 253(1)(d).<sup>131</sup>

### **Claimant may seek damages only in particular cases**

**269.** The claimant may seek damages only if WorkCover—

- (a) has paid compensation to the dependants of a worker under chapter 3, part 10<sup>132</sup> for the worker's death; or
- (b) if an application for compensation has not been made—gives the claimant a damages certificate under this division.

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<sup>129</sup> Part 11 (Costs), division 1 (Costs applying to worker with certificate injury or dependent)

<sup>130</sup> Division 2 (Costs applying to worker with non-certificate injury)

<sup>131</sup> Section 253 (General limitation on persons entitled to seek damages)

<sup>132</sup> Chapter 3 (Compensation), part 10 (Compensation on worker's death)

### **Application for damages certificate**

**270.(1)** For section 269(b), the person must apply in the approved form to WorkCover for a damages certificate.

**(2)** WorkCover may only, and must, give the certificate if WorkCover decides that—

- (a) the deceased was a worker when the relevant event happened; and
- (b) the worker sustained an injury in the event; and
- (c) the injury caused the worker's death.

**(3)** However, WorkCover may give the person a conditional damages certificate if there is an urgent need to bring a proceeding for damages and WorkCover is not satisfied about the matters in subsection (2).

**(4)** If a conditional certificate is given, the person may start a proceeding for damages for the injury, but the proceeding is stayed until WorkCover makes the certificate unconditional and the person complies with parts 5 and 6.<sup>133</sup>

**(5)** WorkCover must make the certificate unconditional when it is satisfied about the matters mentioned in subsection (2).

**(6)** If WorkCover makes a decision under subsection (2)(a), a person aggrieved by the decision may apply to have the decision reviewed under chapter 9.<sup>134</sup>

**(7)** If WorkCover makes a decision about a matter mentioned in subsection (2)(b) or (c) and a person does not agree with the decision, WorkCover must refer the matter to a medical assessment tribunal for decision.

### **Consequences of seeking damages**

**271.** Part 11, division 1<sup>135</sup> applies in relation to costs in the claimant's proceeding for damages.

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<sup>133</sup> Parts 5 (Pre-court procedures) and 6 (Settlement of claims)

<sup>134</sup> Chapter 9 (Reviews and appeals)

<sup>135</sup> Part 11 (Costs), division 1 (Costs applying to worker with certificate injury or dependent)

**Proceedings to be discontinued**

**272.(1)** This section applies if WorkCover decides not to make a damages certificate unconditional.

**(2)** A person who has started a proceeding on the basis of a conditional certificate must discontinue the proceeding.

***Division 7—Review of worker’s decision to accept payment of lump sum compensation for non-certificate injury*****Application of div 7**

**273.** This division applies if a worker has elected, under section 207,<sup>136</sup> to accept payment of lump sum compensation for a non-certificate injury.

**Decision not to seek damages reviewable in certain circumstances**

**274.(1)** The worker may ask WorkCover to consider fresh medical evidence about the worker’s injury but only—

- (a) to satisfy WorkCover of the matters mentioned in subsection (7) for the purpose of seeking damages for the injury; and
- (b) within the period of limitation for bringing a proceeding for damages for personal injury under the *Limitation of Actions Act 1974*.

**(2)** WorkCover is required to consider the medical evidence only if the worker satisfies WorkCover that—

- (a) when the worker’s degree of permanent impairment was assessed under section 197,<sup>137</sup> there was no reason to believe that there would be a material deterioration of the worker’s injury; and
- (b) the further material deterioration is a deterioration of the injury for which the worker was assessed and accepted payment of lump sum compensation under section 207; and

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<sup>136</sup> Section 207 (Non-certificate injury)

<sup>137</sup> Section 197 (Assessment of permanent impairment)

(c) the medical evidence—

- (i) was not available when the worker's permanent impairment was previously assessed or when the worker made the election not to seek damages; and
- (ii) establishes there has been a further material deterioration of the worker's injury that would have entitled the worker to an additional WRI of 10% or more.

(3) If WorkCover rejects the evidence, WorkCover must refer the evidence to a review panel for review.

(4) The review panel must consider the medical evidence produced by the worker and may accept or reject the evidence.

(5) A decision of the review panel is final and may not be appealed against.

(6) If WorkCover or the review panel accepts the medical evidence, WorkCover must refer the question of degree of permanent impairment to an appropriate medical assessment tribunal for decision.

(7) The worker may seek damages for the injury if WorkCover is satisfied that—

- (a) the worker's further material deterioration is an additional WRI of 10 % or more; and
- (b) the deterioration is a deterioration of the injury for which the worker has accepted payment of lump sum compensation; and
- (c) the deterioration does not arise from combining a psychiatric or psychological injury with another injury; and
- (d) the additional WRI, when added to the worker's WRI as previously calculated by WorkCover under section 201,<sup>138</sup> results in a certificate injury.

(8) In this section—

**“review panel”** means a panel consisting of the chairperson or deputy chairperson of the General Medical Assessment Tribunal and a member of an appropriate medical assessment tribunal.

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<sup>138</sup> Section 201 (Calculation of WRI)

## **PART 3—MITIGATION OF DAMAGES**

### **Mitigation of damages**

**275.(1)** The common law duty of mitigation applies to all workers in relation to claims or proceedings for damages.

**(2)** In a proceeding, the onus of proving that all reasonable steps to mitigate damages have been taken by a worker lies with the worker.

**(3)** If WorkCover is not satisfied with the action taken by a worker to mitigate damages, WorkCover may give the worker a written notice proposing action the worker should take to mitigate the worker's damages.

**(4)** Without limiting subsection (3), the notice may propose—

- (a) the worker undergo medical treatment of a stated type; or
- (b) the worker undergo rehabilitation of a stated type; or
- (c) the worker return to work or take stated steps to obtain employment.

**(5)** In assessing damages for personal injury, the court must—

- (a) consider whether the worker has failed to take reasonable steps to mitigate damages, including action proposed by WorkCover under subsection (3); and
- (b) if it appears that the worker has failed to take reasonable steps to mitigate damages by not following the proposals or otherwise—reduce the worker's damages to an appropriate extent reflecting the failure.

## **PART 4—REDUCTION OF RECOVERABLE DAMAGES**

### **When damages are to be reduced**

**276.(1)** The amount of damages that an employer is legally liable to pay to a claimant for an injury must be reduced by the total amount paid or

payable by WorkCover by way of compensation for the injury.

(2) However, the amount of damages must not be reduced by an amount paid under section 211.<sup>139</sup>

(3) This section does not limit the reduction of the amount of the damages by any other amount that WorkCover or the claimant is legally liable to pay on account of the worker under another law.

### **Assessment by court of total liability for damages**

**277.(1)** This section applies if—

- (a) damages are awarded for an injury; or
- (b) damages are to be paid in settlement of a claim for an injury.

(2) To establish the reduction under section 276(1) in damages for compensation paid, the claimant or WorkCover may apply to—

- (a) the court in which the proceeding is brought; or
- (b) if a proceeding has not been started—the Industrial Magistrates Court.

(3) The court's decision is binding on WorkCover and all persons entitled to payment by WorkCover for the injury.

### **WorkCover's charge on damages for compensation paid**

**278.(1)** This section applies to—

- (a) an injury sustained by a worker in circumstances creating—
  - (i) an entitlement to compensation; and
  - (ii) a legal liability in the worker's employer, or other person, to pay damages for the injury, independently of this Act; and
- (b) damages that an employer is not indemnified against under this Act.

(2) An amount paid as compensation to a person for an injury, to which there is an entitlement to payment of damages at a time or for a period

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<sup>139</sup> Section 211 (Additional lump sum compensation for gratuitous care)

before the person becomes entitled to payment of damages by an employer or another person, is a first charge on any amount of damages recovered by the person to the extent of the amount paid as compensation to the person.

(3) An employer or other person from whom the damages are recoverable must pay WorkCover the amount of the first charge or, if the damages are not more than the amount of the first charge, the whole of the damages.

(4) Payment to WorkCover under subsection (3), to the extent of the payment, satisfies the liability of the employer or other person for payment of the damages.

(5) A person can not settle, for a sum less than the amount that is a first charge on damages under subsection (2), a claim for damages had by the person independently of this Act for an injury to which there is an entitlement to payment of damages without WorkCover's written consent.

(6) If, without WorkCover's consent, a settlement mentioned in subsection (5) is made, then to the extent that the damages recovered are insufficient to meet all payments due to WorkCover under this section—

- (a) WorkCover is entitled to be indemnified by the employer or other person who is required by the settlement to pay the damages; and
- (b) to that end, WorkCover is subrogated to the rights of the person who has sought the damages, as if the settlement had not been made.

(7) If a person who has received compensation has not recovered, or taken proceedings to recover, damages for the injury from another person, other than the worker's employer—

- (a) WorkCover is entitled to be indemnified for the amount of the compensation by the other person to the extent of that person's liability for the damages, so far as the amount of damages payable for the injury by that person extends; and
- (b) to that end, WorkCover is subrogated to the rights of the person for the injury.

(8) Payment made as indemnity under subsection (7), to the extent of the payment, satisfies the person's liability on a judgment for damages for the injury.

(9) In addition to all rights of action had by WorkCover to give effect to its right to indemnity under this section, all questions about the right and the amount of the indemnity may, in default of agreement, be decided by an industrial magistrate if all persons affected by the indemnity consent.

(10) In this section—

“**damages**” includes damages under a legal liability existing independently of this Act, whether or not within the meaning of section 11.

## **PART 5—PRE-COURT PROCEDURES**

### **Object of pt 5**

**279.**The object of this part is to enable WorkCover to enter into early negotiations with claimants to achieve early resolution of claims for damages before the start of court proceedings.

### **Notice of claim for damages**

**280.(1)** Before starting a proceeding in a court for damages, a claimant must give notice under this section within the period of limitation for bringing a proceeding for the damages under the *Limitation of Actions Act 1974*.

(2) The claimant must give—

- (a) WorkCover or, if the worker’s employer is a self-insurer, the self-insurer a notice of claim in the approved form; and
- (b) a copy of the notice of claim to the worker’s employer if the employer is not a self-insurer.

(3) The notice must include the particulars prescribed under a regulation.

(4) The claimant must state in the notice—

- (a) whether, and to what extent, liability expressed as a percentage is admitted for the injury; or

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(b) a statement of the reasons why the claimant can not admit liability.

(5) The notice must be verified by statutory declaration.

(6) The notice must be accompanied by a genuine offer of settlement or a statement of the reasons why an offer of settlement can not yet be made.

(7) The notice must be accompanied by the claimant's written authority allowing WorkCover to obtain information, including copies of documents relevant to the claim, and in the possession of—

- (a) a hospital; or
- (b) the ambulance service of the State or another State; or
- (c) a doctor, provider of treatment or rehabilitation services or person qualified to assess cognitive, functional or vocational capacity; or
- (d) the employer or a previous employer; or
- (e) insurers that carry on the business of providing workers' compensation insurance, compulsory third party insurance, personal accident or illness insurance, insurance against loss of income through disability, superannuation funds or any other type of insurance; or
- (f) a department, agency or instrumentality of the Commonwealth or the State; or
- (g) a solicitor, other than where giving the information or documents would breach legal professional privilege.

(8) The notice must also be accompanied by copies of all documents supporting the claim including, but not limited to—

- (a) hospital, medical and other reports relating to the injury sustained by the worker, other than reports obtained by or on behalf of WorkCover; and
- (b) income tax returns, group certificates and other documents for the 3 years immediately before the injury supporting the claimant's claim for lost earnings or diminution of income-earning capacity; and
- (c) invoices, accounts, receipts and other documents evidencing the claimant's claim for out-of-pocket expenses.

### **Claimant to tell WorkCover of change to information in notice of claim**

**281.(1)** The claimant must give WorkCover written notice of any change in relation to the information given in the notice of claim.

**(2)** The notice of change must also state the date of, and reasons for, the change in the information.

### **Response to notice of claim**

**282.(1)** This section applies if a notice of claim is given to WorkCover.

**(2)** WorkCover must, within 30 days after receiving the notice, give the claimant written notice—

- (a) stating whether WorkCover is satisfied that the notice of claim complies with section 280<sup>140</sup> (a “**complying notice of claim**”); and
- (b) if WorkCover is not so satisfied—identifying the noncompliance and stating whether WorkCover waives compliance with the requirements; and
- (c) if WorkCover does not waive compliance with the requirements—allowing the claimant a reasonable period of at least 30 days either to satisfy WorkCover that the claimant has complied with the requirements or to take reasonable action to remedy the noncompliance.

**(3)** If WorkCover is not prepared to waive compliance with the requirements in the first instance, WorkCover must, within 30 days after the end of the period specified in subsection (2)(c), give the claimant written notice stating that—

- (a) WorkCover—
  - (i) is satisfied the claimant has complied with the relevant requirements; or
  - (ii) is satisfied with the action taken by the claimant to remedy the noncompliance; or

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<sup>140</sup> Section 280 (Notice of claim for damages)

- (iii) waives the noncompliance; or
- (b) WorkCover is not satisfied that the claimant has taken reasonable action to remedy the noncompliance, with full particulars of the noncompliance and the claimant's failure to remedy it.

(4) WorkCover must, within 30 days after receiving a complying notice of claim or waiving noncompliance with the requirements of section 280,<sup>141</sup> advise the employer or employers against whom negligence is alleged.

### **WorkCover to give information to claimant**

**283.(1)** WorkCover must give a claimant any relevant information WorkCover has about the worker in relation to whom a claim is made—

- (a) for information held by WorkCover when a notice of claim is received—within 30 days after receiving the notice of claim; or
- (b) for any other information received—within 30 days after receiving the information.

(2) This section is subject to section 288.<sup>142</sup>

### **Employer to cooperate with WorkCover**

**284.(1)** An employer against whom negligence is alleged in connection with a claim must cooperate fully with and give WorkCover all information and access to documents in relation to the claim that WorkCover reasonably requires.

(2) WorkCover may recover from the employer as a debt in the Industrial Magistrates Court—

- (a) any additional costs reasonably incurred in connection with the claim as a direct result of the employer's noncompliance with subsection (1); and
- (b) to the extent that WorkCover's interests in connection with the claim have been prejudiced as a direct result of the employer's

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<sup>141</sup> Section 280 (Notice of claim for damages)

<sup>142</sup> Section 288 (Non-disclosure of certain material)

noncompliance with subsection (1)—an amount reflecting the extent of WorkCover's prejudice.

### **WorkCover and claimant to attempt to resolve claim**

**285.(1)** The claimant and WorkCover must endeavour to resolve a claim as quickly as possible.

**(2)** WorkCover must give the claimant a written notice under subsection (4) within 6 months after—

- (a) WorkCover receives a complying notice of claim or waives the claimant's noncompliance with the requirements of section 280;<sup>143</sup> or
- (b) the court makes an order under section 304;<sup>144</sup> or
- (c) the court makes an order under section 305.<sup>145</sup>

**(3)** For subsection (2), for a worker with a terminal condition, WorkCover must give the claimant the written notice within 3 months.

**(4)** The written notice must—

- (a) state whether liability in connection with the event to which the claim relates—
  - (i) is admitted or denied; and
  - (ii) if admitted—whether contributory liability is claimed from the worker or another party; and
  - (iii) if liability is admitted—the extent, expressed as a percentage, to which liability is admitted; and
- (b) state whether WorkCover accepts or rejects any offer of settlement that may be made by the claimant; and
- (c) if the claimant did not make an offer of settlement in the notice of claim or WorkCover is rejecting the offer—contain a genuine offer or counter-offer of settlement, or a statement of the reasons

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<sup>143</sup> Section 280 (Notice of claim for damages)

<sup>144</sup> Section 304 (Court to have made declaration about noncompliance)

<sup>145</sup> Section 305 (Court to have given leave despite noncompliance)

why an offer or counter-offer of settlement can not yet be made; and

- (d) be accompanied by copies of all medical reports, assessments of cognitive, functional or vocational capacity, or other material in WorkCover's possession not previously given to the claimant that may help the claimant to make a proper assessment of the offer.

(5) WorkCover or the claimant to whom a written offer or counter-offer of settlement is made must respond in writing to the offer within 14 days after receiving it, indicating acceptance or rejection of the offer, unless a response to the offer is to be made under subsection (4)(b).

(6) The offer or counter-offer of settlement is made on a without prejudice basis and must not be disclosed to a court except on the issue of costs.

(7) An admission of liability by WorkCover under this section—

- (a) is not binding on WorkCover at all if it is later shown at the trial in the proceeding for damages that the claimant has been relevantly guilty of fraud or attempted fraud; and
- (b) is not binding on WorkCover at all if it is later shown that liability was admitted because of misrepresentation by any person; and
- (c) is not an admission about the nature and extent of the claimant's loss or damage or that the claimant has sustained loss or damage, unless it specifically states otherwise; and
- (d) does not entitle the claimant to apply for judgment, summary or otherwise, in a court of competent jurisdiction; and
- (e) is confined to damages under the claim.

### **Worker to undergo medical examination**

**286.(1)** WorkCover may, at any time, ask the worker to undergo, at WorkCover's expense—

- (a) a medical examination by a doctor to be selected by the worker from a panel of at least 3 doctors nominated in the request; or
- (b) an assessment of cognitive, functional or vocational capacity by a registered person to be selected by the worker from a panel of at

least 3 persons with appropriate qualifications and experience nominated in the request.

(2) The worker must comply with the request unless it would be unreasonable or unnecessarily repetitious.

(3) If 3 doctors or persons with appropriate qualifications and experience are not available for inclusion on a panel, the number on the panel may be reduced to 2.

### **Joint expert reports**

**287.(1)** WorkCover and a claimant may jointly arrange for an expert report about—

- (a) the event or events giving rise to the claim; or
- (b) the worker's medical condition; or
- (c) the worker's capacity to undertake specific rehabilitation programs; or
- (d) the worker's capacity to undertake further work and earn income; or
- (e) any other matter about the claim.

(2) Neither party is under an obligation to agree to a proposal to obtain a report.

(3) The person preparing the report must be a person agreed to by both parties and have appropriate qualifications and experience in the relevant field.

(4) The person preparing the report must give both parties a copy of the report.

(5) The cost of obtaining a report is to be paid by the parties in proportions agreed to in writing between them or, in default of agreement, in equal proportions.

(6) This section does not prevent a party from obtaining a report other than under this section.

**Non-disclosure of certain material**

**288.(1)** A party is not obliged to disclose information or a document if the information or document is protected by legal professional privilege.

(2) However, investigative reports, medical reports and reports relevant to the worker's rehabilitation must be disclosed even though otherwise protected by legal professional privilege, but they may be disclosed with the omission of passages consisting only of statements of opinion other than expert opinion.

(3) If WorkCover has reasonable grounds to suspect a claimant of fraud, WorkCover may withhold from disclosure information, or omit a document or a passage from a document, that—

- (a) would alert the claimant to the suspicion; or
- (b) could help further the fraud; or
- (c) WorkCover believes would meet the requirements of the *Freedom of Information Act 1992*, part 3, division 2.<sup>146</sup>

(4) Subsection (3) applies even if the information or document would, if the subsection did not apply, have to be disclosed under subsection (2).

**Consequence of failure to give information**

**289.(1)** This section applies if a party fails to comply with a provision of this chapter requiring the party to disclose a document to the other party.

(2) The document can not be used by the party in a subsequent court proceeding for the claim, or the deciding of the claim, unless the court orders otherwise.

(3) If the document comes to the other party's knowledge, the document may be used by the other party.

**Privilege and duties**

**290.** Subject to this Act, information and documents disclosed under this

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<sup>146</sup> *Freedom of Information Act 1992*, part 3 (Access to documents), division 2 (Exempt matter)

chapter are protected by the same privileges, and are subject to the same duties, as if disclosed in a proceeding before the Supreme Court.

### **Court's power to enforce compliance with chapter**

**291.** If a party fails to comply with a provision of this chapter, a court may order the party to comply with the provision, and may make consequential or ancillary orders that may be necessary or desirable in the circumstances of the case.

## **PART 6—SETTLEMENT OF CLAIMS**

### *Division 1—Compulsory conference*

#### **Application of div 1**

**292.** This division does not apply to a claim that is otherwise settled by negotiation between the parties.

#### **Compulsory conference**

**293.(1)** A claimant must organise and hold a conference of the parties within 3 months after WorkCover gives the claimant a written notice under section 285.<sup>147</sup>

- (2) The conference may be held with a mediator if both parties agree.
- (3) The mediator must be a person—
  - (a) independent of, and agreed to, by the parties; and
  - (b) approved—
    - (i) for the Supreme Court—under the *Supreme Court of Queensland Act 1991*; or

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<sup>147</sup> Section 285 (WorkCover and claimant to attempt to resolve claim)

- (ii) for the District Court—under the *District Courts Act 1967*;  
or
- (iii) for a Magistrates Court—under the *Magistrates Courts Act 1921*.

(4) If the parties are unable to agree within 30 days on the person to be appointed, the claimant must apply to the registrar of the court to nominate a mediator.

(5) At least 4 days before the compulsory conference is held, each party must give the other party—

- (a) copies of any documents relevant to the claim not yet given to the other party; and
- (b) a statement verifying that all relevant documents in the party's possession have been given as required; and
- (c) details of each party's legal representation.

(6) The claimant in person and a person authorised to settle on WorkCover's behalf must attend the conference and actively participate in an attempt to settle the claim unless the claimant or person has a reasonable excuse.

(7) If it would be unreasonable for all parties to attend at the same place, for example, because of distance or illness, the conference may be conducted by telephone, closed-circuit television or another form of communication agreed to between the parties or, if agreed between the parties, at another time.

### **Parties to make written final offer if claim not settled at compulsory conference**

**294.(1)** If the claim is not settled at a conference, each party must make a written final offer at the conference.

(2) The final offer must remain open for 14 days and proceedings must not be started while the offer remains open.

(3) If the claimant brings a proceeding in a court for the claim, the claimant must, at the start of the proceeding, file at the court a sealed envelope containing a copy of the claimant's offer.

(4) WorkCover must, after being served with the legal process that starts the proceeding, file at the court a sealed envelope containing a copy of WorkCover's offer.

(5) The court must not read the offers until it has decided the claim.

(6) However, the court must have regard to the offers in making a decision about costs.

### *Division 2—Financial information to be given to claimant*

#### **Definition for div 2**

**295.** In this division—  
“costs” includes outlays.

#### **Information to be given by lawyer before compulsory conference**

**296.** Before a compulsory conference is held for a claim, a lawyer acting for the claimant in the claim must ensure the claimant receives, at least 4 days before the compulsory conference is held, the lawyer's written report stating—

- (a) the costs incurred up to the day the report is given; and
- (b) the approximate additional costs to be incurred from the day the report is given until the end of the conference; and
- (c) the approximate additional costs to be incurred, should the matter not be settled at the conference but proceed to trial; and
- (d) the approximate net damages the claimant might receive if the claim is settled at the conference, based on the offers made by the parties.

