



# **Workers' Compensation and Rehabilitation Act 2003**

**Reprinted as in force on 1 April 2005  
(includes commenced amendments up to 2005 Act No. 11)**

**Reprint No. 1H**

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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 reprints is included in the endnotes.

**Also see endnotes for information about—**

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Queensland

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# **Workers' Compensation and Rehabilitation Act 2003**

[as amended by all amendments that commenced on or before 1 April 2005]

**An Act to establish a workers' compensation scheme for Queensland, and for other purposes**

## **Chapter 1 Preliminary**

### **Part 1 Introduction**

#### **1 Short title**

This Act may be cited as the *Workers' Compensation and Rehabilitation Act 2003*.

#### **2 Commencement**

- (1) Sections 613 to 618 and 621 are taken to have commenced on 1 April 2003.
- (2) The remaining provisions of this Act, (other than sections 612, 619 and 620) commence on 1 July 2003.<sup>1</sup>

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

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

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<sup>1</sup> Under the *Acts Interpretation Act 1954*, section 15A, sections 612, 619 and 620 of this Act commence on the date of assent.

## **Part 2                      Objects**

### **4            Objects of Act**

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

### **5            Workers' compensation scheme**

- (1) This Act establishes a workers' compensation scheme for Queensland—
  - (a) 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; and
  - (b) encouraging improved health and safety performance by employers.
- (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 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) ensure that injured workers or dependants are treated fairly by insurers; and
  - (c) provide for the protection of employers' interests in relation to claims for damages for workers' injuries; and
  - (d) provide for employers and injured workers to participate in effective return to work programs; and
  - (da) provide for workers or prospective workers not to be prejudiced in employment because they have sustained injury to which this Act or a former Act applies; and
  - (e) provide for flexible insurance arrangements suited to the particular needs of industry.
- (5) 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.

## **6 Administration**

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

## **Part 3                      Definitions**

### **7            Definitions**

The dictionary in schedule 6 defines particular words used in this Act.

## **Part 4                      Basic concepts**

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

#### **8            Meaning of *accident insurance***

*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—

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

#### **9            Meaning of *compensation***

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

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2 Chapters 3 (Compensation) and 4 (Injury management)

**10 Meaning of *damages***

- (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 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.
- (3) Also, a reference in subsection (1) to the liability of an employer does not include a liability to pay damages for loss of consortium resulting from injury sustained by a worker.

**Division 2 Workers****11 Who is a *worker***

- (1) A *worker* is a person who works under a contract of service.
- (2) Also, schedule 2, part 1 sets out who is a *worker* in particular circumstances.
- (3) However, schedule 2, part 2 sets out who is not a *worker* in particular circumstances.
- (4) Only an individual can be a *worker* for this Act.

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

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

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

- (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 9, division 4, subdivision 3 and division 5, subdivision 1;<sup>3</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.

#### **13            Particular persons under Disaster Management Act 2003**

- (1) WorkCover may enter into a contract of insurance for this subdivision with the chief executive of the department within which the *Disaster Management Act 2003* is administered.
- (2) The contract may cover—

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3 Chapter 3 (Compensation), part 9 (Weekly payment of compensation), division 4 (Entitlement for total incapacity), subdivision 3 (Persons entitled to compensation other than workers, students and eligible persons) and division 5 (Entitlement for partial incapacity), subdivision 1 (Persons entitled to compensation other than eligible persons)

- (a) a member of the State Emergency Service or an emergency service unit under the *Disaster Management Act 2003*; or
  - (b) a person required to give reasonable help under section 77(1)(q), 107(2)(h) or 112(3)(g)<sup>4</sup> of that Act; or
  - (c) another person performing a function or exercising a power under that Act.
- (3) A person covered by the contract is entitled to compensation for injury sustained only while engaged in disaster operations or performing an emergency function, or participating in an activity arising out of, or in the course of, disaster operations or performing an emergency function, including training.
- (4) In this section

***disaster operations*** see the *Disaster Management Act 2003*, section 15.

***emergency function*** means a function of the State Emergency Service or an emergency service unit under the *Disaster Management Act 2003*.

#### **14 Rural fire brigade member**

- (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 and Rescue 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.

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

- (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.

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<sup>4</sup> *Disaster Management Act 2003*, section 77 (General powers), 107 (General provision about powers) or 112 (General powers)

- (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.

## **16 Local government, statutory or industrial body member**

- (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.<sup>5</sup>

## **17 Honorary ambulance officers**

- (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.

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<sup>5</sup> A local government councillor can also be covered by a self-insurer's licence—see chapter 2 (Employer's obligations), part 4 (Employer's self-insurance), division 1A (Local government self-insurers).

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

- (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.

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

- (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.****20 Entitlements of persons mentioned in sdiv 2**

- (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 9, division 4, subdivision 3 and division 5, subdivision 1;<sup>6</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.

## **21 Persons performing community service or unpaid duties**

- (1) WorkCover may enter into a contract of insurance for this subdivision with the authority responsible for directing the performance of—
- (a) community service under a community service order or fine option order under the *Penalties and Sentences Act 1992*; or
  - (b) community service under a community service order under any other Act; or
  - (c) 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 chief executive (corrective services).<sup>7</sup>
- (2) The contract may cover a person performing the community service or the work-related activity or program.

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6 Chapter 3 (Compensation), part 9 (Weekly payment of compensation), division 4 (Entitlement for total incapacity), subdivision 3 (Persons entitled to compensation other than workers, students and eligible persons) and division 5 (Entitlement for partial incapacity), subdivision 1 (Persons entitled to compensation other than eligible persons)

7 For the definition of *chief executive (corrective services)*, see *Acts Interpretation Act 1954*.

- (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**

#### **22      Students**

- (1) WorkCover may enter into—
- (a) a contract of insurance for this subdivision with the authority through which is administered 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 a registered training organisation attended by a vocational placement student.
- (2) The contract may cover the student for injury arising out of, or in the course of, work experience or vocational 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—

***non-State school*** means a school that is provisionally accredited, or accredited, under the *Education (Accreditation of Non-State Schools) Act 2001*.

***registered training organisation*** means a registered training organisation under the *Vocational Education, Training and Employment Act 2000*.

***State student*** means a student defined in the *Education (Work Experience) Act 1996*, dictionary.

*vocational placement* see the *Vocational Education, Training and Employment Act 2000*, section 17.<sup>8</sup>

## **Subdivision 4      Eligible persons**

### **23      Meaning of *eligible person***

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.

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

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.

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

- (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—

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<sup>8</sup> *Vocational Education, Training and Employment Act 2000*, section 17, definition *vocational placement*—

*vocational placement*, for a student, is the placement under a vocational placement agreement of the student in a work environment with a placement person who agrees to deliver to the student the training stated in the training plan for the placement.

- (a) an entitlement to weekly payments of compensation under chapter 3, part 9, division 4, subdivision 4 and division 5, subdivision 2;<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**

### **26      Other persons**

- (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**

### **27      Meaning of *dependant***

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 earnings at the time of the worker's

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<sup>9</sup> Chapter 3 (Compensation), part 9 (Weekly payment of compensation), division 4 (Entitlement for total incapacity), subdivision 4 (Eligible persons) and division 5 (Entitlement for partial incapacity), subdivision 2 (Eligible persons)

death or, but for the worker's death, would have been so dependent.

## 28 Meaning of *member of the family*

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.

## 29 Who is the *spouse* of a deceased worker

(1) The *spouse*, of a deceased worker, includes the worker's de facto partner only if the worker and the de facto partner lived together as a couple on a genuine domestic basis within the meaning of the *Acts Interpretation Act 1954*, section 32DA<sup>10</sup>—

- (a) generally—
  - (i) for a continuous period of at least 2 years ending on the worker's death; or
  - (ii) for a shorter period ending on the deceased's death, if the circumstances of the de facto relationship of the deceased and the de facto partner evidenced a clear intention that the relationship be a long term, committed relationship; or
- (b) if the deceased left a dependant who is a child of the relationship—immediately before the worker's death.

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<sup>10</sup> *Acts Interpretation Act 1954*, section 32DA (Meaning of *de facto partner*)

(2) In this section—

*child of the relationship* means a child of the worker and the de facto partner, 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**

### **30            Who is an *employer***

(1) An *employer* is a person—

- (a) for whom an individual works under a contract of service; or
- (b) who enters into a contract with an individual in the circumstances mentioned in schedule 2, part 1.

(2) Also, schedule 3 sets out who is an *employer* in particular circumstances.

(3) To remove doubt, 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.

(4) In this section—

*contract* includes agreement and arrangement.

*person* includes—

- (a) a government entity; and
- (b) the legal personal representative of a deceased individual.

## **Division 6                    Injuries and impairment**

### **Subdivision 1            Event resulting in injury**

#### **31            Meaning of *event***

- (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**

#### **32            Meaning of *injury***

- (1) An *injury* is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.
- (2) However, employment need not be a significant contributing factor to the injury if section 34(2) or 35(2)<sup>11</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

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<sup>11</sup> Section 34 (Injury while at or after worker attends place of employment) or 35 (Other circumstances)

*Workers' Compensation and Rehabilitation Act 2003*

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- employment is a significant contributing factor to the disease;
- (b) an aggravation of the following, if the aggravation arises out of, or in the course of, employment and the employment is a significant contributing factor to the aggravation—
- (i) a personal injury;
  - (ii) a disease;
  - (iii) a medical condition if the condition becomes a personal injury or disease because of the aggravation;
- (c) loss of hearing resulting in industrial deafness if the employment is a significant contributing factor to causing the loss of hearing;
- (d) death from injury arising out of, or in the course of, employment if the employment is a significant contributing factor to causing the injury;
- (e) death from a disease mentioned in paragraph (a), if the employment is a significant contributing factor to the disease;
- (f) death from an aggravation mentioned in paragraph (b), if the employment is a significant contributing factor to the aggravation.
- (4) For subsection (3)(b), to remove any doubt, it is declared that an aggravation mentioned in the provision is an injury only to the extent of the effects of the aggravation.
- (5) Despite subsection (1) and (3), ***injury*** does not include 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;
  - (b) the worker's expectation or perception of reasonable management action being taken against the worker;
  - (c) action by the Authority or an insurer in connection with the worker's application for compensation.

*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.

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

#### **33      Application of sdiv 3**

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.

#### **34      Injury while at or after worker attends place of employment**

- (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 a significant contributing factor to the injury.

**35 Other circumstances**

- (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 a significant contributing factor to the injury.
- (3) For subsection (1), 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.

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

- (1) This section applies if a worker sustains an injury in an event that happens during a journey mentioned in section 35.
- (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 happens—
  - (a) while the worker is in control of a vehicle and contravenes—
    - (i) the *Transport Operations (Road Use Management) Act 1995*, section 79, or a corresponding law, if the contravention is the major significant factor causing the event; or
    - (ii) the Criminal Code, section 328A<sup>12</sup> or a corresponding law, if the contravention is the major significant factor causing the event; or
  - (b) 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) For subsection (2)(b)(i), in deciding whether there has been a substantial delay before the worker starts the journey, regard must be had to the following matters—

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12 Criminal Code, section 328A (Dangerous operation of a vehicle)

- (a) the reason for the delay;
  - (b) the actual or estimated period of time for the journey in relation to the actual or estimated period of time for the delay.
- (5) For subsection (2)(b)(ii), in deciding whether there has been a substantial interruption of, or deviation from the journey, regard must be had to the following matters—
- (a) the reason for the interruption or deviation;
  - (b) the actual or estimated period of time for the journey in relation to the actual or estimated period of time for the interruption or deviation;
  - (c) for a deviation—the distance travelled for the journey in relation to the distance travelled for the deviation.
- (6) In subsection (2)(a)(i) and (ii)—
- corresponding law*** means a law of another State that is substantially equivalent—
- (a) for subsection (2)(a)(i)—to the law mentioned in that provision; or
  - (b) for subsection (2)(a)(ii)—to the law mentioned in that provision.

## Subdivision 4 Impairment from injury

### 37 Meaning of *impairment*

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

### 38 Meaning of *permanent impairment*

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

**39 Meaning of *work related impairment***

- (1) A worker's *work related impairment* from injury is the worker's entitlement to lump sum compensation under section 180<sup>13</sup> expressed as a percentage of maximum statutory compensation calculated under section 183.<sup>14</sup>
- (2) To remove any 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.