#### **Information to be given by lawyer before other type of settlement attempted**

**297.(1)** This section applies if settlement of a claim is attempted in a way other than by a compulsory conference.

(2) At least 4 days before the claim is attempted to be settled, a lawyer acting for the claimant in the claim must ensure that the claimant receives the lawyer's written report stating—

- (a) the costs incurred up to the day the report is given; and
- (b) the approximate additional costs to be incurred from the day the report is given until the day the claim is settled; and
- (c) the approximate additional costs to be incurred should the matter not be settled at the time but proceed to trial; and
- (d) the approximate net damages the claimant might receive if the claim is settled, based on the offers made.

### **Details of costs payable**

**298.** A report under this division must include the amounts that will be paid by WorkCover and the amounts payable by the claimant to the lawyer.

### **WorkCover to be informed that report given**

**299.** A claimant must inform WorkCover before a compulsory conference is held or any other settlement is made that the claimant has received a report under this division.

## ***Division 3—Settlement before court proceedings***

### **Settlement of claim for damages**

**300.** If a claim is settled before the start of a court proceeding, the parties to the settlement must sign a discharge for the claim.

## **PART 7—START OF COURT PROCEEDINGS**

### *Division 1—When claimant can start court proceedings*

#### **Application of div 1**

**301.** This division states the conditions that must be satisfied before a claimant can start a court proceeding.

#### **Compliance necessary before starting proceeding**

**302.** The claimant may start a proceeding in a court for damages only if the claimant has complied with—

- (a) the relevant division under part 2;<sup>148</sup> and
- (b) part 5, other than as provided by section 304 and 305;<sup>149</sup> and
- (c) part 6;<sup>150</sup> and
- (d) section 303.

#### **Claimant to have given complying notice of claim or WorkCover to have waived compliance**

**303.** The claimant may start the proceeding if any of the following have happened—

- (a) at least 6 months or, for a terminal condition, 3 months have elapsed after—
  - (i) the claimant has given a complying notice of claim; or

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<sup>148</sup> Part 2 (Entitlement conditions)

<sup>149</sup> Part 5, (Pre-court procedures) (other than section 304 (Court to have made declaration about noncompliance) and 305 (Court to have given leave despite noncompliance))

<sup>150</sup> Part 6 (Settlement of claims)

- (ii) WorkCover has waived the claimant's noncompliance with the requirements of section 280;<sup>151</sup> or
- (iii) the court has made an order under section 304 or 305;
- (b) WorkCover has denied liability on the part of the employer in connection with the injury;
- (c) WorkCover has admitted liability, but is claiming contributory liability from the claimant or another party, and the claimant has given WorkCover written notice that the extent of the admission is disputed;
- (d) WorkCover has admitted liability but damages can not be agreed.

### **Court to have made declaration about noncompliance**

**304.(1)** Subject to section 303,<sup>152</sup> the claimant may start the proceeding if the court, on application by the claimant dissatisfied with WorkCover's response under section 282<sup>153</sup> to a notice of claim, declares that—

- (a) notice of claim has been given under section 280;<sup>154</sup> or
- (b) the claimant is taken to have remedied noncompliance with the requirements of section 280.

**(2)** A declaration that a claimant is taken to have remedied noncompliance with section 280 may be made on conditions the court considers necessary or appropriate to minimise prejudice to WorkCover from the claimant's failure to comply with the requirements of section 280.

### **Court to have given leave despite noncompliance**

**305.(1)** Subject to section 303, the claimant may start the proceeding if the court, on application by the claimant, gives leave to bring the proceeding despite noncompliance with the requirements of section 280.

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<sup>151</sup> Section 280 (Notice of claim for damages)

<sup>152</sup> Section 303 (Claimant to have given complying notice of claim or WorkCover to have waived compliance)

<sup>153</sup> Section 282 (Response to notice of claim)

<sup>154</sup> Section 280 (Notice of claim for damages)

(2) The order giving leave to bring the proceeding may be made on conditions the court considers necessary or appropriate to minimise prejudice to WorkCover from the claimant's failure to comply with the requirements of section 280.

### *Division 2—Court proceedings*

#### **Carriage of proceedings**

**306.(1)** If a proceeding is brought for damages, the proceeding must be brought against the employer of the injured or deceased worker and not against WorkCover.

(2) However, a proceeding may, and may only, be brought against WorkCover if—

- (a) the employer was an individual and can not be adequately identified, is dead or can not practically be served; or
- (b) the employer was a corporation and has been wound-up; or
- (c) the employer was self insured at the time of the event and WorkCover has since assumed the employer's liability for the injury.

(3) If a claim has not been settled at a compulsory conference, then despite any rule of court, the legal process that starts the proceeding must be served on the employer—

- (a) within 60 days after the day the conference was held; or
- (b) within the further period that the court orders on the claimant's application.

(4) If the employer is not a self-insurer, legal process that starts the proceeding must be served on WorkCover within 30 days after the employer has been served, and no step may be taken in the proceeding until WorkCover or the self-insurer has been served.

(5) WorkCover is entitled to conduct for an employer, other than an employer who is a self-insurer, all proceedings taken to enforce the claim or to settle any matter about the claim.

(6) An employer who is a self-insurer is entitled to conduct all proceedings taken to enforce the claim or to settle any matter about the claim.

(7) In addition to an employer's obligation under section 284(1),<sup>155</sup> the employer, other than an employer who is a self-insurer, immediately on being required by WorkCover to do so, must execute all documents and do everything that WorkCover considers reasonably necessary to allow the proceedings to be conducted by it.

(8) If an employer, other than an employer who is a self-insurer—

- (a) is absent from the State or, after reasonable inquiry, can not be found; or
- (b) refuses, fails or is unable to execute documents mentioned in subsection (7);

WorkCover may execute for the employer all documents that it may require or requires the employer to execute for subsection (7).

### **Exclusion of jury trial**

**307.** A proceeding for damages must be decided by a judge without a jury.

### **Alteration of period of limitation**

**308.(1)** A claimant may bring a proceeding for damages for personal injury after the end of the period of limitation allowed for bringing a proceeding for damages for personal injury under the *Limitation of Actions Act 1974* only if—

- (a) before the end of the period of limitation—
  - (i) the claimant gives a notice of claim that is a complying notice of claim; or

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<sup>155</sup> Section 284 (Employer to cooperate with WorkCover)

- (ii) the claimant gives a notice of claim for which WorkCover waives compliance with the requirements of section 280;<sup>156</sup> or
- (iii) a court makes a declaration under section 304;<sup>157</sup> or
- (iv) a court gives leave under section 305;<sup>158</sup> and
- (b) the claimant complies with section 302.<sup>159</sup>

(2) However, the proceeding must be brought within 60 days after a compulsory conference for the claim is held.

### **Court may have regard to claimant's non-compliance with s 280 in relation to costs and interest**

**309.** If a claimant does not comply with the requirements of section 280,<sup>160</sup> the court before which the claimant brings a proceeding for damages—

- (a) on WorkCover's application, may award in WorkCover's favour costs, including legal and investigation costs reasonably incurred by WorkCover because of the claimant's default; and
- (b) subject to section 318,<sup>161</sup> may award interest in the claimant's favour for a period for which the claimant was in default but only if the court is satisfied that there is a reasonable excuse for the default.

### **Court may have regard to compulsory conference**

**310.** A court may have regard to the compulsory conference between the parties in deciding—

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<sup>156</sup> Section 280 (Notice of claim for damages)

<sup>157</sup> Section 304 (Court to have made declaration about noncompliance)

<sup>158</sup> Section 305 (Court to have given leave despite noncompliance)

<sup>159</sup> Section 302 (Compliance necessary before starting proceeding)

<sup>160</sup> Section 280 (Notice of claim for damages)

<sup>161</sup> Section 318 (Interest)

- (a) whether the matter of the damages should be referred to an alternative dispute resolution process; or
- (b) costs in the proceeding for damages.

## **PART 8—PARTICULAR MATTERS AFFECTING ASSESSMENTS OF LIABILITY**

### **Absolute defences not reintroduced**

**311.** This Act does not reintroduce the absolute defence of contributory negligence or common employment.

### **Liability of employers and workers**

**312.(1)** In deciding whether a claimant is entitled to recover damages not reduced on account of contributory negligence, or at all, all courts must have regard to whether the claimant has proved such of the following matters as are relevant to the claim—

- (a) that the employer had made no genuine and reasonable attempt to put in place an appropriate system of work to guard the worker against injury arising out of events that were reasonably readily foreseeable;
- (b) that the actual and direct event giving rise to the worker's injury was actually foreseen or reasonably readily foreseeable by the employer;
- (c) that the worker did not know and had no reasonable means of knowing that the actual and direct event giving rise to the injury might happen;
- (d) that the injury sustained by the worker did not arise out of a relevant failure of the worker to inform the employer of the possibility of the event giving rise to the injury happening, in circumstances in which the employer neither knew nor reasonably had the means of knowing of the possibility;

- (e) that the worker did everything reasonably possible to avoid sustaining the injury;
- (f) that the event giving rise to the worker's injury was not solely as a result of inattention, momentary or otherwise, on the worker's part;
- (g) that the injury sustained by the worker did not arise out of a relevant failure of the worker to use all the protective clothing and equipment provided, or provided for, by the employer and in the way instructed by the employer;
- (h) that the worker did not relevantly fail to inform the employer of any unsafe plant or equipment as soon as practicable after the worker's discovery and relevant knowledge of the unsafe nature of the plant or equipment;
- (i) that the worker did not inappropriately interfere with or misuse or fail to use anything provided that was designed to reduce the worker's exposure to risk of injury.

(2) If the claimant relies exclusively on a failure by the employer to provide a safe system of work and fails to prove the matter mentioned in subsection (1)(a), the court must dismiss the claim.

(3) If the claimant fails to prove the matter mentioned in subsection (1)(b), the court must dismiss the claim.

(4) If the claimant fails to prove any of the matters mentioned in subsection (1)(c) to (i), the court must—

- (a) dismiss the claim; or
- (b) reduce the claimant's damages on the basis that the worker substantially contributed to the worker's injury.

(5) In deciding whether a worker has been guilty of completely causative or contributory negligence, the court is not confined to a consideration of and reliance on the matters mentioned in subsection (1)(c) to (i).

### **Worker's breach of instructions**

**313.** An employer is not liable for damages to a claimant because the

employer failed to guard against breach by the worker of the employer's instructions.

### **Reduction of damages because of contributory negligence**

**314.(1)** A court must make a finding of contributory negligence if the worker—

- (a) relevantly failed to comply, so far as was practicable, with instructions given by the worker's employer for the health and safety of the worker or other persons unless the claimant can prove, on the balance of probabilities, that the failure did not cause or contribute to the worker's injury; or
- (b) failed at the material time to use, so far as was practicable, protective clothing and equipment provided, or provided for, by the worker's employer, in a way in which the worker had been properly instructed to use them unless the claimant can prove, on the balance of probabilities, that the failure did not cause or contribute to the worker's injury; or
- (c) failed at the material time to use, so far as was practicable, anything provided that was designed to reduce the worker's exposure to risk of injury unless the claimant can prove, on the balance of probabilities, that the failure did not cause or contribute to the worker's injury; or
- (d) inappropriately interfered with or misused something provided that was designed to reduce the worker's exposure to risk of injury; or
- (e) was at the relevant time adversely affected by the intentional consumption of a substance that induces impairment unless the claimant can prove that the adverse affect did not cause or contribute to the worker's injury; or
- (f) has failed without reasonable excuse to attend on more than 1 occasion any safety training course organised by the worker's employer that is conducted during normal working hours at which the information given would probably have enabled the worker to avoid, or minimise the effects of, the event giving rise to the worker's injury.

(2) If an injury sustained by a worker was caused or contributed to by 1 or more of the circumstances mentioned in subsection (1), the court must reduce the damages for the worker's injury under subsection (3).

(3) For subsection (2), the court must reduce the award of damages by at least 25% for each of the circumstances causing or contributing to the injury.

## **PART 9—NO RIGHT TO PARTICULAR DAMAGES**

### **Gratuitous services**

**315.** A court can not award damages for the value of services of any kind—

- (a) that have been, or are to be, provided by another person to a worker; and
- (b) that are services of a kind that have been, or are to be, or ordinarily would be, provided to the worker by a member of the worker's family or household; and
- (c) for which the worker is not, and would ordinarily not be, liable to pay.

### **Damages other than to claimant**

**316.** A court can not award damages of any kind under this Act to a person other than the claimant, including damages for loss of consortium as a result of the injury sustained by the worker.

## **PART 10—AWARDING OF PARTICULAR DAMAGES**

### *Division 1—Future economic loss*

#### **Future economic loss**

**317.** A court may award damages for future economic loss or damages for diminution of future earning capacity only if the claimant satisfies the court that, because of the percentage of WRI resulting from the injury sustained, there is at least a 51% likelihood that the claimant will sustain the future economic loss or diminution of future earning capacity.

### *Division 2—Interest*

#### **Interest**

**318.(1)** A court may order payment of interest on the amount of damages but only as provided by this section.

**(2)** A court may order payment of interest—

- (a) on items of special damage that the claimant has actually paid; or
- (b) for damages for actual past economic loss.

**(3)** For subsection (2)(b), the damages must be reduced by the amount of compensation paid.

**(4)** In deciding whether to order payment of interest, the court must have regard to the following—

- (a) whether WorkCover—
  - (i) has been given information that would enable a proper assessment of the claimant's claim; and
  - (ii) has had a reasonable opportunity to make an offer of settlement if it would be appropriate to do so in relation to the claimant's full entitlement to all damages of any kind; and
  - (iii) has not made an offer;

(b) whether WorkCover—

- (i) has had a reasonable opportunity to make a revised offer of settlement if it would be appropriate to do so in the light of further information given by the claimant that would enable a proper assessment of the claimant's full entitlement to all damages of any kind; and
- (ii) has not made an offer.

(5) The rate of interest to be used in the calculation is the rate prescribed under the *Supreme Court Act 1995*, section 48(1).<sup>162</sup>

(6) This section does not affect the payment of interest on a debt under a judgment or order of the court.

### *Division 3—Exemplary damages*

#### **Exemplary damages**

**319.(1)** A court can not award exemplary or punitive damages against WorkCover in a claimant's proceeding for damages.

(2) However, the court may give a separate judgment against an employer for the payment of exemplary or punitive damages if the court considers that the employer's conduct is so reprehensible that an award of exemplary or punitive damages is justified.

(3) WorkCover can not indemnify an employer against an award of exemplary or punitive damages.

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<sup>162</sup> *Supreme Court Act 1995*, section 48 (Interest on debt under judgment or order)

## **PART 11—COSTS**

### ***Division 1—Costs applying to worker with certificate injury or dependant***

#### **Application of div 1**

**320.** This division only applies if the claimant is—

- (a) a worker who has a certificate injury; or
- (b) a dependant.

#### **Principles about orders as to costs**

**321.(1)** If a court has assessed damages in the claimant's proceeding for damages, it must apply the principles set out in this section when making an order about the costs in the proceeding.

**(2)** If the amount of damages is equal to or more than the claimant's written final offer, the court must, unless WorkCover shows that another order for costs is proper in the circumstances, order WorkCover to pay the claimant's costs—

- (a) on a party and party basis up to and including the day of final offer; and
- (b) on a solicitor-client basis after the day of final offer.

**(3)** If the amount of damages is not more than WorkCover's written final offer, the court must order—

- (a) WorkCover to pay the claimant's costs on a party and party basis up to and including the day of final offer; and
- (b) the claimant to pay WorkCover's costs on a solicitor-client basis after the day of final offer.

**(4)** In any other case, the court may make an order about costs as it considers appropriate.

#### **WorkCover's denial of liability**

**322.(1)** This section applies if—

- (a) after receiving a notice of claim, WorkCover denies liability or admits liability to the extent of not more than 25% of the claim; and
- (b) WorkCover's liability is established in a proceeding before a court to the extent of at least 75%.

(2) The court must award costs in favour of the claimant on a solicitor-client basis unless WorkCover establishes good reason why it should not.

### **Costs because of noncompliance with this chapter**

**323.(1)** If a party (the “**defaulting party**”) has failed to comply with a provision of this chapter, the court may order that the defaulting party—

- (a) bear its own costs during the period of default; and
- (b) pay the costs, including legal and investigation costs, reasonably incurred by the other party because of the default.

(2) However, the court must consider—

- (a) whether it was unreasonable for the other party not to waive compliance with the provision (for example, not to consent to late receipt of a document); and
- (b) whether the defaulting party failed to comply with the provision within a reasonable time after the other party requested compliance.

### ***Division 2—Costs applying to worker with non-certificate injury***

#### **Application of div 2**

**324.** This division applies if the claimant is a worker who has a non-certificate injury.

#### **Principles about orders as to costs**

**325.(1)** No order about costs, other than an order allowed under this section, is to be made by the court in the claimant's proceeding.

(2) If a party to the proceeding makes a written final offer of settlement that is refused and the court later awards damages to the worker, the court must, in the following circumstances, make the order about costs provided for—

- (a) if the amount of damages awarded is equal to or more than the worker's final offer—an order that WorkCover pay the worker's party and party costs from the day of the final offer;
- (b) if the amount of damages awarded is equal to or less than the WorkCover's final offer—an order that the worker pay WorkCover's party and party costs from the day of the final offer.

(3) If the award of damages is less than the claimant's written final offer but more than WorkCover's final offer, each party bears the party's own costs.

(4) An order about costs for an interlocutory application may be made only if the court is satisfied that the application has been brought because of unreasonable delay by 1 of the parties.

(5) If an entity other than the worker's employer or WorkCover is joined as a defendant in the proceeding, the court may make an order about costs in favour of, or against, the entity according to the proportion of liability of the defendants and the justice of the case.

(6) The court may make an order for costs against the worker's employer or WorkCover under subsection (5) only if—

- (a) the order is in favour of the entity; and
- (b) the worker's employer or WorkCover joined the entity as a defendant.

### *Division 3—Costs generally*

#### **Application of div 3**

**326.** This divisions applies to all claimants.

**Costs if proceeding could have been brought in a lower court**

**327.** If the amount of damages a court awards could have been awarded in a lower court, the court must order any costs in favour of the claimant under the scale of costs applying in the lower court.

**PART 12—EXCESS DAMAGES AWARDED IN ANOTHER JURISDICTION****Application of pt 12**

**328.** This part applies if—

- (a) a person is entitled to seek as a claimant damages for an injury sustained by a worker in a court of the State, other than under the *Jurisdiction of Courts (Cross-Vesting) Act 1978*; and
- (b) damages for the injury are awarded by a court that is not a court of the State; and
- (c) the court that awards the damages does not do so subject to this chapter; and
- (d) the amount of the damages awarded to a claimant is more than the amount that would have been awarded subject to this chapter in a proceeding before a court of the State; and
- (e) WorkCover would be liable to pay all the damages if section 329 did not apply.

**No liability for excess damages**

**329.** WorkCover is not liable for the difference between the amount of damages awarded to the claimant and the amount of damages that would have been awarded in a proceeding before a court of the State.

## **CHAPTER 6—WORKCOVER QUEENSLAND**

### **PART 1—ESTABLISHMENT**

#### **WorkCover is established**

**330.** WorkCover Queensland is established.

#### **WorkCover is a body corporate etc.**

**331.** WorkCover—

- (a) is a body corporate with perpetual succession; and
- (b) has a common seal; and
- (c) may sue and be sued in its corporate name.

#### **Relationship with State**

**332.(1)** WorkCover represents the State.

**(2)** Without limiting subsection (1), every WorkCover policy or other insurance contract with WorkCover is guaranteed by the government of the State.

**(3)** If WorkCover is unable to pay from a fund under its control an amount payable by WorkCover under a policy or contract guaranteed under subsection (2), the amount is to be paid out of consolidated fund to WorkCover.

**(4)** The consolidated fund is appropriated for the amount.

## **PART 2—FUNCTIONS AND POWERS**

### *Division 1—Functions and insurance business*

#### **General statement of WorkCover’s functions**

**333.(1)** WorkCover’s functions are as follows—

- (a) to manage the workers’ compensation scheme;
- (b) to undertake the insurance business mentioned in section 334;
- (c) to perform other functions conferred on it by this or another Act;
- (d) to do anything necessary for the administration of this Act that is not the function of another entity.

**(2)** In performing its functions, WorkCover—

- (a) must, as far as practicable, deliver insurance as a commercial enterprise; and
- (b) must enforce this Act as a regulator; and
- (c) is subject to the Minister’s directions under part 4.

#### **WorkCover’s insurance business**

**334.(1)** WorkCover may undertake the business of—

- (a) accident insurance; and
- (b) other insurance this Act authorises WorkCover to undertake.

**(2)** WorkCover may reinsure, on conditions that it considers appropriate, all or part of any risk accepted by it.

#### **WorkCover as the exclusive provider of accident insurance**

**335.(1)** Accident insurance is to be undertaken only by WorkCover.

**(2)** Policies for accident insurance are to be issued by or for WorkCover and no other person or association or group of persons.

(3) A policy issued in contravention of this section is unenforceable at law.

(4) This section is subject to the provisions of this Act authorising self-insurers to provide accident insurance.

### **WorkCover's offices**

**336.** WorkCover may establish offices anywhere and discontinue any WorkCover offices.

## *Division 2—Powers generally*

### **Objects of div 2**

**337.** The objects of this division include—

- (a) abolishing any application of the doctrine of ultra vires to WorkCover; and
- (b) ensuring that WorkCover gives effect to any restrictions on its objects or powers, but without affecting the validity of its dealings with outsiders.

### **WorkCover's general powers**

**338.(1)** WorkCover has, for or in connection with the performance of its functions, all the powers of a natural person, including, for example, the power to—

- (a) enter into contracts; and
- (b) acquire, hold, dispose of and deal with property; and
- (c) appoint attorney and agents, including for debt collection; and
- (d) charge, and fix terms, for goods, services and information supplied by it; and
- (e) engage consultants; and
- (f) establish subsidiaries; and

(g) do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), WorkCover has the powers that are conferred on it by this or another Act.

(3) WorkCover may exercise its powers inside and outside Queensland.

(4) Without limiting subsection (3), WorkCover may exercise its powers in a foreign country.

(5) The fact that the doing of an act by WorkCover would not be, or is not, in its best interests does not affect its power to do the act.

(6) In this section—

“**power**” includes legal capacity.

### **General restriction on WorkCover’s powers**

**339.(1)** Section 338 applies to WorkCover subject to any restrictions on WorkCover’s powers expressly imposed under this or another Act.

(2) Section 338 also applies to WorkCover subject to any restrictions expressly imposed by—

- (a) WorkCover’s statement of corporate intent; and
- (b) any relevant directions, notifications or approvals given to WorkCover by the Minister

(3) WorkCover contravenes this subsection if—

- (a) WorkCover exercises a power contrary to a restriction mentioned in subsection (1) or (2); or
- (b) does an act otherwise than for its functions.

(4) The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.

(5) A WorkCover officer who is involved in the contravention contravenes this subsection.

(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

(7) WorkCover or an officer of WorkCover is not guilty of an offence merely because of the contravention.