**Division 7                      Rehabilitation****40 Meaning of *rehabilitation***

- (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 an 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.

**41 Meaning of *rehabilitation coordinator***

A *rehabilitation coordinator* is a person who—

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

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13 Section 180 (Calculation of lump sum compensation)

14 Section 183 (Calculation of WRI)

**42 Meaning of *suitable duties***

*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.

**43 Meaning of *workplace rehabilitation***

*Workplace rehabilitation* is a system of rehabilitation accredited by the Authority that is initiated or managed by an employer.

**44 Meaning of *workplace rehabilitation policy and procedures***

*Workplace rehabilitation policy and procedures* are written policy and procedures for workplace rehabilitation that are accredited by the Authority.

**45 Meaning of *accredited workplace***

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

## **Chapter 2      Employer's obligations**

### **Part 1            Employer's legal liability**

#### **46      Employer's legal liability**

- (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>15</sup> regulates access to damages.

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

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**

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

- (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.

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15 Chapter 5 (Access to 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 4;<sup>16</sup> or
  - (b) under a WorkCover policy.
- (4) WorkCover must not issue more than 1 policy for each employer.
- (5) However, if the employer is the State, WorkCover may issue 1 policy for each department of government.

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

- (1) WorkCover may exempt an employer from insuring under this Act if WorkCover is satisfied that the employer has similar insurance for the employer's workers under another law.
- (2) To exempt an employer, WorkCover must—
  - (a) be satisfied that the employer's workers will not be disadvantaged; and
  - (b) obtain advice from the Authority that the exemption will not adversely affect the workers' compensation scheme.
- (3) If an employer is aggrieved by WorkCover's decision, the employer may have the decision reviewed under chapter 13.<sup>17</sup>

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16 Part 4 (Employer's self-insurance)

17 Chapter 13 (Reviews and appeals)



the State with which the employer believed on reasonable grounds the worker's employment was connected under section 113.

(3) In subsection (2)—

*workers' compensation cover* means insurance or registration required under the law of a State in relation to liability for statutory workers' compensation under that law.

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

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.

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

- (1) An amount taken or received from a worker in contravention of section 52 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

#### 54 Setting of premium

- (1) WorkCover must set the premium payable under a policy.
- (2) The premium payable for the 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 and the Authority of the proposed specification of method or rate.
- (5) The specification is subject to any direction the Minister may make under section 481.<sup>19</sup>
- (6) An assessment of premium 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>19</sup> Section 481 (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 the employer is a corporation and an administrator is appointed under the Corporations Act to administer the corporation, the administrator must pay the premium for the period during which the corporation is under administration.
- (9) If an employer is aggrieved by WorkCover's decision, the employer may have the decision reviewed under chapter 13.<sup>20</sup>

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

- (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 may have regard to the claims experience of the business under the former employer.
- (3) In deciding whether to have regard to the claims experience of the business under a former employer, WorkCover may consider any relevant matter, including the following—
  - (a) if the new employer is an individual, whether the new employer is or was—
    - (i) a partner of the former employer; or
    - (ii) an officer or shareholder of the former employer; or
    - (iii) an officer or shareholder of a related body corporate of the former employer;
  - (b) if the new employer is a partnership, whether any of the partners of the new employer is or was—
    - (i) an individual who was the former employer; or

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- (ii) a partner of the former employer; or
  - (iii) an officer or shareholder of the former employer;  
or
  - (iv) an officer or shareholder of a related body corporate of the former employer;
- (c) if the new employer is a body corporate, whether the new employer is or was a related body corporate of the former employer;
- (d) if the new employer is a body corporate, whether any of the officers or shareholders of the new employer is or was—
- (i) an individual who was the former employer; or
  - (ii) a partner of the former employer; or
  - (iii) an officer or shareholder of the former employer;  
or
  - (iv) an officer or shareholder of a related body corporate of the former employer.
- (4) However, subsection (2) applies only if the predominant industry activity of the business remains the same as under the former employer.
- (5) In this section—  
*officer* has the meaning given by the Corporations Act.

**56 Reassessment of premium for policy**

- (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.



- (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 section 48 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 have the decision reviewed under chapter 13.<sup>23</sup>
  - (7) In this section—  
*worker* means a worker employed by the employer.

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

- (1) This section applies if WorkCover suspects on reasonable grounds that an employer has contravened section 48.<sup>24</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.

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23 Chapter 13 (Reviews and appeals)

24 Section 48 (Employer's obligation to insure)

- (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 54.<sup>25</sup>
- (5) As soon as practicable after a default assessment is made, 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 15 business 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 have the decision reviewed under chapter 13.<sup>26</sup>
- (10) If the employer does not object to the default assessment within 15 business days of receiving the premium notice, the amount of premium assessed and notified to the employer becomes payable immediately at the end of the 15 business days.
- (11) WorkCover may act under this section even if WorkCover knows the employer has contravened section 48.

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

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

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25 Section 54 (Setting of premium)

26 Chapter 13 (Reviews and appeals)

- (b) if compensation has or damages have been paid for an injury sustained by a worker employed by the employer, recovering the amount paid together with a penalty equal to 50% of the payment mentioned in section 57.<sup>27</sup>

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

For any period an employer contravenes section 48,<sup>28</sup> the employer is liable—

- (a) to a proceeding for an offence under section 51;<sup>29</sup> and
- (b) to a proceeding to recover an amount of premium or another amount under section 57 or 58<sup>30</sup> with or without a charge imposed by WorkCover, whether or not a proceeding is taken for an offence under section 51.

## **Division 3 Additional premiums**

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

- (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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27 Section 57 (Recovery of compensation and unpaid premium)

28 Section 48 (Employer's obligation to insure)

29 Section 51 (Offence of contravening general obligation to insure)

30 Section 57 (Recovery of compensation and unpaid premium) or 58 (Default assessment on reasonable suspicion)

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

- (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 551(4)<sup>31</sup> as a condition of the appeal to an industrial magistrate within 15 business 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.

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

- (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.

**64 WorkCover may waive or reduce additional premium**

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

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31 Section 551 (Appeal about amount of premium)

- (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 have the decision reviewed under chapter 13.<sup>32</sup>

## **Division 4                      Employer's liability for excess period**

### **65            Meaning of *excess period***

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>33</sup>

### **66            Employer's liability for excess period**

- (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.