(8) The fact that—

- (a) by exercising the powers mentioned in subsection (3)(a), or doing the act as mentioned in subsection (3)(b), WorkCover contravened, or would contravene, subsection (3); or
- (b) by doing a particular act, an officer of WorkCover contravened, or would contravene, subsection (5);

may be asserted or relied on only in proceedings between the Minister or the State and officers of WorkCover.

(9) In this section—

**“officer”** of WorkCover means—

- (a) a WorkCover director; or
- (b) the chief executive officer; or
- (c) an employee of WorkCover.

**“restriction”** includes prohibition.

### **Disposal of main undertakings**

**340. (1)** WorkCover may dispose of any of its main undertakings only with the prior written approval of the Minister.

(2) In this section—

**“main undertakings”** means the undertakings specified as WorkCover’s main undertakings in WorkCover’s most recent statement of corporate intent.

### **Acquiring and disposing of subsidiaries**

**341.** WorkCover may do the following only with the prior written approval of the Minister—

- (a) form, or participate in the formation of, a company that will become a WorkCover subsidiary;

- (b) acquire shares, or participate in any other transaction that will result in a body corporate becoming, or ceasing to be a WorkCover subsidiary.

### **Protection of persons who deal with WorkCover**

**342.(1)** If a person has dealings with WorkCover—

- (a) the person is entitled to make the assumptions mentioned in subsection (3); and
- (b) in a proceeding about the dealings, any assertion by WorkCover that the matters that the person is entitled to assume were not correct must be disregarded.

**(2)** If a person has dealings with a person who has acquired, or purports to have acquired, title to property from WorkCover (whether directly or indirectly)—

- (a) the person is entitled to make the assumptions mentioned in subsection (3); and
- (b) in a proceeding for the dealings, any assertion by WorkCover or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

**(3)** The assumptions that a person is, because of subsection (1) or (2), entitled to make are—

- (a) that, at all relevant times, this Act has been complied with; and
- (b) that a person who is held out by WorkCover to be an officer or agent of WorkCover—
  - (i) has been properly appointed; and
  - (ii) has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of WorkCover who has authority to issue a document for WorkCover has authority to warrant that the document is genuine; and

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- (d) that an officer or agent of WorkCover who has authority to issue a certified copy of a document for WorkCover has authority to warrant that the copy is a true copy; and
- (e) that a document has been properly sealed by WorkCover if—
  - (i) it bears what appears to be an imprint of WorkCover’s seal; and
  - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be a WorkCover director or the chief executive officer; and
- (f) that the directors, chief executive officer, employees and agents of WorkCover have properly performed their duties to WorkCover.

(4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—

- (a) the person has actual knowledge that the assumption would be incorrect; or
- (b) because of the person’s connection or relationship with WorkCover, the person ought to know that the assumption would be incorrect.

(5) If, because of subsection (4), a person is not entitled to make a particular assumption—

- (a) if the assumption is in relation to dealings with WorkCover—subsection (1) does not apply to any assertion by WorkCover in relation to the assumption; or
- (b) if the assumption is in relation to an acquisition or purported acquisition from WorkCover of title to property—subsection (2) does not apply to any assertion by WorkCover or another person in relation to the assumption.

(6) In this section—

“**officer**” of WorkCover means—

- (a) a WorkCover director; or
- (b) the chief executive officer; or
- (c) an employee of WorkCover.

**Reserve power of Minister to direct that asset not be disposed of**

**343.(1)** The Minister may, after consultation with the board, give the board a written direction requiring WorkCover not to dispose of a specified asset.

(2) The board must ensure that the direction is complied with.

(3) The Minister must cause a copy of the direction to be published in the gazette within 21 days after it is given.

**PART 3—OBLIGATIONS***Division 1—Corporate Plan***WorkCover must have corporate plan**

**344.** WorkCover must have a corporate plan.

**Guidelines in relation to corporate plans**

**345.(1)** The Minister may issue guidelines about the form and content of WorkCover's corporate plan.

(2) WorkCover must comply with the guidelines.

**Draft corporate plan**

**346.(1)** WorkCover's board must prepare, and submit to the Minister for the Minister's agreement, a draft corporate plan not later than 2 months before the start of each financial year.

(2) The board and the Minister must endeavour to reach agreement on the draft plan as soon as possible and, for a draft corporate plan for a financial year, in any case not later than 1 month before the start of the financial year.

**Special procedures for draft corporate plan**

**347.(1)** The Minister may return a draft corporate plan to WorkCover's board and ask it to—

- (a) consider or further consider any matter and deal with the matter in the draft plan; and
- (b) revise the draft plan in the light of its consideration or further consideration.

**(2)** The board must comply with the request as a matter of urgency.

**(3)** If, for a financial year, a draft corporate plan has not been agreed to by the Minister by 1 month before the start of the financial year, the Minister may, by written notice, direct the board—

- (a) to take specified steps in relation to the draft plan; or
- (b) to make specified changes to the draft plan.

**(4)** The board must immediately comply with a direction under subsection (3).

**(5)** The Minister must cause a copy of a direction to be published in the industrial gazette within 21 days after it is given.

**Corporate plan on agreement**

**348.** When a draft corporate plan is agreed to by the Minister, it becomes WorkCover's corporate plan for the relevant financial year.

**Corporate plan pending agreement**

**349.(1)** This section applies if, for a financial year, the Minister has not agreed to a draft corporate plan before the start of the financial year.

**(2)** The draft corporate plan submitted or last submitted by the board to the Minister before the start of the financial year, with any changes made by the board, whether before or after that time, at the direction of the Minister, is taken to be WorkCover's corporate plan until a draft corporate plan becomes WorkCover's corporate plan under section 348.

**Changes to corporate plan**

**350.(1)** WorkCover's corporate plan may be changed by its board with the Minister's agreement.

(2) The Minister may, by written notice, direct the board to change the corporate plan.

(3) The Minister must cause a copy of the direction to be published in the industrial gazette within 21 days after it is given.

***Division 2—Statement of corporate intent*****WorkCover must have statement of corporate intent**

**351.** WorkCover must have a statement of corporate intent for each financial year.

**Statement of corporate intent must be consistent with corporate plan**

**352.** WorkCover's statement of corporate intent must be consistent with its corporate plan.

**Matters to be included in statement of corporate intent**

**353.(1)** WorkCover's statement of corporate intent must specify WorkCover's financial and non-financial performance targets for its activities for the relevant financial year.

(2) The statement of corporate intent must also include the matters required by the following sections—

- (a) section 354;
- (b) section 360;<sup>163</sup>
- (c) section 408.<sup>164</sup>

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<sup>163</sup> Section 360 (Community service obligations to be specified in statement of corporate intent)

<sup>164</sup> Section 408 (Employment and industrial relations plan)

**Additional matters to be included in statement of corporate intent**

**354.(1)** WorkCover's statement of corporate intent must include the following additional matters—

- (a) an outline of WorkCover's objectives;
- (b) an outline of the nature and scope of the activities proposed to be undertaken by WorkCover during the relevant financial year;
- (c) an outline of WorkCover's main undertakings during the relevant financial year;
- (d) WorkCover's capital structure and payments to the consolidated fund under section 417;<sup>165</sup>
- (e) an outline of the borrowings made, and proposed to be made, by WorkCover;
- (f) an outline of the policies adopted by WorkCover to minimise and manage any risk of investments and borrowings that may adversely affect its financial stability;
- (g) an outline of WorkCover's policies and procedures relating to the acquisition and disposal of major assets;
- (h) WorkCover's accounting policies that apply to the preparation of its accounts;
- (i) the type of information to be given to the Minister, including information to be given in quarterly and annual reports.

**(2)** The Minister may exempt WorkCover from including any matter, or any aspect of a matter, mentioned in subsection (1) in the statement of corporate intent.

**(3)** Subsection (1) does not limit the matters that may be included in a statement of corporate intent.

**Draft statement of corporate intent**

**355.(1)** WorkCover's board must prepare, and submit to the Minister for the Minister's agreement, a draft statement of corporate intent not later than

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<sup>165</sup> Section 417 (Payment to consolidated fund)

2 months before the start of each financial year.

(2) The board and the Minister must endeavour to reach agreement on the draft statement as soon as possible and, for a draft statement of corporate intent for a financial year, in any case not later than the start of the financial year.

### **Special procedures for draft statement of corporate intent**

**356.(1)** The Minister may return the draft statement of corporate intent to WorkCover's board and ask it to—

- (a) consider or further consider any matter and deal with the matter in the draft statement; and
- (b) revise the draft statement in the light of its consideration or further consideration.

(2) The board must comply with the request as a matter of urgency.

(3) If, for a financial year, a draft statement of corporate intent of WorkCover has not been agreed to by the Minister before the start of the financial year, the Minister may, by written notice, direct the board—

- (a) to take specified steps in relation to the draft statement; or
- (b) to make specified changes to the draft statement.

(4) The board must immediately comply with a direction under subsection (3).

(5) The Minister must cause a copy of the direction to be published in the industrial gazette within 21 days after it is given.

### **Statement of corporate intent on agreement**

**357.** When a draft statement of corporate intent of WorkCover is agreed to by the Minister, it becomes WorkCover's statement of corporate intent for the relevant financial year.

### **Changes to statement of corporate intent**

**358.(1)** WorkCover's statement of corporate intent may be changed by its board with the Minister's agreement.

(2) The Minister may, by written notice, direct the board to change the statement of corporate intent.

(3) Before giving the direction, the Minister must consult with the board and take its views into account.

(4) The Minister must cause a copy of the direction to be published in the industrial gazette within 21 days after it is given.

### *Division 3—Community service obligations*

#### **Meaning of “community service obligations”**

**359.(1)** WorkCover’s “community service obligations” are obligations to perform activities that WorkCover’s board establishes to the Minister’s satisfaction—

- (a) are not in the commercial interests of WorkCover to perform; and
- (b) arise because of a direction, notification or duty to which this section applies.

(2) This section applies to the following directions, notifications and duties—

- (a) a direction given to WorkCover’s board under section 343;<sup>166</sup>
- (b) a direction given to WorkCover’s board under section 347;<sup>167</sup>
- (c) a direction given to WorkCover’s board under section 350;<sup>168</sup>
- (d) a direction given to WorkCover’s board under section 356;<sup>169</sup>
- (e) a direction given to WorkCover’s board under section 358;<sup>170</sup>
- (f) a notification given to WorkCover’s board under section 374;<sup>171</sup>

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<sup>166</sup> Section 343 (Reserve power of Ministers to direct that asset not be disposed of)

<sup>167</sup> Section 347 (Special procedures for draft corporate plan)

<sup>168</sup> Section 350 (Changes to corporate plan)

<sup>169</sup> Section 356 (Special procedures for draft statement of corporate intent)

<sup>170</sup> Section 358 (Changes to statement of corporate intent)

<sup>171</sup> Section 374 (Reserve power of Minister to notify board of public sector policies)

- (g) a direction given to WorkCover's board under section 375;<sup>172</sup>
- (h) a statutory duty to perform activities, including any economic development activities or activities of a regulatory or policy formulation nature, that arise under an Act applying specifically to WorkCover.

### **Community service obligations to be specified in statement of corporate intent**

**360.(1)** The community service obligations that WorkCover is to perform are to be specified in its statement of corporate intent.

(2) The costings of, funding for, or other arrangements to make adjustments relating to, WorkCover's community service obligations are also to be specified in its statement of corporate intent.

(3) The statement of corporate intent is conclusive, as between the Government and WorkCover, of—

- (a) the nature and extent of WorkCover's community service obligations; and
- (b) the ways in which, and the extent to which, WorkCover is to be compensated by the Government for performing its community service obligations.

### ***Division 4—Reports and other accountability matters***

#### **Quarterly reports**

**361.(1)** WorkCover's board must give to the Minister a report on the operations of WorkCover for each quarter of a financial year.

(2) A quarterly report must be given to the Minister—

- (a) within 1 month after the end of the quarter; or
- (b) if another period after the end of the quarter is agreed between the board and the Minister—within the agreed period.

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<sup>172</sup> Section 375 (Reserve power of Minister to give directions in public interest)

(3) A quarterly report must include the information required to be given in the report by WorkCover's statement of corporate intent.

### **Matters to be included in annual report**

**362.(1)** Each annual report of WorkCover must—

- (a) contain the information that is required to be included in the report by the Minister to enable an informed assessment to be made of WorkCover's operations, including a comparison of the performance of WorkCover's statement of corporate intent; and
- (b) state WorkCover's policy for the relevant financial year for payments to the consolidated fund under section 417;<sup>173</sup> and
- (c) include the statement of corporate intent for the relevant financial year; and
- (d) include particulars of any changes made to the statement of corporate intent during the relevant financial year; and
- (e) include particulars of any directions and notifications given to WorkCover's board by the Minister that relate to the relevant financial year; and
- (f) include particulars of the impact on the financial position, profits and losses and prospects of WorkCover of any changes made to the statement of corporate intent, and any directions and notifications given to the board by the Minister, that relate to the relevant financial year.

(2) Each annual report of WorkCover must also state whether or not WorkCover's directors consider there are, when the statement is made, reasonable grounds to believe that WorkCover will be able to pay its debts as and when they fall due.

### **Deletion of commercially sensitive matters from annual report etc.**

**363.(1)** If WorkCover's board asks the Minister to delete from the copies of an annual report of WorkCover and accompanying documents that are to

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<sup>173</sup> Section 417 (Payment to consolidated fund)

be made public a matter that is of a commercially sensitive nature, the Minister may delete the matter from the copies of the annual report and accompanying documents that are laid before the Legislative Assembly or otherwise made public.

(2) An annual report of WorkCover may include a summary of a matter required to be included in the annual report, rather than a full statement of the matter, if—

- (a) the summary indicates that it is a summary only; and
- (b) a full statement of the matter is laid before the Legislative Assembly at the same time as a copy of the annual report is laid before the Legislative Assembly.

(3) Subsections (1) and (2) have effect despite section 362<sup>174</sup> or another Act.

(4) Subsection (1) has effect despite subsection (2).

### **Board to keep Minister informed**

**364.(1)** WorkCover's board must—

- (a) keep the Minister reasonably informed of the operations, financial performance and financial position of WorkCover, including the assets and liabilities, profits and losses and prospects of WorkCover; and
- (b) give the Minister reports and information that the Minister requires to enable the Minister to make informed assessments of matters mentioned in paragraph (a); and
- (c) if matters arise that in the board's opinion may prevent, or significantly affect, achievement of WorkCover's objectives outlined in its statement of corporate intent or targets under its corporate plan—immediately inform the Minister of the matters and its opinion about them.

(2) Subsection (1) does not limit the matters of which the board is required to keep the Minister informed, or limit the reports or information

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<sup>174</sup> Section 362 (Matters to be included in annual report)

that the board is required, or may be required, to give to the Minister, by another Act.

### *Division 5—Duties and liabilities of directors and other officers*

#### **Disclosure of interests by director**

**365.(1)** If a WorkCover director has a direct or indirect interest in a matter being considered, or about to be considered, by WorkCover's board, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director's knowledge.

Maximum penalty—100 penalty units.

(2) The disclosure must be recorded in the board's minutes.

#### **Voting by interested director**

**366.(1)** A WorkCover director who has a material personal interest in a matter that is being considered by WorkCover's board must not—

- (a) vote on the matter; or
- (b) vote on a proposed resolution (a “**related resolution**”) under subsection (2) in relation to the matter (whether in relation to the director or another director); or
- (c) be present while the matter, or a related resolution, is being considered by the board; or
- (d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to the matter if the board has at any time passed a resolution that—

- (a) specifies the director, the interest and the matter; and
- (b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.

(3) A quorum is present during a consideration of a matter by the board only if at least 2 directors are present who are entitled to vote on any motion that may be moved in relation to the matter.

(4) The Minister may, by signing consent to a proposed resolution, deal with a matter if the board can not deal with it because of subsection (3).

### **Duty and liability of certain officers of WorkCover**

**367.(1)** A WorkCover officer must act honestly in the exercise of powers, and discharge of functions, as a WorkCover officer.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud WorkCover, WorkCover's creditors or creditors of another person or for another fraudulent purpose—500 penalty units or 5 years imprisonment; or
- (b) in any other case—100 penalty units.

(2) In the exercise of powers and the discharge of functions, a WorkCover officer must exercise the degree of care and diligence that a reasonable person in a like position within WorkCover would exercise.

Maximum penalty—100 penalty units.

(3) A person who is, or was, a WorkCover officer must not make improper use of information acquired because of the person's position as a WorkCover officer—

- (a) to gain, directly or indirectly, an advantage for the person or for another person; or
- (b) to cause detriment to WorkCover.

Maximum penalty—500 penalty units or 5 years imprisonment.

(4) An officer of WorkCover must not make improper use of the officer's position as a WorkCover officer—

- (a) to gain, directly or indirectly, an advantage for the officer or another person; or
- (b) to cause detriment to WorkCover.

Maximum penalty—500 penalty units or 5 years imprisonment.

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(5) If a person contravenes this section in relation to WorkCover, WorkCover may recover from the person as a debt due to WorkCover—

- (a) if the person or another person made a profit because of the contravention—an amount equal to the profit; and
- (b) if WorkCover suffered loss or damage because of the contravention—an amount equal to the loss or damage.

(6) An amount may be recovered from the person whether or not the person has been convicted of an offence in relation to the contravention.

(7) Subsection (5) is in addition to, and does not limit, the *Crimes (Confiscation) Act 1989*.

(8) In deciding for subsection (2) the degree of care and diligence that a reasonable person in a like position within WorkCover would exercise, regard must be had to—

- (a) the fact that the person is a WorkCover officer; and
- (b) the application of this Act to WorkCover; and
- (c) relevant matters required or permitted to be done under this Act in relation to WorkCover;

including, for example—

- (d) any relevant community service obligations of WorkCover; and
- (e) any relevant directions, notifications or approvals given to WorkCover by the Minister.

(9) Subsection (8) does not limit the matters to which regard may be had for the purposes of subsection (2).

(10) In this section—

“**officer**” of WorkCover means—

- (a) a WorkCover director; or
- (b) the chief executive officer; or
- (c) another person who is concerned, or takes part, in WorkCover’s management.

**Prohibition on loans to directors**

**368.(1)** WorkCover must not, whether directly or indirectly—

- (a) make a loan to a WorkCover director, a spouse of a director or a relative of a director or spouse; or
- (b) give a guarantee or provide security in connection with a loan made to a director, a spouse of a director or a relative of a director or spouse.

(2) Subsection (1) does not apply to the entering into by WorkCover of an instrument with a person mentioned in subsection (1) if the instrument is entered into on the same terms as similar instruments, if any, are entered into by WorkCover with members of the public.

(3) A WorkCover director must not be knowingly concerned in a contravention of subsection (1) by WorkCover (whether or not in relation to the director).

Maximum penalty—100 penalty units.

(4) In this section—

“**relative**” means—

- (a) a parent or remoter lineal ancestor; or
- (b) a son, daughter or remoter issue; or
- (c) a brother or sister.

**WorkCover not to indemnify officers**

**369.(1)** WorkCover must not—

- (a) indemnify a person who is or has been a WorkCover officer against a liability incurred as an officer; or
- (b) exempt a person who is or has been a WorkCover officer from a liability incurred as an officer.

(2) An instrument is void so far as it provides for WorkCover to do something that subsection (1) prohibits.

(3) Subsection (1) does not prevent WorkCover from indemnifying a person against a civil liability, other than a liability to WorkCover, unless the

liability arises out of conduct involving a lack of good faith.

(4) Subsection (1) does not prevent WorkCover from indemnifying a person against a liability for costs and expenses incurred by the person—

- (a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or
- (b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

(5) WorkCover may give an indemnity mentioned in subsection (3) or (4) only with the prior approval of the Minister.

(6) In this section—

**“indemnify”** includes indemnify indirectly through 1 or more interposed entities.

**“officer”** of WorkCover means—

- (a) a director of WorkCover; or
- (b) the chief executive officer; or
- (c) another person who is concerned, or takes part, in WorkCover’s management.

### **WorkCover not to pay premiums for certain liabilities of officers**

**370.(1)** WorkCover must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been an officer of WorkCover against a liability—

- (a) incurred by the person as an officer; and
- (b) arising out of conduct involving—
  - (i) a wilful breach of duty in relation to WorkCover; or
  - (ii) without limiting subparagraph (i), a contravention of section 367(3) or (4).<sup>175</sup>

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<sup>175</sup> Section 367 (Duty and liability of certain officers of WorkCover)

(2) Subsection (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.

(3) An instrument is void so far as it insures a person against a liability in contravention of subsection (1).

(4) In this section—

“**officer**” of WorkCover means—

- (a) a director of WorkCover; or
- (b) the chief executive officer; or
- (c) another person who is concerned, or takes part, in WorkCover’s management.

“**pay**” includes pay indirectly through 1 or more interposed entities.

### **Examination of persons concerned with WorkCover**

**371.(1)** If it appears to the Attorney-General that—

- (a) a person who has been concerned, or taken part, in WorkCover’s management, administration or affairs, has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to WorkCover; or
- (b) a person may be capable of giving information about WorkCover’s management, administration or affairs;

the Attorney-General may apply to the Supreme Court or a District Court for an order under this section about the person.

(2) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on anything about WorkCover’s management, administration or affairs.

(3) The examination of the person is to be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.

(4) The court may give directions about—

- (a) the matters to be inquired into at the examination; and

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- (b) the procedures to be followed at the examination, including, if the examination is to be held in private, the persons who may be present.

(5) The person must not fail, without reasonable excuse—

- (a) to attend as required by the order; or
- (b) to continue to attend as required by the court until the completion of the examination.

Maximum penalty—200 penalty units or 2 years imprisonment.

(6) The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty—200 penalty units or 2 years imprisonment.

(7) The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty—200 penalty units or 2 years imprisonment.

(8) The person may be directed by the court, in the order or by subsequent direction, to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

(9) The person must not, without reasonable excuse, contravene a direction under subsection (8).

Maximum penalty—200 penalty units or 2 years imprisonment.

(10) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.

(11) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.

Maximum penalty—500 penalty units or 5 years imprisonment.

(12) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

(13) If—

- (a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty; and
- (b) the answer might in fact tend to incriminate the person or make the person liable to a penalty;

the answer is not admissible in evidence against the person in—

- (c) a criminal proceeding; or
- (d) a proceeding for the imposition of a penalty;

other than a proceeding for an offence against this section or another proceeding in relation to the falsity of the answer.

(14) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.

(15) Subject to subsection (13), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.

(16) The person may, at the person's own expense, employ counsel or a solicitor, and the counsel or solicitor may put to the person questions that the court considers just for the purpose of enabling the person to explain or qualify any answers given by the person.

(17) The court may adjourn the examination from time to time.

(18) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order the whole or any part of the costs incurred by the person be paid by the State.

### **Power to grant relief**

**372.(1)** This section applies to a WorkCover director, the chief executive or other WorkCover employee.

(2) If, in a proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty as a person to whom this section applies, it appears to the court that—

- (a) the person is or may be liable for the negligence, default or breach;
- (b) the person has acted honestly and, having regard to all the circumstances of the case, including circumstances connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach;

the court may relieve the person, completely or partly, from liability on terms that the court considers appropriate.

(3) If a person to whom this section applies believes that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this section applies, the person may apply to the Supreme Court or a District Court for relief.

(4) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.

(5) If—

- (a) a proceeding mentioned in subsection (2) is being tried by a judge with a jury; and
- (b) the judge, after hearing the evidence, is satisfied that the defendant ought under that subsection be relieved, completely or partly, from the liability sought to be enforced against the person;

the judge may withdraw the case, completely or partly, from the jury and direct that judgment be entered for the defendant on the terms, as to costs or otherwise, the judge considers appropriate.

### **False or misleading information or documents**

**373.(1)** An officer of WorkCover must not make a statement concerning the affairs of WorkCover to another officer or the Minister that the first officer knows is false or misleading in a material particular.

(2) A complaint against a person for an offence against subsection (1) is sufficient if it states that the statement was false or misleading to the person's knowledge, without specifying which.

(3) An officer of WorkCover must not give to another officer or the Minister a document containing information that the first officer knows is false or misleading in a material particular without—

- (a) indicating to the recipient that the document is false or misleading and the respect in which the document is false or misleading; and
- (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud WorkCover, creditors of WorkCover or creditors of another person or for another fraudulent purpose—500 penalty units or 5 years imprisonment; or
- (b) in any other case—100 penalty units.

(4) In this section—

“**officer**” of WorkCover means—

- (a) a director of WorkCover; or
- (b) the chief executive officer; or
- (c) an employee of WorkCover.

## **PART 4—THE MINISTER**

### **Reserve power of Minister to notify board of public sector policies**

**374.(1)** The Minister may notify WorkCover’s board, in writing, of a public sector policy that is to apply to WorkCover if the Minister is satisfied that it is necessary to give the notification in the public interest.

(2) The board must ensure that the policy is carried out in relation to WorkCover.

(3) Before giving the notification, the Minister must—

- (a) consult with the board; and

(b) request the board to advise the Minister whether, in its opinion, carrying out the policy would not be in the commercial interests of WorkCover.

(4) The Minister must cause a copy of the notification to be—

- (a) published in the industrial gazette within 21 days after it is given; and
- (b) tabled in the Legislative Assembly within 14 sitting days after it is given.

### **Reserve power of Minister to give directions in public interest**

**375.(1)** The Minister may give WorkCover's board a written direction in relation to WorkCover if the Minister is satisfied that it is necessary to give the direction in the public interest.

(2) The board must ensure that the direction is complied with in relation to WorkCover.

(3) Before giving the direction, the Minister must—

- (a) consult with the board; and
- (b) request the board to advise the Minister whether, in its opinion, complying with the direction would not be in the commercial interests of WorkCover.

(4) The Minister must cause a copy of the direction to be—

- (a) published in the industrial gazette within 21 days after it is given; and
- (b) tabled in the Legislative Assembly within 14 sitting days after it is given.

### **Additional power to direct WorkCover**

**376.(1)** This section applies to anything other than a commercial activity of WorkCover.

(2) The Minister may give WorkCover a written direction for the administration of this Act.

(3) Before giving the direction, the Minister must—

- (a) consult with the board; and
- (b) ask the board to advise the Minister whether it considers complying with the direction would adversely affect the performance of its functions.

(4) Subsection (3) does not apply if the Minister's direction is in response to a written recommendation of the board about the relevant matter, whether or not the direction implements the recommendation.

(5) The board must comply with the direction.

(6) The Minister must cause a copy of the direction to be—

- (a) published in the industrial gazette within 21 days after it is given; and
- (b) tabled in the Legislative Assembly within 14 sitting days after it is given.

### **Notice of suspected threat to full funding because of direction or notification**

**377.(1)** If—

- (a) WorkCover's board is given a direction or notification by the Minister; and
- (b) the board suspects that complying with the direction or notification will threaten WorkCover's ability to achieve or maintain full funding;

the board must immediately give written notice to the Minister and the Auditor-General of the suspicion and its reasons for its opinion.

(2) The notice must state that it is given under this section.

(3) The giving of the notice operates to suspend the direction or notification until the Minister gives a written direction to the board stating—

- (a) whether the direction or notification mentioned in subsection (1) is to be—
  - (i) revoked and replaced with an alternative direction or notification; or

- (ii) revoked; or
- (iii) complied with by the board; and
- (b) the reasons for the direction.

(4) The board must ensure that the direction under subsection (3) is complied with, subject to subsection (6).

(5) The Minister must cause a copy of the written notice given by the board to the Minister and the Auditor-General and the Minister's direction under subsection (3) to be—

- (a) published in the industrial gazette within 21 days after it is given; and
- (b) tabled in the Legislative Assembly within 14 sitting days after it is given.

(6) This section applies to an alternative direction mentioned in subsection (3)(a)(i) in the way it applies to any other direction.

### **WorkCover and board not otherwise subject to government direction**

**378.** Other than as provided by this or another Act, WorkCover and its board are not subject to direction by or on behalf of the Government.

### **Minister not director etc.**

**379.(1)** The Minister is not to be treated as a director of WorkCover.

(2) The Minister does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under or for this Act in relation to WorkCover.

(3) A liability that would, apart from subsection (2), attach to the Minister attaches instead to the State.

(4) This section has effect despite the Corporations Law.

**Monitoring and assessment of WorkCover**

**380.(1)** The Minister may delegate the Minister's powers under section 364<sup>176</sup> to—

- (a) for any provision of section 364—the chief executive of the department (the “**department chief executive**”) or an appropriately qualified public service officer of the department; or
- (b) for section 364(1)(a) or (b)—a person appropriately qualified to assess the matters mentioned in section 364(1)(a).

**(2)** The Minister may request the department chief executive to investigate, and report to the Minister on, any matter relating to WorkCover.

**(3)** For an investigation under this section of a matter relating to WorkCover, the department chief executive may give WorkCover written directions.

**(4)** Without limiting subsection (3), the department chief executive may direct WorkCover—

- (a) to give to the department chief executive any information about WorkCover that the department chief executive considers necessary or desirable in connection with the investigation; and
- (b) to permit persons authorised by the department chief executive to have access to specified documents about WorkCover that the department chief executive considers necessary or desirable in connection with the investigation; and
- (c) to take steps that the department chief executive considers necessary or desirable for the purposes of the investigation.

**(5)** WorkCover must ensure that any direction given to it under this section is complied with.

**(6)** The department chief executive may delegate to an officer of the department or another person the chief executive's powers under this section, including powers delegated to the chief executive under subsection (1)(b).

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<sup>176</sup> Section 364 (Board to keep Minister informed)

## **PART 5—BOARD OF DIRECTORS**

### *Division 1—Establishment of WorkCover’s board*

#### **Establishment of board**

**381.(1)** WorkCover’s Board of Directors is established.

**(2)** The board consists of at least 7 members appointed by the Governor in Council.

#### **Appointment of chairperson and deputy chairperson**

**382.(1)** The Governor in Council may appoint a director to be the board’s chairperson and another director to be the board’s deputy chairperson.

**(2)** The deputy chairperson is to act as chairperson—

- (a) during a vacancy in the office of chairperson; and
- (b) during all periods when the chairperson is absent from duty or is, for another reason, unable to perform the functions of the office.

#### **Regard to particular ability in appointment of directors**

**383.(1)** In appointing a person as a director, the Governor in Council must have regard to the person’s ability to make a contribution to WorkCover’s implementation of its statement of corporate intent and to its performance as a commercial enterprise and regulator.

**(2)** A person is not eligible for appointment as a director if the person is not able to manage a corporation because of the Corporations Law, section 229.<sup>177</sup>

#### **Role of board**

**384.** The board’s role includes the following—

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<sup>177</sup> Corporations Law, section 229 ( Certain persons not to manage corporations)

*Workcover Queensland Act 1996*

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- (a) ensuring that, as far as possible, WorkCover achieves, and acts in accordance with, its statement of corporate intent and carries out the objectives outlined in its statement of corporate intent;
- (b) accounting to the Minister for its performance as required by this Act or under another law applying to WorkCover;
- (c) responsibility for WorkCover's commercial policy and management;
- (d) reporting to the Minister, on its own initiative or the Minister's request, on the adequacy, operation, and enforcement of this Act;
- (e) notifying the Minister of the methods and rates it proposes to use to assess premiums;
- (f) making recommendations to the Minister about—
  - (i) entitlements that should be paid under this Act; or
  - (ii) regulation of access to damages under this Act; or
  - (iii) legislative policy issues;
- (g) performing of other functions conferred on the board under this or another Act;
- (h) ensuring WorkCover otherwise performs its functions in a proper, effective and efficient way.

**Delegation by board**

**385.(1)** The board may, by resolution, delegate its powers to—

- (a) a director; or
- (b) a committee of the board; or
- (c) the chief executive officer; or
- (d) an appropriately qualified WorkCover employee.

**(2)** In subsection (1)—

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

The level at which a person is employed within WorkCover.

### ***Division 2—Meetings and other business of board***

#### **Meaning of “required minimum number” of directors**

**386.** In this division—

**“required minimum number”** of directors means the number that is half the number of directors of which the board for the time being consists or, if that number is not a whole number, the next higher whole number.

#### **Conduct of meetings and other business**

**387.** Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

#### **Times and places of meetings**

**388.(1)** Meetings of the board are to be held at the times and places that the board decides.

**(2)** However, the chairperson—

- (a)** may at any time convene a meeting; and
- (b)** must convene a meeting when asked by at least the required minimum number of directors.

#### **Presiding at meetings**

**389.(1)** The chairperson is to preside at all meetings at which the chairperson is present.

**(2)** If the chairperson is not present at a meeting, the deputy chairperson is to preside.

**(3)** If both the chairperson and deputy chairperson are not present at a

meeting, the director chosen by the directors present at the meeting is to preside.

### **Quorum and voting at meetings**

**390.(1)** At a meeting of the board—

- (a) the required minimum number of directors constitute a quorum; and
- (b) a question is to be decided by a majority of the votes of the directors present and voting; and
- (c) each director present has a vote on each question arising for decision and, if the votes are equal, the director presiding also has a casting vote.

**(2)** Subsection (1)(a) has effect subject to section 366.<sup>178</sup>

### **Participation in meetings by telephone etc.**

**391.(1)** The board may permit directors to participate in a particular meeting, or all meetings, by—

- (a) telephone; or
- (b) closed circuit television; or
- (c) another means of communication.

**(2)** A director who participates in a meeting of the board under a permission under subsection (1) is taken to be present at the meeting.

### **Resolutions without meetings**

**392.(1)** If at least a majority of directors sign a document containing a statement that they are in favour of a resolution stated in the document, a resolution in those terms is taken to have been passed at a meeting of the board held—

- (a) on the day on which the document is signed; or

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<sup>178</sup> Section 366 (Voting by interested director)

- (b) if the directors do not sign it on the same day, the day on which the last of the directors constituting the majority signs the document.

(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the board, each director must immediately be advised of the matter and given a copy of the terms of the resolution.

(3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more directors, are taken to constitute a single document.

### **Minutes**

**393.** The board must keep minutes of its proceedings.

### *Division 3—Other provisions about directors*

#### **Term of appointment of directors**

**394.** A director is to be appointed by the Governor in Council for a term of not more than 5 years.

#### **Terms of appointment not provided for under Act**

**395.(1)** In relation to matters not provided for under this Act, a director holds office on the terms of appointment decided by the Governor in Council.

(2) Except as decided by the Governor in Council, a director is not entitled to receive any payment, any interest in property or other valuable consideration or benefit—

- (a) by way of remuneration as a director; or
- (b) in connection with retirement from office, or other termination of office, as a director.

**Appointment of acting director**

**396.** The Governor in Council may appoint a person to act as a director during any period, or all periods, when a director is absent from duty or is, for another reason, unable to perform the functions of the office.

**Resignation**

**397.(1)** A director, or person appointed under section 382<sup>179</sup> may resign by signed notice given to the Governor.

**(2)** The chairperson or deputy chairperson may resign as chairperson or deputy chairperson and remain a director.

**Termination of appointment as director**

**398.(1)** The Governor in Council may, at any time, terminate the appointment of all or any directors of the board for any reason or none.

**(2)** If a person who is an officer of the public service when appointed as a director ceases to be an officer of the public service, the person ceases to be a director.

**PART 6—THE CHIEF EXECUTIVE OFFICER****WorkCover's chief executive officer**

**399.(1)** WorkCover is to have a chief executive officer.

**(2)** The chief executive officer is to be appointed by the Governor in Council, by gazette notice, on the board's recommendation.

**(3)** The chief executive officer is to be appointed under this Act and not under the Public Service Act.

**(4)** A person appointed as the chief executive officer must enter into a contract with WorkCover.

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<sup>179</sup> Section 382 (Appointment of chairperson and deputy chairperson)

(5) The contract must be signed for WorkCover by the board's chairperson.

(6) The conditions of the contract are to be decided by the board.

(7) The contract must state the conditions of appointment, including—

(a) a term of the contract of not longer than 5 years; and

(b) the remuneration to which the person is entitled.

(8) Subsection (7)(a) does not prevent the chief executive officer from being reappointed.

(9) An industrial instrument does not apply to a person appointed as the chief executive officer.

(10) However, subsection (9) has no effect on the *Industrial Relations Act 1990*, section 40 or part 12, division 5.<sup>180</sup>

### **Duties of chief executive officer**

**400.** WorkCover's chief executive officer is, under the board, to manage WorkCover.

### **Things done by chief executive officer**

**401.** Anything done in the name of, or for, WorkCover by its chief executive officer is taken to have been done by WorkCover.

### **Delegation by chief executive officer**

**402.(1)** WorkCover's chief executive officer may delegate the chief executive officer's powers, including a power delegated to the chief executive officer, to an appropriately qualified WorkCover employee.

(2) Subsection (1) has effect subject to any directions of the board further limiting the power to delegate.

(3) In subsection (1)—

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<sup>180</sup> *Industrial Relations Act 1990*, section 40 (Power to vary or void contracts) and part 12 (General conditions of employment) division 5 (Dismissal)

**“appropriately qualified”** includes having the qualifications, experience or standing appropriate to exercise the power.

*Example of ‘standing’—*

The level at which a person is employed within WorkCover.

### **Additional provisions relating to chief executive officer**

**403.(1)** The board may appoint a person to act as chief executive officer—

- (a) during a vacancy in the office; or
- (b) during any period, or all periods, when the chief executive officer is absent from duty or is, for another reason, unable to perform the functions of the office.

**(2)** The chief executive officer may resign by signed notice given to the chairperson.

**(3)** The board may, at any time, terminate the appointment of the chief executive officer for any reason or none.

**(4)** The termination of the appointment of the chief executive officer does not affect a right to which the chief executive officer is entitled under the terms of the chief executive officer’s appointment.

## **PART 7—OTHER EMPLOYMENT PROVISIONS**

### **Appointment of senior executives**

**404.(1)** Senior executives of WorkCover may be appointed by the Governor in Council, by gazette notice, on the board’s recommendation.

**(2)** A senior executive is to be appointed under this Act and not under the Public Service Act.

(3) Subsection (2) does not affect the *Public Service Act 1996*, section 22.<sup>181</sup>

(4) A person appointed as a senior executive must enter into a contract with WorkCover.

(5) The conditions of the contract are to be decided by the board.

(6) The contract must state the conditions of appointment, including—

(a) a term of the contract of not longer than 5 years; and

(b) the remuneration to which the person is entitled.

(7) The contract must be signed for WorkCover by the board's chairperson.

(8) Subsection (6)(a) does not prevent the senior executive from being reappointed.

(9) An industrial instrument does not apply to a person appointed as a senior executive.

(10) However, subsection (9) has no effect on the *Industrial Relations Act 1990*, section 40 or part 12, division 5.<sup>182</sup>

### **Basis of employment generally**

**405.(1)** This section does not apply to the chief executive officer or a senior executive.

(2) WorkCover may employ persons it considers necessary or convenient for the administration of this Act or for its functions or powers under any Act.

(3) The employment conditions of a person employed by WorkCover are to be decided by WorkCover, subject to any applicable industrial instrument.

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<sup>181</sup> *Public Service Act 1996*, Section 22 (Application of Act to certain public sector units etc.)

<sup>182</sup> *Industrial Relations Act 1990*, section 40 (Power to vary or void contracts) and part 12 (General conditions of employment) division 5 (Dismissal)

(4) A person employed by WorkCover is to be employed under this Act, and not the Public Service Act.

(5) Subsection (4) does not affect the *Public Service Act 1996*, section 22.<sup>183</sup>

### **Superannuation schemes**

**406.(1)** WorkCover may—

- (a) establish or amend superannuation schemes; or
- (b) join in establishing or amending superannuation schemes; or
- (c) take part in superannuation schemes.

(2) The auditor-general may audit the schemes.

(3) Subsection (2) is subject to the *Financial Administration and Audit Act 1977*, part 6.<sup>184</sup>

### **Arrangements relating to staff**

**407.(1)** WorkCover may arrange with the chief executive of a department, or with an authority of the State, for the services of officers or employees of the department or authority to be made available to it.

(2) WorkCover may arrange with the appropriate authority of the Commonwealth or another State, or with an authority of the Commonwealth or another State, for the services of officers or employees of the public service of the Commonwealth or State, or of the authority, to be made available to it.

(3) WorkCover may arrange for the service of an employee of WorkCover to be made available to—

- (a) the Commonwealth or another State; or
- (b) an authority of the Commonwealth or another State.

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<sup>183</sup> *Public Service Act 1996*, section 22 (Application of Act to certain public sector units etc.)

<sup>184</sup> *Financial Administration and Audit Act 1977*, part 6 (Audit of public accounts and public sector entities)

**Employment and industrial relations plan**

**408.(1)** WorkCover's board must prepare an employment and industrial relations plan.

**(2)** The plan must specify the arrangements for all major employment and industrial relations issues for WorkCover.

**EEO legislation is applicable**

**409.** WorkCover is a unit of public sector under the *Equal Opportunity in Public Employment Act 1992*.

**PART 8—FINANCIAL PROVISIONS****Application of financial legislation**

**410.** WorkCover is—

- (a) a statutory body under the *Financial Administration and Audit Act 1977*; and
- (b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

**Liability for State taxes**

**411.(1)** WorkCover is not exempt from State tax merely because it represents the State.

**(2)** A regulation, or the Treasurer by certificate, may exempt WorkCover from liability to pay a State tax, completely or partly.

**(3)** State tax is not payable for anything done, including, for example, a transaction entered into or an instrument made, executed, lodged or given, because of, or for a purpose connected with or arising out of, chapter 11.<sup>185</sup>

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<sup>185</sup> Chapter 11 (Transitional provisions)

(4) The Treasurer may certify that a specified matter, instrument, transaction or thing is exempt from State tax under subsection (3), and the matter, instrument, transaction or thing is exempt from State tax.

(5) So far as the legislative power of the Parliament permits, the reference in subsection (3) to State tax includes a reference to tax imposed under an Act of another State.

### **Liability for Commonwealth tax equivalents**

**412.(1)** WorkCover must pay amounts to the Treasurer for payment into the consolidated fund as required under the tax equivalent manual.

(2) For subsection (1), the tax equivalent manual applies as if WorkCover were a GOC.

(3) In this section—

**“tax equivalents manual”** means the tax equivalent manual issued under the *Government Owned Corporations Act 1993*, section 155.<sup>186</sup>

### **Procedures for borrowing**

**413.(1)** WorkCover may borrow in accordance with its policies, as outlined in its statement of corporate intent, to minimise and manage any risk of investments and borrowings that may adversely affect its financial stability.

(2) If a proposed borrowing is in accordance with those policies, the *Statutory Bodies Financial Arrangements Act 1982* does not apply to the borrowing.

### **Funds and accounts**

**414.(1)** WorkCover may establish funds and accounts.

(2) WorkCover must pay into the funds and accounts all amounts received by it.

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<sup>186</sup> *Government Owned Corporations Act 1993*, section 155 (Liability for Commonwealth tax equivalents).

**(3)** WorkCover may pay out of a WorkCover fund—

- (a) amounts in relation to policies, whether of accident insurance or other insurance business undertaken by or for WorkCover; or
- (b) amounts for the administration of accident insurance or other insurance business undertaken by or for WorkCover; or
- (c) amounts WorkCover considers appropriate for the performance of its functions; or
- (d) other amounts that WorkCover may, or must, pay for any purpose under this or another Act.

**Reserves**

**415.** WorkCover may establish reserves it considers appropriate for the performance of its functions.

**Amounts payable by WorkCover on Minister's instruction**

**416.(1)** WorkCover must make payments to organisations or bodies that the Minister considers will help in—

- (a) the treatment or alleviation of injury sustained by workers; or
- (b) the prevention or recognition of injury to workers.

**(2)** A payment must be approved by the Governor in Council by industrial gazette notice before it is made.

**(3)** The Minister must cause a copy of the approval to be tabled in the Legislative Assembly within 14 sitting days after it is given.

**Payment to consolidated fund**

**417.(1)** For any financial year, WorkCover may pay to the consolidated fund a proportion of a surplus in WorkCover's funds.

**(2)** WorkCover may only make a payment under this section if the workers' compensation scheme is fully funded, and the payment does not stop the scheme being fully funded.

(3) WorkCover's payment must not exceed profits after provision has been made for—

- (a) payment of income tax and its equivalents; and
- (b) exclusion of unrealised capital gains from upward revaluation of non-current assets.

(4) Within 4 months after the end of each financial year, the board must—

- (a) recommend to the Minister whether or not WorkCover may make a payment; and
- (b) if the board recommends WorkCover make a payment—recommend to the Minister the amount WorkCover should pay.

(5) The board must consult with the Minister before giving the recommendation.

(6) Within 1 month after receiving the recommendation, the Minister must—

- (a) approve the recommendation; or
- (b) direct the board to pay an amount the Minister specifies.

(7) The Minister must cause a copy of the direction to be published in the industrial gazette within 21 days after it is given.

### **Additional financial reporting requirements**

**418.(1)** As soon as practicable after the end of each financial year, WorkCover must give the Minister a report stating the extent to which the workers' compensation scheme is fully funded.

(2) WorkCover must seek the advice of an appropriately qualified actuary in preparing the report.

## **PART 9—OTHER PROVISIONS ABOUT WORKCOVER**

### **WorkCover's seal**

**419.(1)** WorkCover's seal is to be kept in the custody directed by the board and may be used only as authorised by the board.

**(2)** The affixing of the seal to a document must be attested by—

- (a) 2 or more directors; or
- (b) at least 1 director and the chief executive officer; or
- (c) a director or the chief executive officer and 1 or more persons authorised by the board.

**(3)** Judicial notice must be taken of the imprint of WorkCover's seal appearing on a document.

### **Authentication of documents**

**420.** A document made by WorkCover, other than a document that is required by law to be sealed, is sufficiently authenticated if it is signed by—

- (a) the chairperson of the board; or
- (b) the chief executive officer; or
- (c) a person authorised to sign the document by—
  - (i) resolution of the board; or
  - (ii) direction of the chief executive officer.