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<sup>32</sup> Chapter 13 (Reviews and appeals)

<sup>33</sup> Chapter 3 (Compensation), part 7 (Payment of compensation)

The time from which compensation is payable is dealt with under section 141.

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- (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 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 10 business 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 580;<sup>34</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.

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34 Section 580 (Recovery of debts under this Act)

- (10) If the employer is dissatisfied with WorkCover's decision, the employer may have the decision reviewed under chapter 13.<sup>35</sup>
- (11) This section does not limit section 50.<sup>36</sup>
- (12) In this section—  
*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.

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

- (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.

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35 Chapter 13 (Reviews and appeals)

36 Section 50 (When an employer contravenes the general obligation to insure)

## **Part 4                      Employer's self-insurance**

### **Division 1                Preliminary**

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

- (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 start or happen before the issue of the licence and 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 the Authority.

### **Division 1A              Local government self-insurers**

#### **68A      Self-insurance for local governments**

- (1) A local government self-insurer may, under the self-insurer's licence, also cover councillors of a local government.
- (2) If councillors of a local government are covered under a local government self-insurer's licence, each councillor of the local government is covered under the licence.
- (3) A local government self-insurer must, when advising councillors of its decision to cover them, also advise the Authority of the decision.

#### **68B      Entitlements of local government councillors**

- (1) A councillor covered under a local government's self-insurer's licence is entitled under the licence to compensation from the

local government to which the councillor is elected or appointed for injury sustained by the councillor while—

- (a) attending meetings of the local government; or
  - (b) performing any other duty of office as a councillor.
- (2) The councillor has, subject to this section—
- (a) an entitlement to weekly payments of compensation under chapter 3, part 9, division 4, subdivision 3 and division 5, subdivision 1;<sup>37</sup> and
  - (b) for all other entitlements—the same entitlements to compensation as a worker.
- (3) The councillor is not covered for payment of damages for injury sustained by the councillor.
- (4) In the application of the definition *injury* to the councillor—
- (a) the activity mentioned in subsection (1)(a) or (b) is taken to be the councillor's employment; and
  - (b) the local government to which the councillor is elected or appointed is taken to be the councillor's employer.

### **68C Local government self-insurer's liability for injury to councillors**

If a local government self-insurer's licence covers councillors, the only liability the self-insurer has under the licence in relation to a councillor is the liability to pay the compensation to which a councillor is entitled under section 68B for the total of the accrued, continuing, future and contingent liabilities for all injuries sustained, during the period of the licence, by the councillor in the circumstances mentioned in section 68B.

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37 Chapter 3 (Compensation), part 9 (Weekly payment of compensation), division 4 (Entitlement for total incapacity), subdivision 3 (Persons entitled to compensation other than workers, students and eligible persons) and division 5 (Entitlement for partial incapacity), subdivision 1 (Persons entitled to compensation other than eligible persons)

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

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

- (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 employ workers in Queensland.
- (3) A related bodies corporate group employer may only apply for a licence if all related bodies corporate that employ workers in Queensland are included in the application.
- (4) The Authority may issue a licence to an employer only if the employer can satisfy the requirements stated in this part.

### **70        How the application is made**

The application must—

- (a) be made to the Authority 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.

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

- (1) The Authority 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 2000; and
  - (b) the net tangible assets of the employer are at least \$100M; and

- (c) the employer's occupational health and safety performance is satisfactory; and
  - (d) the licence will cover all workers, employed in Queensland, of the employer; and
  - (e) the employer has given the Authority the unconditional bank guarantee or cash deposit required under section 84;<sup>38</sup> and
  - (f) the employer has the reinsurance cover required under section 86;<sup>39</sup> and
  - (g) 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
  - (h) the employer is fit and proper to be a self-insurer.
- (2) For subsection (1)(c), the Authority must ask the chief executive of the department within which the *Workplace Health and Safety Act 1995* is administered to prepare an OHS report about the employer's occupational health and safety performance.

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

- (1) The Authority 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 2000; and

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38 Section 84 (Bank guarantee or cash deposit)

39 Section 86 (Reinsurance)

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- (c) the combined total net tangible assets of all members of the group is at least \$100M; and
  - (d) the group employer's occupational health and safety performance is satisfactory; and
  - (e) the licence will cover all workers, employed in Queensland, of the group employer; and
  - (f) the group employer has given the Authority the unconditional bank guarantee or cash deposit required under section 84;<sup>40</sup> and
  - (g) the group employer has the reinsurance cover required under section 86;<sup>41</sup> and
  - (h) 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
- (i) the group employer is fit and proper to be a self-insurer.
- (2) For subsection (1)(d), the Authority must ask the chief executive of the department within which the *Workplace Health and Safety Act 1995* is administered to prepare an OHS report about the group employer's occupational health and safety performance.

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40 Section 84 (Bank guarantee or cash deposit)

41 Section 86 (Reinsurance)

**73 Calculation of the number of fulltime workers**

- (1) For sections 71(1)(a) and 72(1)(b),<sup>42</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 the Authority; 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.

**73A Calculation of the number of fulltime workers for local government self-insurers**

To remove any doubt, it is declared that if a local government self-insurer's licence covers councillors, the number of ordinary time hours worked by a councillor is not to be taken into account for section 73(1).

**74 Workers employed in Queensland**

For sections 71 and 72, a worker is employed in Queensland if the worker would have an entitlement for an injury under section 113.<sup>43</sup>

**75 Whether applicant fit and proper**

- (1) This section applies when the Authority is deciding whether a single employer or group employer is fit and proper to be licensed or to have a licence renewed.
- (2) The Authority may consider any relevant matter and must consider the following matters—

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42 Sections 71 (Issue or renewal of licence to a single employer) and 72 (Issue or renewal of licence to a group employer)

43 Section 113 (Employment must be connected with State)

- (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 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 the Authority may require in the way the Authority 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 92 or 92A<sup>44</sup> reasonably.

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

- (1) The Authority 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 71 (other than paragraph (c)) or 72 (other than paragraph (d));<sup>45</sup> and
  - (b) is fit and proper under section 75;<sup>46</sup> and
  - (c) satisfies the conditions of the licence.
- (2) The Authority may engage the services of a person who, in the Authority's opinion, has appropriate qualifications and experience to carry out the audit.