### **Judicial notice of certain signatures**

**421.** Judicial notice must be taken of—

- (a) the official signature of a person who is or has been chairperson of WorkCover's board, a WorkCover director or the chief executive officer; and
- (b) the fact that the person holds or has held the relevant office.

**Giving of documents to board**

**422.** If this Act authorises or requires a document to be given to WorkCover's board, it may be given to the board's chairperson.

**Application of various other Acts**

**423.(1)** WorkCover is—

- (a) an exempt public authority under the Corporations Law; and
- (b) a unit of public administration under the *Criminal Justice Act 1989*; and
- (c) a public authority under the *Parliamentary Commissioner Act 1974*.

**(2)** The *Freedom of Information Act 1992* does not apply to a document received or brought into existence by WorkCover in carrying out its excluded activities.

**(3)** In this section—

**“community service obligations”** see section 359.<sup>187</sup>

**“excluded activities”** means—

- (a) commercial activities other than activities about policies, applications for compensation, proceedings for damages; or
- (b) community service obligations prescribed under a regulation.

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<sup>187</sup> Section 359 (Meaning of “community service obligations”)

## **CHAPTER 7—MEDICAL ASSESSMENT TRIBUNALS**

### **PART 1—OBJECT**

#### **Object of ch 7**

**424.** The object of this chapter is to provide for an independent system of medical review and assessment of injury and impairment sustained by workers.

### **PART 2—COMPOSITION AND PROCEEDINGS OF TRIBUNALS**

#### **Assessment tribunals to be maintained**

**425.(1)** There are to be maintained for this Act a General Medical Assessment Tribunal and the following specialty medical assessment tribunals—

- (a) Cardiac Assessment Tribunal;
- (b) Orthopaedic Assessment Tribunal;
- (c) Dermatology Assessment Tribunal;
- (d) Ear, Nose and Throat Assessment Tribunal;
- (e) Neurology/Neurosurgical Assessment Tribunal;
- (f) Ophthalmology Assessment Tribunal.

#### **General Medical Assessment Tribunal**

**426.(1)** The General Medical Assessment Tribunal consists of a chairperson and 2 other members appointed as prescribed.

(2) The Governor in Council, by gazette notice, may appoint, for a specified period of not more than 3 years, a panel of 16 doctors as members of the General Medical Assessment Tribunal.

(3) Every appointee must be a specialist in the speciality for which the appointment is made.

(4) The panel must comprise—

- (a) 5 physicians; and
- (b) 1 vascular surgeon; and
- (c) 3 general surgeons; and
- (d) 1 urologist; and
- (e) 3 psychiatrists; and
- (f) 1 gynaecologist; and
- (g) 1 thoracic physician; and
- (h) 1 rheumatologist.

### **Alternative panel**

**427.(1)** The Governor in Council, by gazette notice, may appoint an alternative panel of members for a specified period of not more than 3 years.

(2) The alternative panel must comprise a number of specialists of the descriptions specified in section 426(4).

(3) Every appointee to an alternative panel must be a specialist in the speciality for which the appointment is made.

### **Conditions of appointment to panels**

**428.(1)** An appointee to the panel or alternative panel holds the appointment for the term specified in the gazette notice by which the appointment is made unless the appointee sooner—

- (a) dies; or
- (b) resigns by signed notice given to the Minister; or

(c) becomes incapable of discharging the duties of a member of the General Medical Assessment Tribunal.

(2) As often as there is a vacancy in the membership of the panel or alternative panel, the Governor in Council, by gazette notice, may appoint a doctor to the vacancy for the remainder of the predecessor's term of appointment.

(3) A doctor appointed under subsection (2) must be qualified as specified in section 426.<sup>188</sup>

### **Chairperson and deputy chairperson of General Medical Assessment Tribunal**

**429.(1)** The Governor in Council, by gazette notice, may appoint 1 physician appointed to the panel to be chairperson, and another 2 physicians appointed to the panel to be deputy chairpersons, of the General Medical Assessment Tribunal.

(2) If the chairperson is not available to attend to the business of the General Medical Assessment Tribunal, a deputy chairperson must act as chairperson of the tribunal.

(3) Until the contrary is proved, it is to be presumed that a deputy chairperson has acted with due authority on each occasion of the deputy chairperson's acting as chairperson of the tribunal.

(4) A deputy chairperson may act as a member of the General Medical Assessment Tribunal other than under subsection (2) only if the chairperson has designated the member for the purpose.

### **Constitution of General Medical Assessment Tribunal for reference**

**430.(1)** For deciding a matter referred to it, the General Medical Assessment Tribunal is constituted by the chairperson and 2 members of the panel designated by the chairperson.

(2) In so designating, the chairperson must have regard to the branch of medicine that is a speciality under the *Medical Act 1939* that is relevant to the matters referred to the tribunal for decision.

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<sup>188</sup> Section 426 (General Medical Assessment Tribunal)

(3) Whenever it is impracticable to supply from appointees to the panel 2 appropriate members to constitute, with the chairperson, the General Medical Assessment Tribunal for deciding a particular matter, the chairperson may designate an appointee or appointees on the alternative panel to be a member or 2 members of the tribunal for deciding the matter.

(4) Until the contrary is proved, it is to be presumed that—

- (a) an appointee on the alternative panel who acts as a member of the tribunal has been duly designated to do so; and
- (b) the tribunal whose members include the appointee or appointees, and the chairperson, is duly constituted.

(5) The chairperson must preside over meetings of the General Medical Assessment Tribunal.

### **Specialty medical assessment tribunal**

**431.(1)** Every specialty medical assessment tribunal consists of 3 members, each of whom must be a specialist in the speciality with which the tribunal is concerned.

(2) Each member of a specialty medical assessment tribunal is to be appointed by the Governor in Council by gazette notice.

(3) The Governor in Council may appoint alternative members of a specialty medical assessment tribunal.

(4) A member or alternative member is to be appointed for a term of not more than 3 years specified in the gazette notice making the appointment.

(5) An alternative member appointed under subsection (3) must be a specialist in the speciality with which the tribunal, for which the appointee is an alternative member, is concerned.

(6) Alternative members for different tribunals may be appointed at different times and for different terms of appointment.

### **Vacation of office as member or alternative member of specialty medical assessment tribunal**

**432.** A member is taken to have vacated the office of member or alternative member of a specialty medical assessment tribunal if the

person—

- (a) dies; or
- (b) resigns the office by signed notice given to the Minister; or
- (c) becomes incapable of discharging the duties of the office; or
- (d) becomes an employee of WorkCover.

### **Constitution of specialty medical assessment tribunal in absence of members**

**433.(1)** This section applies if—

- (a) a member of a specialty medical assessment tribunal is unavailable to attend to the business of the tribunal; or
- (b) there is a vacancy in the membership of a specialty medical assessment tribunal.

**(2)** The secretary to the tribunal must designate an alternative member for the tribunal to act as a member of the tribunal.

### **Chairperson of specialty medical assessment tribunals**

**434.(1)** The members who are to constitute a specialty medical assessment tribunal must appoint from their number a chairperson of that tribunal.

**(2)** The chairperson must preside over the meeting of that tribunal.

### **Proceedings of medical assessment tribunals**

**435.(1)** This section applies to the General Medical Assessment Tribunal and each specialty medical assessment tribunal.

**(2)** For each tribunal—

- (a) WorkCover may appoint a secretary; and
- (b) meetings are to be held at the place and time decided by the tribunal or, if there is no decision, as the secretary to the tribunal directs; and

- (c) if there is disagreement among the members of the tribunal, a decision of the tribunal is that of the majority of its members.

## **PART 3—JURISDICTION OF TRIBUNALS**

### **Definition for pt 3**

**436.** In this part—

“**tribunal**” means the General Medical Assessment Tribunal and each of the specialty medical assessment tribunals mentioned in section 425.<sup>189</sup>

### **Reference to tribunals**

**437.** WorkCover may refer the following matters to the appropriate tribunal—

- (a) a worker’s application for compensation for an alleged injury;
- (b) a worker’s capacity for work;
- (c) a worker’s injury under section 265(3)(b);<sup>190</sup>
- (d) a worker’s impairment under section 182;<sup>191</sup>
- (e) a worker’s permanent impairment under section 197<sup>192</sup> or 265(3)(c);
- (f) a worker’s level of dependency under section 211;<sup>193</sup>

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<sup>189</sup> Section 425 (Assessment tribunals to be maintained)

<sup>190</sup> Section 265 (Access to damages if no previous application for compensation)

<sup>191</sup> Section 182 (Total incapacity—reference about impairment to medical assessment tribunal)

<sup>192</sup> Section 197 (Assessment of permanent impairment)

<sup>193</sup> Section 211 (Additional lump sum compensation for gratuitous care)

- (g) an application for a damages certificate by a dependant under section 270.<sup>194</sup>
- (h) a worker's permanent impairment reviewable under section 274.<sup>195</sup>

### **Reference about application for compensation**

**438.(1)** This section applies on a reference to a tribunal under section 437(a).

**(2)** If WorkCover has not admitted that an injury was sustained by a worker, and the nature of the injury, the tribunal must decide—

- (a) whether the matters alleged in the application for compensation constitute an injury to the worker and, if so, the nature of the injury; and
- (b) whether an incapacity for work resulting from the injury—
  - (i) is total or partial; and
  - (ii) is permanent or temporary; and
- (c) if the tribunal decides that the worker has sustained an injury under the table of injuries resulting in permanent impairment and WorkCover asks—the nature and degree of the impairment.

**(3)** For section 157,<sup>196</sup> the tribunal must decide—

- (a) the degree of permanent impairment that could result from the injury; and
- (b) the nature and degree of the impairment.

**(4)** For section 158(4),<sup>197</sup> the tribunal must decide—

- (a) whether special circumstances of a medical nature exist; and

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<sup>194</sup> Section 270 (Application for damages certificate)

<sup>195</sup> Section 274 (Decision not to seek damages reviewable in certain circumstances)

<sup>196</sup> Section 157 (Injuries caused by misconduct)

<sup>197</sup> Section 158 (Time for applying)

- (b) if special circumstances do exist—the nature and extent of the circumstances.
- (5) If subsections (2) to (4) do not apply, the tribunal must decide—
  - (a) whether an incapacity for work resulting from the injury—
    - (i) is total or partial; and
    - (ii) is permanent or temporary; and
  - (b) if the worker has sustained an injury under the table of injuries resulting in permanent impairment and WorkCover asks—the nature and degree of the impairment.
- (6) The tribunal must assess the nature and degree of permanent impairment in the way prescribed under a regulation.

### **Reference about worker's capacity for work**

**439.(1)** This section applies on a reference to a tribunal under section 437(b).<sup>198</sup>

(2) A reference under section 437(b) may be made at any time and from time to time.

(3) The tribunal must decide—

- (a) whether, when it makes its decision, there exists in the worker an incapacity for work resulting from the injury for which the application for compensation was made; and
- (b) whether the incapacity is—
  - (i) total or partial; and
  - (i) permanent or temporary; and
- (c) if the worker has sustained an injury under the table of injuries resulting in permanent impairment and WorkCover asks—the nature and degree of the impairment.

(4) A tribunal must assess the nature and degree of permanent impairment in the way prescribed under a regulation.

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<sup>198</sup> Section 437 (Reference to tribunals)

**Reference about worker's injury**

**440.(1)** This section applies on a reference to a tribunal under section 437(c).<sup>199</sup>

(2) If WorkCover has not admitted that an injury was sustained by a worker, and the nature of the injury, the tribunal must decide whether the matters alleged for the purpose of seeking damages constitute an injury to the worker and, if so, the nature of the injury.

**Reference about worker's impairment**

**441.(1)** This section applies on a reference to a tribunal under section 437(d).<sup>200</sup>

(2) The tribunal must decide—

- (a) the degree of permanent impairment that could result from the injury; and
- (b) the nature and degree of the impairment.

(3) The tribunal must assess the nature and degree of permanent impairment in the way prescribed under a regulation.

**Reference about worker's permanent impairment**

**442.(1)** This section applies on a reference to a tribunal under section 437(e).

(2) The tribunal must decide—

- (a) whether the worker has sustained a degree of permanent impairment; and
- (b) if the worker has sustained a degree of permanent impairment—
  - (i) the degree of permanent impairment resulting from the injury; and
  - (ii) the nature and degree of the impairment.

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<sup>199</sup> Section 437 (Reference to tribunals)

<sup>200</sup> Section 437 (Reference to tribunals)

(3) The tribunal must assess the nature and degree of permanent impairment in the way prescribed under a regulation.

### **Reference about worker's level of dependency**

**443.(1)** On a reference to a tribunal under section 437(f),<sup>201</sup> the tribunal must decide the worker's level of dependency.

(2) The tribunal must decide the worker's level of dependency in the way prescribed under a regulation.

### **Reference about application for damages certificate by dependant**

**444.(1)** This section applies on a reference to a tribunal under section 437(g).

(2) The tribunal must decide whether—

- (a) the deceased worker sustained an injury in the event; and
- (b) the injury caused the worker's death.

### **Reference about review of worker's permanent impairment**

**445.(1)** This section applies on a reference to a tribunal under section 437(h).

(2) The tribunal must review the medical evidence and decide—

- (a) if there has been a further material deterioration in relation to the worker's permanent impairment; and
- (b) the degree of the further permanent impairment.

(3) The tribunal must assess the nature and degree of further permanent impairment in the way prescribed under a regulation.

### **Limitation of tribunals' jurisdiction**

**446.(1)** A tribunal has no jurisdiction to decide whether a person to whom an application for compensation relates is or is not, or was or was

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<sup>201</sup> Section 437 (Reference to tribunals)

not, a worker at any time material to the application.

(2) A decision of a tribunal is not admissible in evidence as proof, or as tending to prove, that a person to whom an application for compensation relates, or who has sustained an injury, is or is not, or was or was not, a worker at any time material to the application.

### **Power of tribunal to examine worker**

**447.(1)** On a reference to a tribunal about a nonfatal injury, the tribunal—

- (a) may make a personal examination of the worker at any time; or
- (b) may arrange for the examination to be made by a doctor nominated by it.

(2) Subsection (3) applies if a worker—

- (a) fails to attend at the time and place of which the worker has been given at least 7 days written notice by the secretary to the tribunal; or
- (b) having attended, refuses to be examined by the tribunal, a member of the tribunal, or the doctor; or
- (c) obstructs, or attempts to obstruct, the examination.

(3) Any entitlement the worker may have to compensation is suspended until—

- (a) the worker undergoes the examination; or
- (b) the tribunal, with the agreement of the secretary to the tribunal, exempts the worker from the examination.

## **PART 4—PRESCRIBED DISFIGUREMENT ASSESSMENT TRIBUNAL**

### **Tribunal to be constituted**

**448.(1)** In addition to the tribunals mentioned in section 425,<sup>202</sup> there is to be constituted as occasion requires, a tribunal called the Prescribed Disfigurement Assessment Tribunal.

**(2)** For deciding a matter referred to it, a prescribed disfigurement assessment tribunal is constituted by—

- (a) a specialist in the speciality of plastic and reconstructive surgery nominated by the chief executive of the department in which the *Health Services Act 1991* is administered; and
- (b) a doctor nominated by WorkCover; and
- (c) a doctor nominated by the worker in the reference to the tribunal.

**(3)** The specialist is the chairperson of the tribunal.

### **Proceedings of tribunal**

**449.(1)** WorkCover may appoint a secretary to a prescribed disfigurement assessment tribunal.

**(2)** The tribunal must meet at the place and time that it decides or, if there is no decision, as the secretary to the tribunal directs.

**(3)** The chairperson of the tribunal must preside over all meetings of the tribunal.

**(4)** If there is disagreement among members of the tribunal, a decision of the tribunal is that of the majority of its members.

### **Assessment of additional compensation for prescribed disfigurement**

**450.(1)** WorkCover may refer to a prescribed disfigurement assessment tribunal an application for compensation to the extent that the application

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<sup>202</sup> Section 425 (Assessment tribunals to be maintained)

relates to prescribed disfigurement.

(2) The tribunal must assess, by personal examination of the worker—

- (a) whether the disfigurement concerned is sufficiently severe to be prescribed disfigurement; and
- (b) if it assesses the disfigurement to be prescribed disfigurement—the severity of the disfigurement expressed as a percentage.

(3) The tribunal must assess the severity of prescribed disfigurement in the way prescribed under a regulation.

(4) The tribunal must give a written decision of its assessment on a reference to it.

### **When entitlement to additional compensation for prescribed disfigurement is not paid**

**451.(1)** This section applies if a worker whose claim for compensation for disfigurement is referred to a prescribed disfigurement assessment tribunal—

- (a) fails to attend at a sitting of the tribunal of which the worker has been given at least 7 days written notice on behalf of the tribunal; or
- (b) having attended, refuses to be examined by the tribunal or a member of it; or
- (c) obstructs, or attempts to obstruct, the examination.

(2) Any entitlement the worker may have to compensation under chapter 3, part 3, division 4<sup>203</sup> is not paid until the worker undergoes the examination.

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<sup>203</sup> Chapter 3 (Compensation), part 3 (Compensation entitlements of particular workers), division 4 (Workers with prescribed disfigurement)

## **PART 5—PROCEEDINGS FOR EXERCISE OF TRIBUNALS’ JURISDICTION**

### **Definition for pt 5**

**452.** In this part—

“**tribunal**” means—

- (a) the General Medical Assessment Tribunal mentioned in section 425;<sup>204</sup> and
- (b) each of the specialty medical assessment tribunals mentioned in section 425; and
- (c) a prescribed disfigurement assessment tribunal mentioned in section 448.<sup>205</sup>

### **Right to be heard before tribunals**

**453.** On a reference to a tribunal, the worker may be heard before the tribunal in person, or by counsel, solicitor or agent.

### **Further reference on fresh evidence**

**454.(1)** This section applies if a worker’s application for compensation has been decided by a tribunal and is not a matter mentioned under section 274.<sup>206</sup>

**(2)** The worker may ask WorkCover to consider fresh medical evidence about the worker’s injury within 12 months of the making of the original decision.

**(3)** WorkCover must refer the medical evidence to a review panel to decide if the medical evidence—

- (a) is relevant to the application so decided; and

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<sup>204</sup> Section 425 (Assessment tribunals to be maintained)

<sup>205</sup> Section 447 (Tribunal to be constituted)

<sup>206</sup> Section 274 (Decision not to seek damages reviewable in certain circumstances)

(b) is factual medical data not known about the worker at the time of the tribunal's decision.

(4) The review panel must consider the medical evidence produced by the worker and may accept or reject the evidence.

(5) A decision of the review panel is final and may not be appealed against.

(6) If the review panel accepts the medical evidence, WorkCover must refer the application to the appropriate tribunal for further decision.

(7) If practicable, the application under this section must be further decided by the original tribunal.

(8) If, as a result of the review, the worker is entitled to further lump sum compensation for a non-certificate injury, the worker's entitlement does not extend to a further election under section 207<sup>207</sup> for the injury.

(9) In this section—

**“review panel”** means a panel consisting of the chairperson or deputy chairperson of the General Medical Assessment Tribunal and a member of the original panel.

### **Deferral of decisions**

**455.(1)** A tribunal may, from time to time, defer its decision on a reference to it.

(2) However, a deferral must not be for longer than 3 months at any 1 time.

### **Finality of tribunal's decision**

**456.** A tribunal's decision about an application for compensation referred to it is final and cannot be questioned in a proceeding before a tribunal or a court, except under section 454.<sup>208</sup>

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<sup>207</sup> Section 207 (Non-certificate injury)

<sup>208</sup> Section 454 (Further reference on fresh evidence)

**Decisions of tribunal**

**457.(1)** A tribunal must give a written decision for an application for compensation referred to it with reasons for the decision.

**(2)** A tribunal must give a copy of its decision to WorkCover and to—

- (a) the worker; or
- (b) the worker's representative or agent.

**CHAPTER 8—ENFORCEMENT****PART 1—AUTHORISED PERSONS***Division 1—General***Function of authorised person**

**458.** An authorised person has the function of conducting investigations and inspections to monitor compliance with this Act.

**Authorised person subject to WorkCover's directions**

**459.** An authorised person is subject to WorkCover's directions in exercising powers of an authorised person.

**Powers of authorised persons**

**460.** An authorised person has the powers given to the person under this Act or another Act.

**Limitation on powers of authorised person**

**461.** The powers of an authorised person may be limited—

- (a) under a regulation; or

- (b) under a condition of appointment; or
- (c) by written notice given by WorkCover to the authorised person.

### *Division 2—Appointment of authorised persons and other matters*

#### **Appointment of authorised persons**

**462.(1)** WorkCover may appoint a WorkCover employee as an authorised person.

**(2)** WorkCover may appoint an employee as an authorised person only if WorkCover considers the employee has the necessary expertise or experience to be an authorised person.

#### **Authorised person’s appointment conditions**

**463.(1)** An authorised person holds office on the conditions stated in the instrument of appointment.

**(2)** An authorised person—

- (a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and
- (b) may resign by signed notice given to WorkCover; and
- (c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

**(3)** However, an authorised person may not resign from the office of authorised person (the “**secondary office**”) if a term of the authorised person’s employment to the main office requires the authorised person to hold the secondary office.

#### **Authorised person’s identity card**

**464.(1)** WorkCover must give an identity card to each authorised person.

**(2)** The identity card must—

- (a) contain a recent photograph of the authorised person; and

- (b) be signed by the authorised person; and
- (c) identify the person as an authorised person for WorkCover; and
- (d) include an expiry date; and
- (e) be signed by the chief executive officer.

(3) A person who ceases to be an authorised person must return the person's identity card to WorkCover within 7 days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **Display of authorised person's identity card**

**465.(1)** An authorised person may exercise a power in relation to someone else only if the authorised person—

- (a) first produces his or her identity card for the person's inspection; or
- (b) has the identity card displayed so it is clearly visible to the person.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

### **Protection from liability**

**466.(1)** An authorised person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an authorised person, the liability attaches instead to WorkCover.

## ***Division 3—Powers of authorised persons***

### **Entry to workplaces**

**467.** An authorised person may, at any reasonable time, enter a workplace to inspect—

- (a) the workplace; and
- (b) documents required to be kept under this Act.

### **Power to require information from certain persons**

**468.(1)** This section applies if an authorised person believes on reasonable grounds that a person has information, or documents providing information, relevant to any of the following matters—

- (a) any person's liability to insure as an employer, including liability for premiums;
- (b) any person's entitlement to compensation;
- (c) any person's entitlement to claim damages;
- (d) any offence the authorised person reasonably believes has been committed against this Act.

(2) The authorised person may require the person to give the information or produce for inspection the documents to the authorised person at a reasonable time and place nominated by the authorised person and allow the authorised person to make a copy of the documents.

(3) To avoid doubt, it is declared that under subsection (2), an authorised person may require the information to be given, or the documents to be produced immediately, at the place the requirement is made, if the requirement is reasonable in the circumstances.

(4) When making the requirement, the authorised person must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

(5) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(6) It is a reasonable excuse for a person to fail to give the information or produce the documents that the person would be entitled to refuse to give the information or produce the document in a court proceeding on the ground that giving the information or producing the documents would tend to incriminate the person.

(7) The person does not commit an offence against this section if the information or documents sought by the authorised person are not in fact relevant to a matter mentioned in subsection (1).

### **Keeping and inspection of documents**

**469.(1)** An employer or contractor must keep the documents about workers, and contracts for the performance of work, prescribed under a regulation.

Maximum penalty—50 penalty units.

(2) A regulation may prescribe the particulars the documents must contain.

(3) The employer or contractor must—

- (a) keep each document for at least 3 financial years after the last entry is made in it; and
- (b) make available for inspection by an authorised person, or produce to the authorised person for inspection, the documents at a reasonable time and place nominated by the authorised person; and
- (c) permit the authorised person to make a copy of a document.

Maximum penalty—50 penalty units.

(4) The authorised person may keep the document to make a copy of it.

(5) The authorised person must return the document to the person as soon as practicable after making the copy.

### **Audit of wages and contracts**

**470.** WorkCover may engage the services of a person who, in WorkCover's opinion, has appropriate qualifications and experience to carry out an audit of—

- (a) wages paid by or on behalf of an employer to, or on account of, workers employed by the employer; and
- (b) contracts let by or on behalf of an employer for performance of work.

**Warrants for entry**

**471.(1)** An authorised person may apply to a magistrate for a warrant for a place.

(2) The application must be sworn and state the grounds on which the warrant is sought.

(3) The magistrate may refuse to consider the application until the authorised person gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

(4) The magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

- (a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and
- (b) the evidence is, or may be within the next 7 days, at the place.

(5) The warrant must state—

- (a) that the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person’s powers; and
- (b) the evidence for which the warrant is issued; and
- (c) the hours when entry may be made; and
- (d) the day, within 14 days after the warrant’s issue, the warrant ends.

(6) The magistrate must record the reasons for issuing the warrant.

**Warrants—applications made other than in person**

**472.(1)** An authorised person may apply for a warrant by phone, fax, radio or another form of communication if the authorised person considers it necessary because of urgent circumstances or other special circumstances, including, for example, the authorised person’s remote location.

(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

(3) The authorised person may apply for the warrant before the application is sworn.

(4) After issuing the warrant, the magistrate must immediately fax a copy to the authorised person if it is reasonably practicable to fax the copy.

(5) If it is not reasonably practicable to fax a copy of the warrant to the authorised person—

(a) the magistrate must—

(i) record on the warrant the reasons for issuing the warrant; and

(ii) tell the authorised person the date and time the warrant was signed; and

(iii) tell the authorised person the warrant's terms; and

(b) the authorised person must write on a form of warrant (the “**warrant form**”)—

(i) the magistrate's name; and

(ii) the date and time the magistrate signed the warrant; and

(iii) the warrant's terms.

(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers mentioned in the warrant issued by the magistrate.

(7) The authorised person must, at the first reasonable opportunity, send to the magistrate—

(a) the sworn application; and

(b) if a warrant form was required to be completed by the authorised person—the completed warrant form.

(8) On receiving the documents, the magistrate must attach them to the warrant.

(9) Unless the contrary is proven, a court must presume that a power exercised by an authorised person was not authorised by a warrant issued under this section if—

- (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and
- (b) the warrant is not produced in evidence.

### **Power to seize evidence**

**473.(1)** An authorised person who enters a place with a warrant may seize the evidence for which the warrant was issued.

**(2)** An authorised person may also seize another thing if the authorised person believes on reasonable grounds—

- (a) the thing is evidence of an offence against this Act; and
- (b) the seizure is necessary to prevent the thing being concealed, lost or destroyed.

### **Receipt for seized things**

**474.(1)** As soon as practicable after a thing is seized by an authorised person, the authorised person must give a receipt for it to the person from whom it was seized.

**(2)** However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure in a reasonably secure way and in a conspicuous position.

### **Access to seized things**

**475.** Until a seized thing is returned or otherwise finally dealt with, an authorised person must allow its owner—

- (a) to inspect it; or
- (b) if it is a document—to make copies of it.

### **Return of seized things**

**476.(1)** The authorised person must return a seized thing to its owner at the end of—

- (a) 6 months; or

(b) if a prosecution for an offence involving it is started within 6 months—the prosecution and any appeal from the prosecution.

(2) Despite subsection (1), the authorised person must return the seized thing to its owner immediately the authorised person stops being satisfied its retention as evidence is necessary.

#### *Division 4—Other enforcement matters*

##### **Authorised person to give notice of damage**

**477.(1)** This section applies if an authorised person damages anything in the exercise of a power under this part.

(2) The authorised person must promptly give written notice of the particulars of the damage.

(3) The notice must be given to the person who appears to the authorised person to be the thing's owner.

(4) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the person's control, the person may state this in the notice.

(5) If, for any reason, it is not practicable to comply with subsection (3), the authorised person must—

- (a) leave the notice at the place where the damage happened; and
- (b) ensure the notice is left in a reasonably secure way in a conspicuous position.

(6) This section does not apply to damage the authorised person believes, on reasonable grounds, is trivial.

##### **Restitution**

**478.(1)** A person may claim an amount by way of restitution if the person incurs loss or expense because of the exercise or purported exercise of a power under this part, including, for example, in complying with a requirement made of the person under this part.

(2) The amount may be claimed from WorkCover.

(3) Payment of the amount may be claimed and ordered—

- (a) in a civil proceeding for a debt; or
- (b) in a proceeding for an offence against this Act brought against the person making the claim for the amount.

(4) A court may order the payment of the amount for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

(5) A regulation may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

### **Costs of investigation**

**479.(1)** This section applies if a person is convicted by a court of an offence against this Act.

(2) The court may order the person to pay WorkCover's reasonable costs of any investigation about the offence, including reasonable costs of preparing for the prosecution.

(3) This section does not limit the orders for costs the court may make on the conviction.

### ***Division 5—Obstructing or impersonating authorised persons***

#### **Obstruction of authorised persons**

**480.(1)** A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

(2) In this section—

“**obstruct**” includes hinder, resist or attempt to obstruct.

**Impersonation of authorised persons**

**481.** A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

**PART 2—FRAUD AND FALSE AND MISLEADING STATEMENTS****Offences involving fraud**

**482.(1)** A person must not in any way defraud or attempt to defraud WorkCover or a self-insurer.

Maximum penalty—400 penalty units or 18 months imprisonment.

(2) If conduct that constitutes an offence defined in subsection (1) is recurrent so that, but for this subsection, each instance of the conduct would constitute a separate offence, 2 or more instances of the conduct are to be taken to constitute but 1 offence committed over a period specified in the complaint laid in relation to the conduct, and may be charged and be dealt with on 1 complaint.

**False or misleading information or documents**

**483.(1)** This section applies to a statement made or document given—

- (a) to WorkCover for the purpose of its functions under this Act; or
- (b) to an entity or person as a self-insurer or self rater; or
- (c) to a registered person for the purpose of an application for compensation or a claim for damages.

(2) A person must not state anything to WorkCover, a self-insurer, a self-rater or a registered person the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units or 1 year's imprisonment.

(3) A person must not give WorkCover, a self-insurer, a self-rater or a registered person a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units or 1 year’s imprisonment.

(4) Subsection (3) does not apply to a person who, when giving the document—

- (a) informs WorkCover, the self-insurer, the self-rater or the registered person, to the best of the person’s ability, how it is false or misleading; and
- (b) gives the correct information to WorkCover, the self-insurer, the self-rater or the registered person, if the person has, or can reasonably obtain, the correct information.

(5) It is enough for a complaint against a person for an offence against subsection (2) or (3) to state the information or document was false or misleading to the person’s knowledge, without specifying which.

### **Particular acts taken to be fraud**

**484.(1)** This section applies if a person—

- (a) lodges an application for compensation; and
- (b) without reasonable excuse, engages in any calling without informing WorkCover or the self-insurer in the way stated under section 163<sup>209</sup> of the person’s engagement in a calling.

(2) If compensation is paid by WorkCover or the self-insurer under the application to the person or anyone else—

- (a) after the start of the engagement in the calling; and
- (b) before WorkCover or the self-insurer is informed in the way stated under section 163 of the engagement in the calling;

the person is taken to have defrauded WorkCover or the self-insurer of the payments under section 482.<sup>210</sup>

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<sup>209</sup> Section 163 (Worker must notify return to work or engagement in a calling)

<sup>210</sup> Section 482 (Offences involving fraud)

(3) If payments to which subsection (2) applies are not made, the person is taken to have attempted to defraud WorkCover or the self-insurer under section 482.

### **Duty to report fraud**

**485.** If an employer or an employer who is a self-insurer or self-rater believes, on reasonable grounds, that a person is defrauding or attempting to defraud WorkCover or the self-insurer, the employer must give WorkCover any information the employer has in relation to the suspected fraud.

Maximum penalty—50 penalty units.

### **Fraud and related offences end entitlement to compensation and damages**

**486.(1)** This section applies if a person is convicted of any of the following offences committed against WorkCover or a self-insurer in relation to an application for compensation or a claim for damages—

- (a) an offence under section 482;<sup>211</sup>
- (b) an offence or an attempt to commit an offence under the Criminal Code, section 123, 427, 429, 430, 488, 489 or 494.<sup>212</sup>

(2) Any entitlement the person may have to compensation or damages for the injury, and any existing claim for compensation or damages, ends.

(3) If, in the proceeding for the offence, the prosecution proves the person obtained payment of compensation or damages by WorkCover or a self-insurer, by conduct that is the offence, then, whether or not a penalty is imposed, the court must on application by WorkCover or the self-insurer,

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<sup>211</sup> Section 482 ( Offences involving fraud)

<sup>212</sup> Criminal Code, section 123 (Perjury)  
 Criminal Code, section 427 (Obtaining goods or credit by false pretence or wilfully false promise)  
 Criminal Code, section 429 (Cheating)  
 Criminal Code, section 430 (Conspiracy to defraud)  
 Criminal Code, section 488 (Punishment of forgery in general)  
 Criminal Code, section 489 (Uttering false documents and counterfeit seals)  
 Criminal Code, section 494 (Making documents without authority)

order the person to repay WorkCover or the self-insurer all amounts of compensation or damages paid to or on account of the person as a result of the commission of the offence.

(4) An order made by a court under subsection (3) may be enforced as if it were an order made by a court in civil proceedings for a debt.

(5) Any costs incurred by WorkCover or the self-insurer in relation to a proceeding for damages to which subsection (3) applies are to be recovered on a solicitor and own client basis from the person convicted under section 482.

(6) Subsection (2) does not apply to a person only because the person is taken under section 484<sup>213</sup> to have—

- (a) attempted to defraud WorkCover or a self-insurer; or
- (b) defrauded WorkCover or a self-insurer of an amount not more than the equivalent of 1 week of the person's normal weekly earnings.

## **CHAPTER 9—REVIEWS AND APPEALS**

### **PART 1—POLICIES AND PREMIUMS**

#### *Division 1—Internal review of decisions*

#### **Who may apply for review**

**487.(1)** This section applies to a decision made by WorkCover under

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<sup>213</sup> Section 484 ( Particular acts taken to be fraud)

section 58, 60, 61, 62, 68 or 74.<sup>214</sup>

(2) An employer who is aggrieved by the decision may apply for the decision to be reviewed.

(3) The decision may only be reviewed by WorkCover.

### **Applying for review**

**488.(1)** An application for review must be made within 35 days after the employer receives WorkCover's written notice of the decision, whether the notice is given in a premium notice or otherwise.

(2) The application—

- (a) must be made in the approved form and given to WorkCover; and
- (b) must detail the grounds on which the person seeks review of the decision; and
- (c) may be accompanied by any relevant document the person wants considered in the review.

### **Review of decision**

**489.(1)** WorkCover must, within 35 days after receiving the application, review the decision and decide (the “**review decision**”) to—

- (a) confirm the decision; or
- (b) vary the decision; or
- (c) set aside the decision and substitute another decision.

(2) WorkCover may, with the employer's consent, extend the time in subsection (1) to enable WorkCover to obtain information relevant to the application.

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<sup>214</sup> Section 58 (Setting of premium)  
Section 60 (Reassessment of premium for policy)  
Section 61 (Recovery of compensation and unpaid premium)  
Section 62 (Default assessment on reasonable suspicion)  
Section 68 (WorkCover may waive or reduce additional premium)  
Section 74 (Premium and surcharge payable)

*Example of obtaining information—*

Information may be obtained by inspecting a workplace.

**(3)** WorkCover can not delegate the review to—

- (a) the officer who made the decision under review; or
- (b) an officer in a less senior position than the officer who made the decision under review.

**(4)** WorkCover must give the employer written notice of the review decision and the reasons for it within 14 days of making it.

**(5)** If WorkCover does not notify the employer of the review decision within the time mentioned in subsection (1), the employer may appeal to an industrial magistrate.

### *Division 2—Appeals*

#### **Appeal to industrial magistrate from decision on assessment**

**490.(1)** An employer who is aggrieved by a review decision under section 489 or a decision under section 81 or 92<sup>215</sup> may appeal to an industrial magistrate.

**(2)** The employer must, within 28 days after receiving notice of the review decision under section 489 or a decision under section 81 or 92, give a written notice of intention to appeal against the decision detailing the grounds of appeal to—

- (a) WorkCover; and
- (b) the industrial magistrate at—
  - (i) the magistrates' court nearest to the place where the employer resides or carries on business; or
  - (ii) a magistrates' court agreed to between WorkCover and the employer.

**(3)** If the appeal is about an amount of premium specified in a premium

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<sup>215</sup> Section 81 (Refusal of application for registration)  
Section 92 (Procedure for cancellation)

notice, the employer is limited to the grounds of appeal given to the magistrate.

(4) The employer must pay the premium specified in the notice before the employer gives written notice of intention to appeal against the decision.

(5) Costs of an appeal are at the magistrate's discretion, except to the extent provided under a regulation.

### **Appeal from industrial magistrate to Industrial Court**

**491.(1)** WorkCover, or an employer, who is aggrieved by the industrial magistrate's decision may appeal to the Industrial Court.

(2) The appeal must be lodged as required under the Industrial Court rules.

(3) The appeal is by way of rehearing on the evidence and proceedings before the magistrate, unless the court orders additional evidence be heard.

(4) The court's decision is final.

### **Powers of appellate courts**

**492.(1)** In deciding an appeal, the industrial magistrate or Industrial Court may—

- (a) confirm the decision; or
- (b) vary the decision; or
- (c) set aside the decision and substitute another decision.

(2) If the decision appealed against is about an amount of premium, the premium assessed by the magistrate or the court is the premium payable by the employer.

(3) If the magistrate or the court acts under subsection (1)(b) or (c), the decision is taken for this Act, other than this part, to be WorkCover's decision.

### **Refunding overpaid premiums**

**493.** If the premium paid by the employer as a condition of the appeal to

the industrial magistrate is more than the premium assessed by the industrial magistrate or Industrial Court, WorkCover must refund the difference to the employer.

## **PART 2—ANNUAL LEVY AND LICENSING OF SELF-INSURERS**

### *Division 1—Internal review of decisions*

#### **Review of annual levy**

**494.(1)** This section applies to a decision made by WorkCover under section 111<sup>216</sup> about the amount of annual levy.

**(2)** A self-insurer who is aggrieved by the decision may apply for review in the way mentioned in part 1, division 1.

### *Division 2—Appeal to industrial magistrate*

#### **Who may appeal**

**495.** A self-insurer who is aggrieved by a review decision under section 494 may appeal to an industrial magistrate in the way mentioned in part 1, division 2.

### *Division 3—Appeal to court*

#### **Who may appeal**

**496.(1)** This section applies to a decision made by WorkCover under

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<sup>216</sup> Section 111 (Annual levy and surcharge payable)

section 107, 110 or 123<sup>217</sup> relating to the issue, renewal or cancellation of a self-insurer's licence.

(2) An employer who is aggrieved by the decision may appeal against the decision.

### **Starting appeals**

**497.(1)** An appeal under section 496 may be made to the court of competent jurisdiction in Brisbane.

(2) The court that has jurisdiction must be decided according to the amount of the appellant's deemed premium.

(3) A court has jurisdiction if the court has jurisdiction for recovery of a debt of the amount.

(4) An appeal may only be made within 28 days after notice of the decision is given to the person.

(5) The appeal may only be started by—

- (a) filing a written notice of appeal with the court detailing the grounds of appeal; and
- (b) serving a copy of the notice on WorkCover.

### **Powers of court on appeal**

**498.(1)** In deciding an appeal, a court—

- (a) has the same powers as the decision maker; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) may hear the appeal in court or in chambers.

(2) An appeal is by way of rehearing.

(3) The court may—

- (a) confirm the decision; or

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<sup>217</sup> Section 107 (Decision on application for the issue of a licence)  
Section 110 (Refusal of application for renewal of a licence)  
Section 123 (Procedure for cancellation)

- (b) set aside the decision and substitute another decision that the court considers appropriate; or
- (c) set aside the decision and return the matter to WorkCover with the directions the court considers appropriate.

### **Effect of decision of court on appeal**

**499.** If a court substitutes another decision, the substituted decision is taken for this Act, other than this part, to be WorkCover's decision.

## **PART 3—RETURN OF BANK GUARANTEE OR CASH DEPOSIT**

### **Who may appeal**

**500.(1)** This section applies to a decision made by WorkCover under section 97 or 130<sup>218</sup> about the refusal to return all or part of a self-rater's or self-insurer's bank guarantee or cash deposit.

(2) A former self-rater or self-insurer aggrieved by the decision may appeal against the decision.

### **Starting appeals**

**501.(1)** An appeal under section 500 may be made to the court of competent jurisdiction in Brisbane.

(2) The court that has jurisdiction must be decided according to the amount of the bank guarantee or cash deposit in dispute.

(3) A court has jurisdiction if the court has jurisdiction for recovery of a debt of the amount.

(4) An appeal may only be made within 28 days after notice of the decision is given to the former self-rater or self-insurer.

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<sup>218</sup> Section 97 (Return of bank guarantee or cash deposit after cancellation)  
Section 130 (Return of bank guarantee or cash deposit after cancellation)

- (5) The appeal may only be started by—
- (a) filing a written notice of appeal with the court detailing the grounds of appeal; and
  - (b) serving a copy of the notice on WorkCover.

### **Powers of court on appeal**

**502.(1)** In deciding an appeal, a court—

- (a) has the same powers as the decision maker; and
- (b) is not bound by the rules of evidence; and
- (c) must comply with natural justice; and
- (d) may hear the appeal in court or in chambers.

(2) An appeal is by way of rehearing.

(3) The court may—

- (a) confirm the decision; or
- (b) set aside the decision and substitute another decision that the court considers appropriate; or
- (c) set aside the decision and return the matter to WorkCover with the directions the court considers appropriate.

### **Effect of decision of court on appeal**

**503.** If a court substitutes another decision, the substituted decision is taken for this Act, other than this part, to be WorkCover's decision.

## PART 4—COMPENSATION AND ENTITLEMENTS

### *Division 1—Internal review of decisions*

#### Who may apply for review

**504.(1)** This section applies to a decision made by WorkCover or a self-insurer (the “**decision maker**”).

**(2)** For subsection (1), the decision must have been made—

- (a) by WorkCover to—
  - (i) allow or reject an application for compensation under chapter 3; or
  - (ii) terminate, suspend, increase or decrease a weekly payment of compensation under chapter 3 or 4;<sup>219</sup> or
  - (iii) allow or refuse an entitlement under section 230, 234 or 237;<sup>220</sup> or
  - (iv) refuse to vary an entitlement under section 189, 190 or 191;<sup>221</sup> or
  - (v) refuse to waive or reduce a penalty under section 70 or 246;<sup>222</sup> or
- (b) by a self-insurer to—
  - (i) reject an application for compensation under chapter 3; or
  - (ii) terminate, suspend, increase or decrease a weekly payment of compensation under chapter 3 or 4; or

<sup>219</sup> Chapter 3 (Compensation) or 4 (Injury Management)

<sup>220</sup> Section 230 (Extent of liability for prosthetic expenses)  
Section 234 (Extent of liability for period of hospitalisation)  
Section 237 (Extent of liability for travelling expenses)

<sup>221</sup> Section 189 (Redemption—worker receiving weekly payments for at least 2 years)  
Section 190 (Redemption—worker moves interstate)  
Section 191 (Redemption—worker moves abroad)

<sup>222</sup> Section 70 (Employer’s liability for excess period)  
Section 246 (Employer’s failure in relation to rehabilitation)

(iii) allow or refuse an entitlement under section 230, 234 or 237;  
or

(iv) refuse to vary an entitlement under section 189, 190 or 191.

(3) The decision maker must give written reasons for the decision.

(4) A claimant, worker or an employer aggrieved by the decision may apply for the decision to be reviewed.

(5) The decision may be reviewed only by WorkCover.

### **Applying for review**

**505.(1)** If the notice of the decision stated the reasons for the decision, an application for review must be made within 28 days after the person applying for review received the notice.

(2) If the notice of the decision did not state the reasons for the decision—

(a) the person applying for review must ask for the reasons for the decision within 28 days after receiving the notice; and

(b) the application for review must be made within 28 days after the person receives the reasons.

(3) For subsection (1) and (2), the person may ask WorkCover to allow further time to apply for review.

(4) The application for review—

(a) must be made in the approved form and be given to WorkCover; and

(b) must detail the grounds on which the person seeks review of the decision; and

(c) may be accompanied by any relevant document the person wants considered in the review.

(5) WorkCover must, within 14 days after receiving the application, give the person written notice that the application has been received.

**Review of decision**

**506.(1)** WorkCover must, within 35 days after receiving the application, review the decision and decide (the “**review decision**”) to—

- (a) confirm the decision; or
- (b) vary the decision; or
- (c) set aside the decision and substitute another decision.

**(2)** WorkCover may, with the consent of the person applying for review, extend the time in subsection (1) to enable WorkCover to obtain information relevant to the application.

*Example of obtaining information—*

Information may be obtained by inspecting a workplace.

**(3)** WorkCover can not delegate the function under subsection (1) to—

- (a) the officer who made the decision under review; or
- (b) an officer in a less senior position than the officer who made the decision under review.

**(4)** WorkCover must give the person applying for review written notice of the review decision and the reasons for it within 14 days of making it.

***Division 2—Hearing by industrial magistrate*****Purpose of div 2**

**507.** The purpose of this division is to provide a process for hearing by an industrial magistrate—

- (a) about a review decision made under section 506 (other than a review decision made about a decision under section 158)<sup>223</sup>; or
- (b) about a decision under chapter 3 or 4<sup>224</sup> that is not a reviewable decision.

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<sup>223</sup> Section 506 (Review of decision)

<sup>224</sup> Chapter 3 (Compensation) or 4 (Injury management)

### **Who may apply for hearing**

**508.(1)** This section applies if a claimant, worker or an employer is aggrieved by a decision mentioned in section 507.