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44 Section 92 (Powers of self-insurers) or 92A (Powers of local government self-insurers)

45 Section 71 (Issue or renewal of licence to a single employer) or 72 (Issue or renewal of licence to a group employer)

46 Section 75 (Whether applicant fit and proper)

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

- (1) The Authority must decide an application within 6 months of receiving it.
- (2) If the Authority refuses an application for the issue of a licence, the Authority must give the applicant a written notice stating—
  - (a) it has refused the application; and
  - (b) the reasons for the refusal; and
  - (c) the applicant may make a written submission to the Authority in further support of the application.
- (3) The applicant may make a submission within 20 business days after the notice of refusal is given.
- (4) The Authority must consider the submission within 60 business days of receiving it and decide whether to confirm or change the decision to refuse the application.
- (5) The Authority must advise the applicant of its decision under subsection (4) within 5 business days after the decision is made.
- (6) If the Authority does not change its decision, it must advise the applicant that the applicant may appeal against the refusal under chapter 13.<sup>47</sup>

**78 Duration of licence**

- (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.

**79 Renewal of licence**

- (1) A licence may be renewed by application to the Authority in the approved form.
- (2) The self-insurer must apply to the Authority at least 60 business days before the current licence period ends.

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47 Chapter 13 (Reviews and appeals)

- (3) If the self-insurer does not intend to renew the licence, the self-insurer must advise the Authority of that fact at least 60 business days before the current licence period ends.
- (4) In considering an application, the Authority must consider whether the self-insurer has—
  - (a) complied with this Act and the conditions of the licence; and
  - (b) acted reasonably in relation to the functions and powers under section 92 or 92A.<sup>48</sup>

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

- (1) This section applies if the Authority intends to refuse an application for the renewal of a licence.
- (2) Before refusing the application, the Authority 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 the Authority in further support of the application; and
  - (d) a period, of at least 30 business days, at the end of which the refusal is to take effect (the *review period*).
- (3) The applicant may make a submission within 15 business days after the notice is given.
- (4) If a submission is made, the Authority must—
  - (a) consider it; and
  - (b) decide whether to accept or refuse the application.
- (5) The Authority 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.

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<sup>48</sup> Section 92 (Powers of self-insurers) or 92A (Powers of local government self-insurers)

- (7) If the Authority refuses the application, it must advise the applicant that the applicant may appeal against the refusal under chapter 13.<sup>49</sup>
- (8) Despite section 78,<sup>50</sup> if the period stated on the licence expires before the end of the review period, the licence period is taken to be extended to the end of the review period.

## **81 Annual levy payable**

- (1) A self-insurer must pay a levy for each financial year or part of a financial year of a licence.
- (2) The levy may include—
  - (a) an amount that relates to the amount paid by the Authority on behalf of self-insurers under section 364(3);<sup>51</sup> and
  - (b) an amount that relates to other costs incurred by the Authority in performing its functions or exercising its powers under this Act.
 

*Example of other costs—*

an administrative cost
- (3) A regulation must prescribe the way the levy is calculated.
- (4) The levy is to be set at the rate specified by the Authority and approved by the Minister for each financial year.
- (5) The Authority must recommend the rate for each financial year to the Minister.
- (6) The Authority must consult with the Minister before giving the recommendation.
- (7) The Authority must publish the rate approved by the Minister in the industrial gazette.
- (8) The Authority must give a self-insurer written notice of the amount of the levy.

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49 Chapter 13 (Reviews and appeals)

50 Section 78 (Duration of licence)

51 Section 364 (Funds and accounts)

- (9) The self-insurer must pay the levy on or before the due date shown in the notice.
- (10) If a self-insurer is aggrieved by the Authority's decision about the amount of levy payable, the self-insurer may appeal against the decision under chapter 13.

## **82 Additional amount payable if levy not paid**

- (1) A self-insurer must pay the Authority an additional amount calculated as prescribed under a regulation if—
  - (a) the self-insurer is given written notice of the amount of the levy; and
  - (b) the self-insurer does not pay the amount of levy specified in the notice on or before the due date.
- (2) The Authority may recover the amount of levy and the additional amount payable to it by the self-insurer.

## **83 Conditions of licence**

- (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 the Authority—
    - (i) on the issue or renewal of a licence; or
    - (ii) at any time during the period of the licence.
- (2) The Authority, 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.

**84 Bank guarantee or cash deposit**

- (1) A self-insurer must lodge an unconditional bank guarantee or cash deposit with the Authority before the issue or renewal of a licence.
- (2) The guarantee or deposit must—
  - (a) be in favour of WorkCover; and
  - (b) be the greater of—
    - (i) \$5M; or
    - (ii) 150% of the self-insurer's estimated claims liability.
- (3) The estimated claims liability—
  - (a) must be assessed annually by an actuary approved by the Authority; and
  - (b) must be calculated in the way prescribed under a regulation.
- (4) The guarantee must remain in force or the Authority 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 102.<sup>52</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

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52 Section 102 (Assessing liability after cancellation)

- (ii) existing claims incurred for which a self-insurer is liable under section 68C or 87;<sup>53</sup> less
- (b) the total amount expected to be paid in the 12 months after the assessment.

## 85 Investing cash deposit

- (1) The Authority may invest a cash deposit in an authorised investment decided by the Authority.
- (2) Interest on the deposit must be paid to the self-insurer at the end of each financial year.
- (3) The Authority 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*.

## 86 Reinsurance

- (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 the Authority; and
  - (b) give the Authority 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

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53 Section 68C (Local government self-insurer's liability for injuries to councillors) or 87 (Self-insurer replaces WorkCover in liability for injury)

- (b) must not be cancelled or varied by the self-insurer, or the approved insurer, without the Authority's consent.
- (5) The approved insurer must endorse the contract to the effect that it can not be cancelled or varied without the Authority's consent.
- (6) In this section—  
*approved insurer* means an insurer approved by the Australian Prudential Regulation Authority under the *Insurance Act 1973* (Cwlth).