(2) The person aggrieved by the decision may ask that the matter be heard and decided by an industrial magistrate.

### **Applying for hearing**

**509.(1)** An application for a hearing must be made—

- (a) if the application is about a review decision—within 28 days after the person applying for hearing receives the review decision; or
- (b) if the application is about a decision that is not a reviewable decision—within 28 days after the person applying for hearing receives the notice of the decision stating the reasons for the decision.

(2) For subsection (1)(b), if the notice of the decision did not state the reasons for the decision, the person must ask for the reasons for the decision within 28 days after receiving the notice.

(3) The person may ask WorkCover to allow further time to apply for hearing.

(4) The application for a hearing must be in the approved form and be given to WorkCover.

(5) WorkCover must immediately refer the matter to an industrial magistrate.

(6) WorkCover must, within 14 days after receiving the application, give the person written notice that the application has been received.

### **Notice of time and place for hearing**

**510.(1)** The registrar must give the person applying for a hearing and WorkCover (the “**parties**”) written notice of the time and place fixed for the hearing of the matter.

(2) WorkCover must, after receipt of the notice, give the registrar of the Industrial Magistrates Court—

- (a) all approved forms and statements lodged with WorkCover by the person applying for hearing; and
- (b) a statement of facts known to WorkCover that are relevant to the matter.

(3) The registrar must make the forms and statements available to the industrial magistrate hearing the matter.

(4) The forms and statements are only admissible as evidence at the hearing if they are admissible under the rules of evidence for the hearing.

### **Exchanging evidence before hearing**

**511.(1)** A party must, at least 7 days before the hearing, give the other party any relevant document the party wants to adduce as evidence at the hearing.

(2) At the hearing, a party can not rely on a document that was not given to the other party as required by subsection (1), unless the industrial magistrate agrees.

### **Adjourning hearing**

**512.(1)** The industrial magistrate may, at any time before or after the start of the hearing, adjourn the hearing if satisfied it could be held more conveniently—

- (a) at another place or before another industrial magistrate, having regard to the difficulty or expense of producing witnesses, or other good and sufficient reason; or
- (b) at a future time.

(2) If a magistrate adjourns a hearing to another industrial magistrate—

- (a) the magistrate must send the relevant documents to the registrar of the appropriate Magistrates Court; and
- (b) the other magistrate has jurisdiction to hear and decide the matter as if it had been brought before that magistrate.

**Additional medical evidence**

**513.(1)** This section applies if—

- (a) the condition of a claimant or worker who has, or is said to have, sustained injury is relevant to the matter; or
- (b) the cause, nature or extent of injury or of incapacity arising from injury is relevant to the matter.

**(2)** The industrial magistrate may, at any time before or after the start of the hearing, order the claimant or worker to submit to a personal examination by 1 or more specified registered persons.

**(3)** The industrial magistrate may also, as the magistrate considers appropriate, make an order about—

- (a) the way, time and place of the examination; and
- (b) costs of the application for the order and of the examination.

**(4)** An opinion formed on the examination must be given to WorkCover and WorkCover must make the opinion available to the claimant or worker.

**(5)** Subsection (6) applies if the claimant or worker—

- (a) refuses or fails to submit to the examination; or
- (b) obstructs the conduct of the examination.

**(6)** Any entitlement the claimant or worker may have to compensation is suspended until the examination is conducted.

**Correcting defects in proceedings**

**514.(1)** For the proper hearing of the matter, the industrial magistrate may order—

- (a) anything necessary be supplied; or
- (b) defects or errors be corrected.

**(2)** The magistrate may make the order at any time before or after the start of the hearing.

**(3)** The order may be made on conditions.

(4) Costs of the order are in the magistrate's discretion, except to the extent provided under a regulation.

(5) All parties concerned must comply with the order.

### **Powers of industrial magistrate**

**515.(1)** In deciding the matter, the industrial magistrate may—

- (a) confirm the decision; or
- (b) vary the decision; or
- (c) set aside the decision and substitute another decision; or
- (d) set aside the decision and return the matter to WorkCover with the directions the magistrate considers appropriate.

(2) If the magistrate acts under subsection (1)(b) or (c), the decision is taken for this Act, other than this part, to be WorkCover's decision.

(3) Costs of the hearing are in the magistrate's discretion, except to the extent provided under a regulation.

### **Decision of industrial magistrate**

**516.** The industrial magistrate must give—

- (a) the magistrate's decision in a hearing in open court; and
- (b) a written copy of the decision to each party.

### **Recovery of costs**

**517.(1)** If the industrial magistrate makes an order for costs, the amount ordered to be paid is a debt payable to the party in whose favour the order is made.

(2) The order may be filed in the registry of a court of competent jurisdiction.

(3) On being filed, the order—

- (a) is taken to be an order properly made by the court; and
- (b) may be enforced as an order made by the court.

**Appeal from industrial magistrate to industrial court**

**518.(1)** A party aggrieved by the industrial magistrate's decision may appeal to the Industrial Court.

(2) The appeal must be lodged as required by the Industrial Court rules.

(3) The appeal is to be by way of rehearing on the evidence and proceedings before the magistrate, unless the court orders additional evidence be heard.

(4) Costs of the appeal are in the court's discretion.

(5) The court's decision is final.

**CHAPTER 10—MISCELLANEOUS****PART 1—INFORMATION****Worker or claimant entitled to obtain certain documents**

**519.(1)** A person who is a worker or claimant for any provision of this Act may, by written notice, ask WorkCover, a self-insurer or a self-rater (the “**document holder**”) to give the person a copy of documents, required to be kept by the document holder that relate to the person's application for compensation or claim for damages.

(2) The document holder must give the worker or claimant a copy of the documents requested within 28 days after the worker or claimant gives the notice, unless the document holder has a reasonable excuse for not doing so.

(3) Without limiting subsection (2), it is a reasonable excuse for the document holder not to give the document or part of the document if—

- (a) the document or part is protected by legal professional privilege;  
or
- (b) the document or part would alert the claimant or worker to the document holder's reasonable suspicion of fraud in relation to the application for compensation or claim for damages; or

- (c) the document holder believes the matter contained in the document would meet the requirements of the *Freedom of Information Act 1992*, part 3, division 2.<sup>225</sup>

### **Disclosure of information**

**520.(1)** A person who is—

- (a) the commissioner of pay-roll tax appointed under the *Pay-roll Tax Act 1971*; or
- (b) the director, an inspector or another officer concerned in the administration of the *Workplace Health and Safety Act 1995*;

may disclose to WorkCover any information the person has relating to any matter under this Act or touching the administration of this Act.

(2) WorkCover may disclose to the commissioner of pay-roll tax, any information it has about anything under the *Pay-roll Tax Act 1971* or touching the administration of that Act.

(3) WorkCover may disclose, to the part of the department responsible for workplace health and safety, statistical or other information that would help in the performance of its administrative functions.

(4) Subsections (1) to (3) apply despite a provision of this or another Act.

(5) If a person has information because the person is, or was, a WorkCover director or employee, the person must not disclose the information, unless the disclosure—

- (a) is for WorkCover or this Act; or
- (b) is required or authorised by this or another Act; or
- (c) is authorised by the chief executive officer, generally or in a particular case.

### **Information from Commissioner of Police Service**

**521.(1)** The Commissioner of the Police Service may, on the chief executive officer's written request, give to WorkCover information in the

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<sup>225</sup> *Freedom of Information Act 1992*, part 3 (Access to documents), division 2 (Exempt matter)

possession of the Queensland Police Service that is mentioned in subsection (2) about a person WorkCover reasonably suspects to have committed an offence against this Act.

(2) The information that may be given is—

- (a) the person's criminal history; and
- (b) any brief of evidence compiled by the Queensland Police Service on anything mentioned in the person's criminal history; and
- (c) any document about any complaint made against the person.

(3) For this section, *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply.

(4) Information given to WorkCover by the Commissioner of the Police Service under this section must not be used for any purpose other than an investigation or prosecution under this Act.

### **Information use immunity**

**522.** Information obtained from a person in relation to an application for compensation or a claim for damages can not be used against the person in a proceeding for an offence under any other Act, other than a proceeding in which it is alleged the information was false or misleading.

### **WorkCover's information not actionable**

**523.(1)** This section applies to an action for defamation, or a proceeding for other redress, about the disclosure of information in the possession of WorkCover, a self-insurer or a self-rater, or traceable to that possession.

(2) Action can not be brought against WorkCover, a self-insurer or a self-rater, or a person acting for any of them, by a person claiming to be aggrieved about the disclosure about a claimant's—

- (a) physical or mental condition; or
- (b) capacity or incapacity for work; or
- (c) credibility.

(3) Subsections (1) and (2) apply to information in the possession of a self-rater only to the extent the information came into the self-rater's

possession under its powers and functions under section 88.<sup>226</sup>

(4) Subsections (1) and (2) apply to information in the possession of a self-insurer only to the extent the information came into the self-insurer's possession under its powers and functions under section 119.<sup>227</sup>

(5) In this section—

**“claimant”** means a person for whose injury, or purported injury, compensation or damages is sought, is being paid or has been paid.

**“information”** includes opinion and comment.

## PART 2—PROCEEDINGS

### Proceedings for offences against ch 6

**524.(1)** A proceeding for a prescribed offence may, at the election of the prosecution, be taken—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(2) A proceeding must be before a magistrate if it is a proceeding—

- (a) with a view to the summary conviction of a person on a charge of a prescribed offence; or
- (b) for an examination of witnesses in relation to a charge for a prescribed offence.

(3) However, if a proceeding for a prescribed offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(4) A proceeding for an offence by way of a summary proceeding under the *Justices Act 1886* must start—

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<sup>226</sup> Section 88 (Conditions giving a self-rater some WorkCover functions and powers)

<sup>227</sup> Section 119 (Powers of self-insurers)

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- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the commission of the offence comes to the complainant's knowledge;

whichever is the later.

**(5) If—**

- (a) a person charged with a prescribed offence, in relation to which a proceeding is taken by way of a summary proceeding, asks, at the start of the proceeding, that the charge be prosecuted on indictment; or
- (b) the magistrate hearing and deciding a charge of a prescribed offence is of the opinion that the charge ought to be prosecuted on indictment;

the magistrate—

- (c) must not hear and decide the charge as a summary offence; but
- (d) must proceed by way of an examination of witnesses in relation to an indictable offence.

**(6) If a magistrate acts under subsection (5)—**

- (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
- (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (7) is taken to be evidence in the proceeding with a view to the committal of the person for trial or sentence; and
- (c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).<sup>228</sup>

**(7)** The maximum penalty that may be imposed on a summary conviction of a prescribed offence is 100 penalty units or 1 year's imprisonment.

**(8) In this section—**

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<sup>228</sup> *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

**“prescribed offence”** means an offence against this Act for which the maximum penalty of imprisonment is 2 years imprisonment or more.

### **Summary proceedings for offences other than against ch 6**

**525.(1)** This section applies to a proceeding for an offence against this Act other than chapter 6.<sup>229</sup>

**(2)** Proceedings for the offence are to be taken in a summary way under the *Justices Act 1886* before an industrial magistrate on the complaint of—

- (a) the chief executive officer; or
- (b) a person authorised for the purpose by the chief executive officer; or
- (c) the Attorney-General.

**(3)** The proceeding must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the commission of the offence comes to the knowledge of the chief executive officer;

whichever is the later.

**(4)** All penalties recovered under the proceeding are to be paid to WorkCover.

### **Recovery of debts under this Act**

**526.(1)** Every amount—

- (a) payable to WorkCover as a premium, additional premium or charge; or
- (b) recoverable by WorkCover on any account whatever;

is a debt owed to WorkCover by the person liable to pay the premium, additional premium or charge, or from whom the amount is recoverable.

**(2)** WorkCover may recover a debt owed to it—

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<sup>229</sup> Chapter 6 (WorkCover Queensland)

(a) on the complaint of the chief executive officer under the *Justices Act 1886*, before an industrial magistrate; or

(b) by action for debt.

(3) If, for a contravention of this Act, there exists—

(a) a right to recover an amount as a debt; and

(b) a right to proceed for a penalty as for an offence;

the amount may be recovered as a debt even though the proceeding for the penalty has not been taken.

(4) Payment of a penalty does not relieve a person from liability to be assessed and to pay a premium or from liability to pay another amount under this Act.

### **Self-insurer recovery of debts**

**527.** A self-insurer may recover a debt owed to the self-insurer because of payments made by the self-insurer under section 119<sup>230</sup>—

(a) on the complaint of the self-insurer under the *Justices Act 1886*, before an industrial magistrate; or

(b) by action for debt.

### **Powers of industrial magistrate**

**528.(1)** For this Act, an industrial magistrate has all the powers conferred on an industrial magistrate by the Industrial Relations Act or by the rules of court or a regulation made for that Act, so far as those powers are appropriate to matters arising under this Act.

(2) Also, for any proceeding before an industrial magistrate under this Act to which this Act does not expressly apply the provisions of the *Justices Act 1886*, a regulation may provide for all matters relating to the proceeding, including, for example, the summoning of witnesses and the hearing of an appeal.

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<sup>230</sup> Section 119 (Powers of self-insurers)

(3) A regulation under subsection (2) prevails over any inconsistent rule of court or regulation mentioned in subsection (1).

## **Evidence**

**529.(1)** The chief executive officer may issue certificates for subsection (2).

(2) A certificate stating the following matters is evidence of the matters in any proceeding about anything arising under this Act—

- (a) that—
  - (i) notice of acceptance of a risk, or of assessment or reassessment of a premium, was duly sent on a specified date to a specified person; and
  - (ii) a specified amount of premium was demanded by the notice;
- (b) that—
  - (i) a default assessment, or a decision on an objection made to a default assessment, was duly made; and
  - (ii) notice of the assessment or decision was duly sent on a specified date to a specified person at an address that is the person's place of business, place of residence or postal address last known to WorkCover; and
  - (iii) a specified amount of premium was demanded by the notice of default assessment, or of decision on objection;
- (c) that commission of an offence against this Act came to the knowledge of the chief executive officer or delegate issuing the certificate on a specified date;
- (d) that an address to which any notice or other document was sent by post to any person is that person's place of business, place of residence or postal address last known to WorkCover or a self-insurer;
- (e) that a worker has a specified WRI;
- (f) that a worker has a specified WRI establishing the worker's access to damages;

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- (g) that no objection has been received from a specified person against a default assessment within 21 days after notice of the assessment was given to the person;
- (h) that a specified amount is due and payable to WorkCover and unpaid by a specified person for a premium or a charge;
- (i) that a specified amount is due and payable to WorkCover or a self-insurer and unpaid by a specified person for an overpayment of compensation;
- (j) that a specified person who is stated in the certificate to be an employer has contravened section 52,<sup>231</sup> and how the person has contravened the section;
- (k) that a specified amount is due and payable to WorkCover and unpaid by a specified person who is stated in the certificate to be an employer who has contravened section 52 in relation to a specified person;
- (l) that a specified amount is due and payable on account of an amount paid by WorkCover or a self-insurer to, or on account of, a specified person;
- (m) that a specified amount was paid by WorkCover or a self-insurer to or on account of a specified person for a specified matter, date or purpose.

**(3)** A document purporting to be a certificate under this Act is admissible as the certificate it purports to be in any proceeding about anything arising under this Act.

**(4)** A statement in a complaint for an offence against this Act of any of the following is evidence of the matter stated—

- (a) that the person making the complaint is authorised to do so;
- (b) that the matter of the complaint came to the knowledge of the complainant or the chief executive officer on a specified day.

**(5)** Evidence that WorkCover or a self-insurer has received an application for compensation is evidence in any proceeding about anything arising under this Act that the application was lodged by the person named in the

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<sup>231</sup> Section 52 (Employer's obligation to insure)

application as the applicant on the day it was received by WorkCover or the self-insurer.

### **PART 3—REGULATIONS**

#### **Regulation-making power**

**530.(1)** The Governor in Council may make regulations under this Act.

(2) A regulation may make provision for anything specified in schedule 1.

### **PART 4—OTHER PROVISIONS**

#### **Entitlements to compensation under industrial instrument prohibited and void**

**531.(1)** The Industrial Relations Commission can not include in an industrial instrument made by it, or approve for an industrial instrument submitted to it, a provision for accident pay, or other payment, on account of a worker sustaining an injury.

(2) The registrar of the Industrial Relations Commission is not to register an industrial instrument submitted to the registrar that provides for payment of accident pay, or other payment, on account of a worker sustaining an injury.

(3) A provision of an industrial instrument is of no force or effect to the extent that it provides for payment of accident pay, or other payment on account of a worker sustaining an injury.

#### **Approval of forms**

**532.** The chief executive officer may approve forms for use under this Act.

**Service of documents**

**533.** For the *Acts Interpretation Act 1954*, section 39,<sup>232</sup> the address of a person's place of residence or business includes the person's postal address.

**CHAPTER 11—TRANSITIONAL PROVISIONS****PART 1—INTERPRETATION****Definitions**

**536.** In this chapter—

**“general manager”** means the general manager of the workers' compensation board.

**“officer”** of the public service, includes a person employed under the Public Service Act other than as an officer.

**“repealed Act”** means the *Workers' Compensation Act 1990*.

**“transferred person”** means a person transferred to WorkCover under this part.

**“workers' compensation board”** means the Workers' Compensation Board under the repealed Act.

**Other savings preserved**

**537.** This chapter does not limit the *Acts Interpretation Act 1954*, section 20.<sup>233</sup>

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<sup>232</sup> *Acts Interpretation Act 1954*, section 39 (Service of documents)

<sup>233</sup> *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

## **PART 2—TRANSFER TO WORKCOVER**

### *Division 1—Staff*

#### **Transfer of staff to WorkCover**

**538.(1)** On the commencement of chapter 6,<sup>234</sup> persons who immediately before the commencement were officers of the public service in the Division of Workers' Compensation, Department of Training and Industrial Relations are transferred to WorkCover.

(2) On transfer every transferred person stops being a public service officer and becomes an employee of WorkCover.

(3) A transferred person may claim against WorkCover all entitlements accrued as a public service officer and not used.

(4) A transferred person's long service leave entitlements are to be calculated as if service as an officer of the public service and service with WorkCover were continuous service with WorkCover.

#### **Preserved employment conditions of transferred person**

**539.(1)** A transferred person is taken to be employed by WorkCover on the same conditions of employment, including salary, as applied to the person immediately before the transfer.

(2) The conditions are unaffected by any change to the conditions that would have happened if the person had not been transferred.

(3) Subsection (1) applies until the person's conditions are, under chapter 6, parts 6 and 7, decided—

- (a) under an employment contract between the person and WorkCover; or
- (b) under an industrial instrument; or
- (c) by WorkCover, subject to any applicable industrial instrument.

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<sup>234</sup> Chapter 6 (WorkCover Queensland)

**Other preserved rights**

**540.(1)** This section applies to a transferred person for 3 years after the commencement of chapter 6.

**(2)** The person has the same appeal rights and entitlements as the person would have had if the person had continued as a public service officer—

- (a) to appeal against an appointment within the public service; or
- (b) to be transferred to a position within the public service; or
- (c) to be redeployed to a position within the public service.

**Public service officers' superannuation on becoming WorkCover employees**

**541.(1)** This section applies to a contributor or a member of a State superannuation scheme who is transferred to WorkCover under this part.

**(2)** If there is no superannuation scheme otherwise available under section 406<sup>235</sup> for WorkCover employees, the member may continue as a contributor or a member of the relevant State superannuation scheme.

**(3)** For subsection (2), the member is taken to be an officer, or taken to be eligible for membership, of the relevant State superannuation scheme under the Act under which the relevant State superannuation scheme was established.

**(4)** If—

- (a) a superannuation scheme is made available under section 406<sup>236</sup> for WorkCover employees after the member becomes a WorkCover employee; and
- (b) the employee has continued as a contributor or a member of the relevant State superannuation scheme;

the member may, under a regulation, stop being a contributor or a member of the relevant State superannuation scheme and become a member of the scheme made available for WorkCover employees.

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<sup>235</sup> Section 406 (Superannuation schemes)

<sup>236</sup> Section 406 (Superannuation schemes)

(5) In this section—

“**State superannuation scheme**” means—

- (a) the State Service Superannuation Fund under the *State Service Superannuation Act 1972*; or
- (b) the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*; or
- (c) the Government Officers Superannuation Scheme under the *Superannuation (Government and Other Employees) Act 1988*.

### *Division 2—Legal succession*

#### **WorkCover is the legal successor**

**542.(1)** WorkCover is the successor in law to the body corporate constituted by the workers’ compensation board.

(2) The other provisions of this chapter do not limit this section.

#### **First corporate plan and statement of corporate intent**

**543.(1)** The requirement for WorkCover to prepare, and submit to the Minister for the Minister’s agreement, a draft corporate plan and a draft statement of corporate intent, for the first time after the day WorkCover is established may be complied with within 6 months of the day.

(2) If a draft corporate plan or a draft statement of corporate intent has not been agreed to by the Minister within 6 months from the day WorkCover is established, the Minister may, by written notice, direct the board—

- (a) to take specified steps in relation to the draft plan; or
- (b) to make specified changes to the draft plan.

(3) The board must immediately comply with the direction.

#### **Assets and liabilities etc.**

**544.** On the commencement of chapter 6—

- (a) the assets and liabilities of the workers' compensation board become the assets and liabilities of WorkCover; and
- (b) anything under the control of the workers' compensation board becomes under the control of WorkCover.

### **Proceedings**

**545.(1)** A proceeding by or against the workers' compensation board that has not ended before the commencement of chapter 6 may, after the commencement, be continued by or against WorkCover.

**(2)** If a proceeding could have been taken by or against the workers' compensation board, if the board had continued to exist, the proceeding may be taken by or against WorkCover.

### **References generally**

**546.** From the commencement of chapter 6, in an Act, instrument or document—

- (a) a reference to the body corporate constituted by the workers' compensation board under a former Act may, if the context permits, be taken as a reference to WorkCover; and
- (b) a reference to the workers' compensation board operating as a board under a former Act may, if the context permits, be taken as a reference to WorkCover's board; and
- (c) a reference to the insurance commissioner or the State Government Insurance Office (Queensland), so far as it relates to the carrying on of the business of accident insurance or other insurance under a former Act, may, if the context permits, be taken as a reference to WorkCover; and
- (d) a reference to the State Insurance Accident Fund or to the workers' compensation fund may, if the context permits, be taken as a reference to a fund established by WorkCover.

## PART 3—INSURANCE

### Policies

**547.(1)** On the commencement of chapter 6, each of the following is taken to be a policy issued by WorkCover—

- (a) a policy issued by the workers' compensation board;
- (b) a policy deemed, under the repealed Act, to have been issued by the workers' compensation board.

**(2)** Merit bonuses and demerit charges are applicable to policies entered into before the repeal of the repealed Act as if the repealed Act had not been repealed.