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

- (1) A self-insurer is liable, to the exclusion of WorkCover's or another self-insurer's liability—
  - (a) for compensation and damages for the total of the accrued, continuing, future and contingent liabilities for all injuries sustained by a worker employed by the self-insurer that arise from an event happening during the period of the self-insurer's licence (*residual liability*); and
  - (b) for the following (*outstanding liability*)—
    - (i) compensation for the total of the accrued, continuing, future and contingent liabilities for all injuries sustained by a worker that arise from an event happening or ending during the worker's employment with the self-insurer before the self-insurer became licensed as a self-insurer;
    - (ii) compensation for the total of the accrued, continuing, future and contingent liabilities for all injuries, other than injuries mentioned in paragraph (a), sustained by a worker arising from an event ending during the worker's employment with the self-insurer;
    - (iii) damages for the total of the accrued, continuing, future and contingent liabilities for all injuries, other than injuries mentioned in paragraph (a), sustained by a worker arising from an event starting or happening during the worker's

employment with the self-insurer before the self-insurer became licensed as a self-insurer.

- (2) WorkCover must pay a self-insurer an amount for the self-insurer's outstanding liability that is calculated under a regulation by an actuary.

## **88 Liability of group employers**

The members of a self-insurer that is 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.

## **Division 3 Change to membership of self-insurer**

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

- (1) If a self-insurer that is a group employer intends to change the membership of the group, the self-insurer must, before the change, apply to the Authority in writing for the change in the group membership on the licence.
- (2) The Authority must approve the application if it is satisfied that—
  - (a) the self-insurer, after the change, meets the requirements for a licence for a group employer; and
  - (b) satisfactory arrangements have been made in relation to the total liability of the member or members leaving.
- (3) However, subsection (4) applies if—
  - (a) the application is made by a self-insurer that is a related bodies corporate group employer; and
  - (b) within 2 months after the application, members of the self-insurer that are a group employer apply, under section 69 (the *section 69 application*), to be a self-insurer as a related bodies corporate group employer.

- (4) The Authority must approve the application if it is satisfied that the self-insurer, after the change, meets the requirements for a licence for a group employer and—
  - (a) the Authority has decided to approve the section 69 application; or
  - (b) if the Authority has decided not to approve the section 69 application, it is satisfied that satisfactory arrangements have been made in relation to the total liability of the applicants for the section 69 application.

## **90 Consequences of change in self-insurer's membership**

- (1) If a member leaves a self-insurer that is a group employer and becomes part of another self-insurer (the *other self-insurer*), the self-insurer must pay the other self-insurer an amount for the member's total liability.
- (2) For subsection (1), the other self-insurer is liable for compensation and damages for the member's total liability from the day the Authority approves the application from the other self-insurer for a change in its group membership.
- (3) If members leave a self-insurer that is a related bodies corporate group employer and become a self-insurer that is a related bodies corporate group employer (the *new self-insurer*), the self-insurer must pay the new self-insurer an amount for the members' total liability.
- (4) For subsection (3), the new self-insurer is liable for compensation and damages for its total liability from the day the Authority approves the new self-insurer's application to be a self-insurer.
- (5) If a member leaves a self-insurer that is a group employer and does not become part of another self-insurer, the self-insurer must pay WorkCover an amount for the member's total liability.
- (6) For subsection (5), WorkCover is liable for compensation and damages for the member's total liability from the day the Authority approves the application for a change in the group membership.

- (7) If an employer becomes part of a self-insurer, other than under subsection (1), WorkCover must pay the self-insurer an amount for the employer's total liability.
- (8) For subsection (7), the self-insurer is liable for compensation and damages for the employer's total liability from the day the Authority approves the application for a change in the group membership.
- (9) The total liability mentioned in subsection (1), (3), (5) or (7) must be—
  - (a) calculated in the way prescribed under a regulation by an actuary approved by the Authority; and
  - (b) paid within the time allowed under a regulation.

## **91 Continuation of membership in particular circumstances**

If there is a change in the membership of a self-insurer that is a group employer, it is declared that each member of the group immediately before the change is taken to continue as a member of the group for the purposes of the Act until the Authority approves an application for a change in the group membership on the licence under section 89.

## **Division 4 Powers, functions and obligations of self-insurers**

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

- (1) A self-insurer has, in relation to the self-insurer's workers—
  - (a) for an injury sustained during the operation of this Act—the functions and powers set out under the following provisions—

*Workers' Compensation and Rehabilitation Act 2003*

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- (i) chapter 3 (other than sections 110(5), 133, 136 and 170(3), and part 12);<sup>54</sup>
  - (ii) chapter 4 (other than part 4);<sup>55</sup>
  - (iii) chapter 5 (other than sections 280, 300 and 309);<sup>56</sup>
  - (iv) chapter 11, parts 3 and 4;<sup>57</sup> and
- (b) for an injury sustained during the operation of the *WorkCover Queensland Act 1996*—the functions and powers that WorkCover had under the following provisions of that Act—
- (i) chapter 3 (other than sections 136(5), 160, 163 and 188(3), and part 11);<sup>58</sup>
  - (ii) chapter 4 (other than sections 235(3)(a), 237(2) and 238, and part 4);<sup>59</sup>

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54 Chapter 3 (Compensation) (other than sections 110 (Compensation entitlement can not be relinquished. assigned or subject to execution), 133 (Employer's duty to report injury), 136 (Worker must notify return to work or engagement in a calling), 170 (Recovery of compensation overpaid) and part 12 (Automatic variation of compensation payable))

55 Chapter 4 (Injury management) (other than part 4 (Employer's obligation for rehabilitation))

56 Chapter 5 (Access to damages) (other than sections 280 (Employer to cooperate with WorkCover), 300 (Carriage of proceedings) and 309 (Exemplary damages))

57 Chapter 11 (Medical assessment tribunals), parts 3 (Jurisdiction of tribunals) and 4 (Proceedings for exercise of tribunals' jurisdiction)

58 *WorkCover Queensland Act 1996*, 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))

59 *WorkCover Queensland Act 1996*, chapter 4 (Injury management) (other than sections 235 (Cost of hospitalisation), 237 (Extent of liability for travelling expenses), 238 (WorkCover's responsibility for worker's rehabilitation) and part 4 (Employer's obligation for rehabilitation))

*Workers' Compensation and Rehabilitation Act 2003*

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- (iii) chapter 5 (other than sections 284, 306 and 319);<sup>60</sup>
  - (iv) chapter 7, parts 3 and 5;<sup>61</sup> and
  - (c) for an injury sustained during the operation of the *Workers' Compensation Act 1990*—the functions and powers that the Workers' Compensation Board of Queensland had under the following provisions of that Act—
    - (i) part 6;
    - (ii) part 7 (other than sections 102 and 105);
    - (iii) part 11 (other than sections 186 and 187); and
  - (d) for an injury sustained during the operation of the *Workers' Compensation Act 1916*—the functions and powers that the Workers' Compensation Board of Queensland had under the following provisions of that Act—
    - (i) section 9;
    - (ii) section 9A;
    - (iii) section 10;
    - (iv) section 11;
    - (v) section 13A;
    - (vi) section 14(2);
    - (vii) section 14B (other than subsections (2) to (9));
    - (viii) section 14D;
    - (ix) section 16;
    - (x) schedule, sections 4, 6, 23 and 25.
- (2) To apply the provisions mentioned in subsection (1)(b), (c) or (d), a reference to WorkCover or the Workers' Compensation

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60 *WorkCover Queensland Act 1996*, chapter 5 (Access to damages) (other than sections 284 (Employer to cooperate with WorkCover), 306 (Carriage of proceedings) and 319 (Exemplary damages))

61 *WorkCover Queensland Act 1996*, chapter 7 (Medical assessment tribunals), parts 3 (Jurisdiction of tribunals) and 5 (Proceedings for exercise of tribunals' jurisdiction)

Board of Queensland in the provisions is taken to be a reference to the self-insurer.

- (3) The functions and powers must not be performed or exercised by WorkCover in relation to the self-insurer's workers.
- (4) The functions and powers may be performed or exercised only by the self-insurer or a person employed under a contract of service with the self-insurer.
- (5) However, a self-insurer may engage a person who is not employed under a contract of service with the self-insurer to perform the self-insurer's functions or exercise the self-insurer's powers for not longer than 3 months if the Authority is satisfied that special circumstances exist.
- (6) Subsection (4) does not apply to a self-insurer that is a classification group employer.
- (7) The self-insurer must perform the functions and exercise the powers reasonably.
- (8) If a single employer or group employer stops being a self-insurer, the employer no longer has the functions and powers, except to the extent stated in section 100.<sup>62</sup>

### **92A Powers of local government self-insurers**

- (1) If a local government self-insurer's licence covers councillors, the self-insurer has, in relation to councillors, the functions and powers set out in section 92(1)(a)(i), (ii) and (iv).
- (2) Section 92(4) to (8) also applies to the self-insurer.

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

- (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

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<sup>62</sup> Section 100 (Certain functions and powers may be held by former self-insurer after cancellation)

- (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;
  - (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 the Authority's written consent.

### **93A Documents that must be kept by local government self-insurers**

If a local government self-insurer's licence covers councillors, section 93 applies to the self-insurer as if a reference in section 93(1)(a) to a worker were a reference to a councillor.

### **94 Documents must be given to Authority on request**

- (1) The Authority may, by written notice, ask a self-insurer to give the Authority the documents, copies of the documents or details from the documents, mentioned in section 93.
- (2) The notice must state the documents required and state a time within which the documents must be given to the Authority.
- (3) The self-insurer must comply with the notice, unless the self-insurer has a reasonable excuse.

## **Division 5 Cancellation of self-insurer's licence**

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

The Authority 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.

## **96 Procedure for cancellation**

- (1) If the Authority considers grounds exist to cancel a licence, the Authority 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 20 business days, why the licence should not be cancelled.
- (2) If, after considering all written representations made within the stated time, the Authority still considers that the licence should be cancelled, the Authority may cancel the licence.
- (3) The Authority must give the self-insurer written notice of the decision to cancel the self-insurer's licence within 8 business 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 13.<sup>63</sup>
- (5) The decision takes effect on the day stated in the notice.
- (6) The Authority must record particulars of the cancellation.

### **97 Self-insurer may ask for cancellation**

- (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 20 business days after the date the notice is given to the Authority.
- (3) Cancellation takes effect—
  - (a) from the day specified in the self-insurer's notice; or
  - (b) if another day is decided by the Authority—from the other day.

### **98 Premium payable after cancellation**

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.

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

Other than as provided by section 100, on cancellation of a licence—

- (a) the self-insurer's functions and powers under section 92 or 92A<sup>64</sup> end; and
- (b) for all applications for compensation held by the former self-insurer immediately before the cancellation—

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63 Chapter 13 (Reviews and appeals)

64 Section 92 (Powers of self-insurers) or 92A (Powers of local government self-insurers)

- (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 claimant or worker against, or by, the self-insurer as an insurer in relation to the claimant or worker; 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.

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

- (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 the Authority considers it appropriate, the Authority may, at the 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 92 or 92A.<sup>65</sup>
- (3) The Authority must give the former self-insurer written notice of the functions and powers continued.
- (4) The Authority may impose conditions on the functions and powers continued.
- (5) The former self-insurer has the functions and powers as stated in the notice.

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<sup>65</sup> Section 92 (Powers of self-insurers) or 92A (Powers of local government self-insurers)

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

- (1) This section applies if—
  - (a) a licence is cancelled; and
  - (b) after the cancellation, WorkCover—
    - (i) pays compensation or damages for which a self-insurer is liable under section 68C or 87;<sup>66</sup> or
    - (ii) incurs management costs in managing compensation applications or damages actions for the compensation or damages mentioned in subparagraph (i).
- (2) The compensation or damages payments and management costs—
  - (a) are a debt due to WorkCover by the former self-insurer; and
  - (b) are payable within 20 business 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 in writing.
- (4) If subsection (3) applies, WorkCover may, by written notice, ask the Authority to authorise the release of the amount of the debt to WorkCover from the unconditional bank guarantee or cash deposit.
- (5) The Authority must make a decision about the release of the amount within 20 business days after being given the request.
- (6) If the Authority refuses to release the amount, WorkCover may ask the Minister to give a direction under section 477.<sup>67</sup>
- (7) In this section—

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66 Section 68C (Local government self-insurer's liability for injury to councillors) or 87 (Self-insurer replaces WorkCover in liability for injury)

67 Section 477 (Additional power to direct Authority)

*management costs* means the reasonable costs of administering the former self-insurer's claims.