**(3)** In this section—

**“merit bonuses”** means merit bonuses under the repealed Act, section 52.<sup>237</sup>

**“demerit charges”** means demerit charges under the *Workers' Compensation Regulation 1992*, section 13A.<sup>238</sup>

### Other contracts of insurance

**548.** On the commencement of chapter 6, the following are taken to be contracts of insurance issued by WorkCover—

- (a) a contract of insurance, other than a policy, issued under the repealed Act;
- (b) a contract of insurance, other than a policy, deemed under the repealed Act to have been issued by the workers' compensation board.

### Previous non-policy compensation arrangement with State

**549.(1)** This section applies to amounts that would have been payable by

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<sup>237</sup> *Workers' Compensation Act 1990*, section 52 (Discounting of premiums)

<sup>238</sup> *Workers' Compensation Regulation 1992*, section 13A (Demerit charges)

a government entity to the workers' compensation board under the repealed Act, section 198,<sup>239</sup> if the repealed Act had not been repealed.

(2) The government entity must pay the amounts to WorkCover.

### **References to self-raters and self-insurers**

**550.** Until the commencement of chapter 2, parts 4 and 5,<sup>240</sup> references in this Act to self-raters or self-insurers are of no effect.

## **PART 4—INJURY BEFORE REPEAL OF REPEALED ACT**

### **Injury under repealed or other former Act**

**551.(1)** This section applies if a worker sustains an injury before the repeal of the repealed Act.

(2) The repealed Act applies in relation to the injury as if the repealed Act had not been repealed.

(3) However, a person entitled to lump sum compensation, weekly payments or dependant allowances under a former Act is entitled to the benefit of every increase in—

- (a) for injury before 1 January 1996—the prescribed base rate; or
- (b) for injury on or after 1 January 1996—QOTE.

(4) In this section—

**“prescribed base rate”** means a weekly rate of compensation that is 65% of the weekly minimum rate of wages for the time being provided by

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<sup>239</sup> *Workers' Compensation Act 1990*, section 198 (Recovery of amounts from State)

<sup>240</sup> Chapter 2 (Employer's obligations), parts 4 (Self-rating) and 5 (Employer's self-insurance)

the Engineering Award—State, made by the Industrial Relations Commission, in relation to employees of the class ‘Wage Group C10’ in the southern division.

## **PART 5—INJURY MANAGEMENT**

### **Appointment of rehabilitation coordinator**

**552.** The employer must, unless the employer has a reasonable excuse, appoint the rehabilitation coordinator—

- (a) within 12 months after the commencement of chapter 4;<sup>241</sup> or
- (b) within a later period approved by WorkCover.

### **Workplace rehabilitation policy and procedures**

**553.** The employer must, unless the employer has a reasonable excuse, have workplace rehabilitation policy and procedures—

- (a) within 12 months after the commencement of chapter 4; or
- (b) within a later period approved by WorkCover.

## **PART 6—MEDICAL ASSESSMENT TRIBUNALS**

### **Continuation of tribunals**

**554.** Each tribunal mentioned in section 425<sup>242</sup> is a continuance in existence of the corresponding medical board and tribunal established under a former Act.

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<sup>241</sup> Chapter 4 (Injury management)

<sup>242</sup> Section 425 (Assessment tribunals to be maintained)

## **PART 7—FINAL ACCOUNTS**

### **Final accounts**

**555.(1)** WorkCover must prepare the final accounts of the workers' compensation board under the *Financial Administration and Audit Act 1977*.

(2) The Auditor-General must audit the accounts.

(3) The *Financial Administration and Audit Act 1977*, part 6<sup>243</sup> applies to the audit.

## **PART 8—OFFENCES**

### **Offences**

**556.(1)** Proceedings for an offence against the repealed Act may be started or continued as if this Act had not been passed.

(2) However, section 525<sup>244</sup> applies as if the proceeding were for an offence under this Act.

## **PART 9—SAVING OF REPEALED ACT PROVISIONS**

### **Transitional application of repealed provisions**

**557.(1)** This section applies from the repeal of the repealed Act.

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<sup>243</sup> *Financial Administration and Audit Act 1977*, part 6 (Audit of public accounts and public sector entities)

<sup>244</sup> Section 525 (Summary proceedings for offences other than against ch 6)

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(2) Until the commencement of chapter 1, part 4, divisions 2 and 3,<sup>245</sup> a person is a worker, or to be treated as a worker, for the purposes of this Act, if the person would be, or be treated as, a worker under the repealed Act.

(3) Until the commencement of chapter 1, part 4, division 5,<sup>246</sup> a person is an employer, or to be treated as an employer, for the purposes of this Act, if the person would be, or be treated as, an employer under the repealed Act.

(4) Until the commencement of a particular provision of chapter 2, parts 1 to 3,<sup>247</sup> the corresponding provision of the repealed Act applies as if it were a provision of this Act in force.

(5) Until the commencement of chapter 3, part 2, division 2,<sup>248</sup> the repealed Act section 4, applies as if it were a provision of this Act in force.

(6) Until the commencement of chapter 9,<sup>249</sup> a person's right to review of or appeal against a decision is only that which the person would have if the repealed Act had not been repealed and, for this purpose, the provisions of the repealed Act apply as if they were provisions of this Act in force.

(7) For this section, a regulation may declare the provisions of the repealed Act that continue in force for any purpose and change the application of any of those provisions for the purpose of the transition to the operation of any uncommenced provision of this Act.

(8) A regulation for subsection (7)—

- (a) may only be made within 9 months after the date of assent of this Act; and
- (b) expires 9 months after the date of assent of this Act unless it has previously expired.

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<sup>245</sup> Chapter 1 (Preliminary), part 4 (Basic concepts), divisions 2 (Workers) and 3 (Students)

<sup>246</sup> Chapter 1 (Preliminary), part 4 (Basic concepts), division 5 (Employers)

<sup>247</sup> Chapter 2 (Employer's obligations), part 1 (Employer's legal liability), part 2 (Employer's insurance requirements) and part 3 (Insurance under WorkCover policy generally)

<sup>248</sup> Chapter 3 (Compensation), part 2 (Compensation entitlements of workers generally), division 2 (Entitlement in relation to place where injury is sustained)

<sup>249</sup> Chapter 9 (Reviews and appeals)

**How to apply provisions of former Acts**

**558.(1)** This section applies if, after the commencement of this part, a provision of a former Act is to be applied for any purpose.

(2) A reference in the provision to the general manager may, if the context permits, be taken as a reference to WorkCover's chief executive officer.

(3) A reference in the provision to the body corporate constituted by the workers' compensation board under a former Act may, if the context permits, be taken as a reference to WorkCover.

(4) A reference in the provision to the workers' compensation board operating as a board under a former Act may, if the context permits, be taken as a reference to WorkCover's board.

(5) A reference in the provision to the Workers' Compensation Fund is taken to be a reference to the corresponding WorkCover fund.

## **SCHEDULE 1**

### **REGULATIONS**

section 530

**1.** Fixing and varying premiums, rates of premium, surcharges, bonuses and demerit charges in relation to policies, including providing for an increase in the rate or a charge if, because of an employer's carelessness or another reason WorkCover considers sufficient, the risk carried by WorkCover is greater than that usually carried in cases of accident insurance of a similar description.

**2.** Provision for payment of additional premiums in relation to policies, and fixing the rates of additional premiums, in cases where employers fail to give to WorkCover the prescribed annual returns within the time decided and notified by WorkCover.

**3.** Authorising WorkCover to assess premiums to be paid, as WorkCover directs, by—

- (a) employers; or
- (b) other persons with whom WorkCover has made contracts of insurance; or
- (c) persons required to give returns; or
- (d) persons whom WorkCover believes to be employers;

and to increase, reduce and enforce payment of the assessments.

**4.** The time in which and place where a premium is to be paid to WorkCover.

**5.** Acceptance by WorkCover of risk under contracts of insurance other than policies, the conditions or provisions to be contained or implied in the contracts, the nature and extent of risk covered by the contracts.

**6.** The proper conduct of WorkCover's insurance business.

**7.** Returns to be given to WorkCover, including—

## SCHEDULE 1 (continued)

- (a) the persons who must give the returns, whether employers or other persons; and
- (b) the time and how the returns must be given.

**8.** The acceptance by WorkCover of payment of premium by instalments, including—

- (a) payment of interest; and
- (b) the rate and calculation of interest; and
- (c) security to WorkCover for payment of instalments and interest;

and the result of and remedies on a failure to make payment due or to honour obligations under a security given to WorkCover for payment of the premium.

**9.** The mode of service of process in legal proceedings, or of a notice or document, for this Act that is not provided for under chapter 10.

**10.** The evidentiary value and if necessary, the admissibility into evidence, in a proceeding before a court, tribunal or person for this Act of a certificate, or copy of or extract from a document kept under this Act for anything under this Act, that is not provided for under chapter 10.

**11.** The management of a claim for which there is more than one defendant.

**12.** Costs, including costs before and after a proceeding is started, and the type and amount of costs that may be claimed by or awarded to a claimant during any stage before or after the start of a proceeding.

**13.** Imposing a penalty for a contravention of a regulation of not more than 20 penalty units.

## SCHEDULE 3

### DEFINITIONS

section 8

**“accident insurance”** see section 9.

**“accredited workplace”** see section 49.

**“aircraft”** includes a machine, glider or apparatus designed to fly by gaining support from the atmosphere.

**“aggravation”** includes acceleration.

**“amount payable under an industrial instrument”** see section 132.

**“approved form”** see section 532.

**“authorised person”** means a person who is appointed as an authorised person.

**“board”** means the board of WorkCover.

**“calling”** means any activity ordinarily giving rise to the receipt of remuneration or reward including self employment or the performance of an occupation, trade, profession, or carrying on of a business, whether or not the person performing the activity received remuneration.

**“certificate injury”** see section 42.

**“chief executive officer”** means the chief executive officer of WorkCover appointed under section 399.

**“claimant”**, other than for chapter 5, means a person who lodges an application for compensation.

**“classification group employer”** means 2 or more employers that are in—

- (a) a pre-existing stable business relationship—
  - (i) of at least 2 years; or

## SCHEDULE 3 (continued)

(ii) for an entity that has been in existence for less than 2 years—since the entity’s inception; and

(b) the same industry or business classification specified by WorkCover by industrial gazette notice.

**“coaster”** means a ship, wherever registered, that for the time being voyages only between 2 or more ports in the State.

**“community service obligations”**, of WorkCover, see section 359.

**“compensation”** see section 10.

**“complying notice of claim”** see section 282.

**“contract of service”** includes an apprenticeship agreement.

**“contractor”** means a person who has contracted with someone else for the performance of work or provision of a service.

**“conviction”** means a finding of guilt, or the acceptance of a plea of guilty, by a court.

**“court”** means the court having jurisdiction in relation to the amount or matter referred to.

**“damages”** see section 11.

**“damages certificate”** see section 250.

**“deemed premium”** means a premium calculated under a regulation.

**“dependant”** see section 29.

**“director”**, of a corporation, includes—

(a) a person holding or acting in the position of a director (by whatever name called) of the corporation whether or not the person was validly appointed to hold, or is duly authorised to act in, the position; and

(b) a person under whose directions or instructions the corporation is ordinarily controlled.

**“doctor”** means a registered medical practitioner.

## SCHEDULE 3 (continued)

“**due date**” means the day an amount becomes payable under this Act or under a premium notice.

“**elective hospitalisation**” see section 233.

“**eligible person**” see section 25.

“**employee**” of WorkCover means—

- (a) the chief executive officer; or
- (b) a senior executive of WorkCover; or
- (c) a person employed by WorkCover on wages or salary or under a contract of service.

“**employer**” see section 32.

“**employs 30 or more workers**”, for an employer, means that the employer during the current calendar year employed, or is likely to employ, 30 or more workers for a total of any 40 days during the year.

“**event**” see section 33.

“**excess period**” see section 69.

“**former Act**” means—

- (a) the *Workers’ Compensation Act 1916*; or
- (b) the *Workers’ Compensation Act 1990*.

“**fully funded**”, in relation to the workers’ compensation scheme, see section 5(5).

“**government entity**” means the State, a State agency or instrumentality or a GOC.

“**government worker**” means a worker employed by a government entity.

“**group employer**” means a classification group employer or related bodies corporate group employer.

“**hospitalisation**” means treatment provided to a person as an in-patient at a private hospital.

## SCHEDULE 3 (continued)

**“household worker”** means a person employed solely in and about, or in connection with, a private dwelling house or the grounds of the dwelling house.

**“impairment”** see section 39.

**“industrial deafness”** means loss of hearing (other than total loss of hearing in either ear) caused by excessive noise.

**“industrial instrument”** means an award, industrial agreement, certified agreement or enterprise flexibility agreement under the Industrial Relations Act or the *Industrial Relations Act 1988* (Cwlth).

**“Industrial Relations Act”** means—

- (a) the *Industrial Relations Act 1990*; or
- (b) *Workplace Relations Act 1996*.

**“injury”** see section 34.

**“Insurance and Superannuation Commission”** means the Insurance and Superannuation Commission under the *Insurance Act 1973* (Cwlth).

**“medical assessment tribunal”** see chapter 7.

**“medical treatment”** means—

- (a) treatment by a doctor, dentist, physiotherapist, occupational therapist, psychologist, chiropractor, osteopath, podiatrist or speech pathologist; or
- (b) assessment for industrial deafness by an audiologist; or
- (c) the provision of diagnostic procedures or skiagrams; or
- (d) the provision of nursing, medicines, medical or surgical supplies, curative apparatus, crutches or other assistive devices.

**“motor vehicle”** includes—

- (a) a machine or apparatus designed for propulsion completely or partly by petrol, diesel, oil, LPG, or other motor spirit, oil or gas, electricity, steam or other mechanical power; and
- (b) a motorcycle; and

## SCHEDULE 3 (continued)

- (c) a caravan, caravan trailer or other trailer designed to be attached to a motor vehicle.

**“non-certificate injury”** see section 43.

**“normal weekly earnings”** see section 133.

**“notice of assessment”** means a notice of assessment of permanent impairment issued by WorkCover under section 203.

**“notice of claim”** means a notice under section 280 that a claimant intends to seek damages for an injury sustained by the claimant.

**“NWE”** means normal weekly earnings.

**“payable amount”** means an amount due and payable.

**“PAYE taxpayer”** see section 13.

**“period of insurance”** means the period of accident insurance cover specified in a policy, policy renewal certificate or premium notice.

**“permanent impairment”** see section 40.

**“personal injury”**, to a person, includes damage to or destruction of—

- (a) a prosthesis actually fitted to the person; or
- (b) an assistive device, being crutches, spectacles or medical aids, while in actual use by the person for a purpose for which the device is intended.

**“place of employment”** means the premises, works, plant, or place for the time being occupied by, or under the control or management of, the employer by whom a worker concerned is employed, and in, on, at, or in connection with which the worker was working when the worker sustained injury.

**“policy”** means a policy for a contract of accident insurance, and includes an existing policy of accident insurance that, under section 547, is taken to be a policy.

**“port”** includes harbour.

**“pre-existing stable business relationship”**, for a classification group employer, includes—

## SCHEDULE 3 (continued)

- (a) membership of a common representative organisation; and
- (b) common ownership or management; and
- (c) involvement in joint ventures or joint ownership of assets.

**“premium notice”** means a notice issued by WorkCover of an assessment of premium, a default assessment of premium, or a reassessment of premium.

**“prescribed disfigurement”** means severe facial disfigurement or severe bodily scarring.

**“private hospital”** see section 233.

**“public hospital”** see section 233.

**“Public Service Act”** means—

- (a) the *Public Service Management and Employment Act 1988*; or
- (b) the *Public Service Act 1996*.

**“QOTE”** see section 134.

**“Queensland ship”** means a ship—

- (a) that is a State ship; or
- (b) that is a coaster; or
- (c) whose first port of clearance and whose destination are in the State; or
- (d) that, being engaged in fishing operations, discharges its catch at a port in the State, or to a mother ship that discharges its cargo at a port in the State, and does not engage in those operations within the territorial waters of a country other than Australia.

**“redemption payment”** means a payment under section 189, 190 or 191.

**“registered”** means—

- (a) in relation to a person mentioned in the definition “medical treatment”, paragraph (a) who is held out as providing, or qualified to provide, medical treatment—registered under the law

## SCHEDULE 3 (continued)

of the place where the medical treatment is provided as a person lawfully entitled to provide the medical treatment in that place; or

- (b) in relation to an audiologist—certified by the Audiological Society of Australia; or
- (c) in relation to a self-rater—means registered under chapter 2, part 3.

**“registered person”** means a registered person of a description mentioned in the definition “medical treatment”.

**“rehabilitation”** see section 44.

**“rehabilitation coordinator”** see section 45.

**“related bodies corporate group employer”** means 2 or more employers who are related bodies corporate.

**“related bodies corporate”** has the meaning given by the Corporations Law.

**“seafarer”** see section 146.

**“self-insurer”** means a single employer or group employer licensed under chapter 2, part 5.

**“self-rater”** means a single employer or group employer registered under chapter 2, part 4.

**“ship”** means a ship, boat, or vessel of any kind designed for use in or on water.

**“single employer”**—

- (a) includes persons in partnership that are employers; but
- (b) does not include a limited partnership formed under the *Mercantile Act 1867* or the *Partnership (Limited Liability) Act 1988*.

**“single pension rate”**, for chapter 3, part 8, division 4, means the amount of the maximum single disability support pension payable from time to time under a Commonwealth law, but does not include an amount for allowances, for example, rent assistance or family payment.

## SCHEDULE 3 (continued)

“**specialist**” see the *Medical Act 1939*, section 4(1).

“**spouse**” see section 31.

“**State ship**” means a ship owned by, or in the possession (under charter) of, the State, on which seafarers are employed by a department of government or by or under the State.

“**statutory maximum compensation**”, means an amount equal to the amount of compensation payable under chapter 3, part 6.

“**student**” for chapter 3, part 10, see section 213.

“**suitable duties**” see section 46.

“**suspects**” includes believes.

“**table of costs**” means the table of costs for the provision of the relevant medical treatment or rehabilitation for the time being as decided by WorkCover to be acceptable for this Act.

“**table of injuries**” means the table of injuries prescribed under a regulation.

“**terminal condition**” see section 251.

“**this Act**” for chapter 5, includes a former Act.

“**vehicle**” for section 38, means a motor vehicle, bicycle, aircraft, train, boat or anything else used to carry persons or goods from place to place, even if the vehicle is incapable of use because of mechanical defect or because a part has been removed.

“**wages**” means the total amount paid, or provided by, an employer to, or on account of, a worker as wages, salary or other earnings by way of money or entitlements having monetary value, but does not include—

- (a) allowances payable in relation to any travelling, car, removal, meal, education, living in the country or away from home, entertainment, clothing, tools and vehicle expenses; and
- (b) contribution by an employer to a scheme for superannuation benefits for a worker, other than contribution made from money payable to the worker; and

## SCHEDULE 3 (continued)

- (c) lump sum payments on termination of a worker's services for superannuation, accrued holidays, long service leave or any other purpose; and
- (d) an amount payable under section 70.

**“WorkCover”** means WorkCover Queensland.

**“WorkCover Queensland”** see section 330.

**“worker”** see section 12.

**“workplace”** means a place where work is, is to be, or is likely to be, performed by a worker or employer and is a place—

- (a) that is for the time being occupied by the employer or under the control or direction of the worker's employer; or
- (b) where the worker is under the control or direction of the worker's employer.

**“workplace rehabilitation”** see section 47.

**“workplace rehabilitation policy and procedures”** see section 48.

**“work related impairment”** see section 41.

**“WRI”** means work related impairment.

**ENDNOTES****1 Index to endnotes**

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**2 Date to which amendments incorporated**

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 26 March 1999. Future amendments of the Workcover Queensland Act 1996 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

AIA	=	Acts Interpretation Act 1954	prev	=	previous
amd	=	amended	(prev)	=	previously
amdt	=	amendment	proc	=	proclamation
ch	=	chapter	prov	=	provision
def	=	definition	pt	=	part
div	=	division	pubd	=	published
exp	=	expires/expired	R[X]	=	Reprint No.[X]
gaz	=	gazette	RA	=	Reprints Act 1992
hdg	=	heading	reloc	=	relocated
ins	=	inserted	renum	=	renumbered
lap	=	lapsed	rep	=	repealed
notfd	=	notified	s	=	section
o in c	=	order in council	sch	=	schedule
om	=	omitted	sdiv	=	subdivision
p	=	page	SIA	=	Statutory Instruments Act 1992
para	=	paragraph	SL	=	subordinate legislation
prec	=	preceding	sub	=	substituted
pres	=	present	unnum	=	unnumbered

### 4 Table of earlier reprints

#### TABLE OF EARLIER REPRINTS

[If a reprint number includes a roman letter, the reprint was released in unauthorised, electronic form only.]

Reprint No.	Amendments included	Reprint date
1	to Act No. 9 of 1997	1 July 1997
2	to Act No. 81 of 1997	5 January 1998

### 5 List of legislation

#### WorkCover Queensland Act 1996 No. 75

date of assent 12 December 1996

ss 1–2 commenced on date of assent

ch 1 (other than pt 4 divs 2, 3, 5), ss 69–70, ch 3 (other than pt 2, div 2), 4–8, chs 10–11, schs 1, 2 (except amendments in relation to the *Juvenile Justice Act 1992*), 3 commenced 1 February 1997 (1996 SL No. 442)

sch 2 (in relation to amendments to the *Juvenile Justice Act 1992*) commenced 1 July 1997 (see 1997 No. 9 s 4(1) sch 2 exp 2 July 1997 (1997 No. 9 s 4(2)))

ch 1 pt 4 divs 2, 3, 5, ch 2 (other than ss 69–70), ch 3 pt 2 div 2, ch 9 commenced 1 July 1997 (1996 SL No. 442)

as amended by—

**Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9  
ss 1, 2(3) pt 27**

date of assent 15 May 1997

ss 1, 2(3) commenced on date of assent

remaining provisions commenced 2 April 1997 (see s 2(3))

**Statute Law (Miscellaneous Provisions) Act 1997 No. 81 ss 1–3, sch**

date of assent 5 December 1997

commenced on date of assent

**Health and Other Legislation Amendment Act 1998 No. 41 ss 1, 2(2), 14(1) sch 1**

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1998 (1998 SL No. 346)

## **6 List of annotations**

**Entitlements for industrial deafness**

s 152 amd 1997 No. 81 s 3 sch

**Total incapacity**

s 181 amd 1997 No. 81 s 3 sch

**Definitions for ch 5**

s 250 def “damages certificate” amd 1997 No. 81 s 3 sch

**Claimant may seek damages only after being assessed**

s 262 amd 1997 No. 81 s 3 sch

**Tribunal to be constituted**

s 448 amd 1998 No. 41 s 14(1) sch 1

**Repeal**

s 534 om R1 (see RA s 40)

**Consequential amendments in sch 2**

s 535 om R1 (see RA s 7(1)(k))

**SCHEDULE 2—CONSEQUENTIAL AMENDMENTS OF OTHER ACTS**

amd 1997 No. 9 s 101

om R1 (see RA s 40)