## **102 Assessing liability after cancellation**

- (1) This section applies if a licence is cancelled.
- (2) WorkCover must appoint an actuary to assess the former self-insurer's liability under sections 68C and 87(1).
- (3) The amount of liability is the amount calculated under a regulation.
- (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 20 business 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) The Authority must retain the deposit or bank guarantee until it is satisfied that the former self-insurer's liability under sections 68C and 87(1) 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.

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

- (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, ask the Authority to return the balance of the bank guarantee or cash deposit.
- (3) The Authority must, within 60 business days after being given the request—
  - (a) return the balance; or
  - (b) if the Authority 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 the Authority refuses to return the balance, the former self-insurer may appeal under chapter 13.<sup>68</sup>
- (5) In this section—  
*return* includes relinquish.

#### **104 Contingency account**

- (1) The Authority 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.

## Chapter 3 Compensation

### Part 1 Interpretation

#### 106 Meaning of *normal weekly earnings*

- (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.

#### 107 Meaning of *QOTE*

*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>69</sup>

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<sup>69</sup> The publication is currently entitled 'Average Weekly Earnings States and Australia'.

## Part 1A                      Entitlements to compensation under industrial instruments

### 107A Definitions for pt 1A

In this part—

*amount* includes rate.

*Industrial Act* means—

- (a) the *Industrial Relations Act 1999*; or
- (b) the *Workplace Relations Act 1996* (Cwlth).

### 107B Meaning of *amount payable* under an industrial instrument

- (1) An *amount payable*, under an industrial instrument, to a worker is—
  - (a) if an amount has been approved by the Authority's board under section 107E—the amount applying immediately before the worker became incapacitated; or
  - (b) if paragraph (a) does not apply—an amount equal to the weekly rate of wages (however described) under the industrial instrument that the worker was entitled to be paid in the worker's usual employment immediately before the worker became incapacitated.
- (2) If the industrial instrument provides for a change in the amount mentioned in subsection (1)(a) after the amount is approved, or there is a change in the rate of wages under the industrial instrument at any time after the worker became incapacitated, the amount payable to the worker changes accordingly.
- (3) If a worker is employed in an industry that is seasonal in nature, the amount payable to the worker must reflect the relevant season under the industrial instrument.

**107C Meaning of *usual employment***

- (1) A worker's *usual employment* is the worker's permanent position or classification of employment.
- (2) However, if a worker is temporarily appointed to another position or classification for a period, the worker's *usual employment* for the period of the temporary appointment is the temporary position or classification.

*Example of usual employment for subsection (2)—*

A worker is acting in higher duties for 3 months. The worker is incapacitated after 1 month. The worker would be entitled to the higher duties wage rate for the remaining 2 months. When that 2 months ends, the worker would be entitled to the wage rate of the worker's permanent position or classification.

**107D Entitlements to compensation under industrial instrument generally prohibited and void**

- (1) The industrial 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 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) Despite subsections (1) and (2), an industrial instrument, other than an award under an Industrial Act, may provide for an amount to be payable as a weekly rate of wages (however described) to a worker if the worker becomes incapacitated.
- (4) A provision of an industrial instrument, other than a provision mentioned in subsection (3) that contains an amount that has been approved by the Authority's board under section 107E, 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.

**107E Authority's board may approve amount payable under industrial instrument**

- (1) This section applies if an industrial instrument, other than an award under an Industrial Act, provides for an amount to be payable as a weekly rate of wages (however described) to a worker if the worker becomes incapacitated.
- (2) An employer may, by written notice, ask the Authority's board to approve the amount provided for in the industrial instrument for the purposes of section 107B.
- (3) The board can approve the amount provided for in the industrial instrument only if the amount was contained in the industrial instrument as approved or certified under an Industrial Act.
- (4) In deciding whether or not to approve the amount, the board must have regard to—
  - (a) if the industrial instrument is a workplace agreement or if an employee organisation is not a party to the industrial instrument—the entitlements of a worker to weekly payment of compensation under section 150(1)(a)(i);<sup>70</sup> or
  - (b) in all other cases—whether the amount is consistent with the compensation entitlements of a worker under previous industrial instruments agreed to by the parties to the industrial instrument.
- (5) The board must make a decision within 25 business days after it receives the request.
- (6) If the board refuses to approve the amount, the employer may appeal under chapter 13.<sup>71</sup>
- (7) In this section—

***employee organisation*** means an organisation of employees.

***workplace agreement*** means—

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70 Section 150 (Total incapacity—workers whose employment is governed by an industrial instrument)

71 Chapter 13 (Reviews and appeals)

- (a) a Queensland workplace agreement under the *Industrial Relations Act 1999*; or
- (b) an Australian workplace agreement under the *Workplace Relations Act 1996* (Cwlth).

## **Part 2 Compensation entitlements of workers generally**

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

#### **108 Compensation entitlement**

- (1) Compensation is payable under this Act for an injury sustained by a worker.
- (2) However, if a worker's injury is an aggravation mentioned in section 32(3)(b),<sup>72</sup> the worker is entitled to compensation for the injury only to the extent of the effects of the aggravation.

#### **109 Who must pay compensation**

- (1) If an employer is a self-insurer, the employer must pay the compensation.
- (2) Otherwise, WorkCover must pay the compensation.
- (3) An employer who is not a self-insurer can not pay a worker an amount, either in compensation or instead of compensation, that is payable by WorkCover under the Act for an injury sustained by the worker.
- (4) However, an employer who is not a self-insurer may pay a worker an amount, either in compensation or instead of compensation, that is payable by WorkCover under the Act for an injury sustained by the worker if—

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72 Section 32 (Meaning of *injury*)

- (a) the worker has made an application for compensation under section 132;<sup>73</sup> and
  - (b) the employer has complied with section 133A.<sup>74</sup>
- (5) Subsections (2) and (3) are subject to section 66.<sup>75</sup>

**109A When an employer contravenes obligation not to pay compensation payable by WorkCover**

- (1) This section applies if an employer contravenes section 109(3).
- (2) WorkCover may require the employer to pay WorkCover an amount by way of penalty equal to 50% of the employer's premium for the period of insurance.
- (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 in writing to WorkCover 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 aggrieved by WorkCover's decision, the employer may have the decision reviewed under chapter 13.<sup>76</sup>

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73 Section 132 (Applying for compensation)

74 Section 133A (Employer's duty to tell WorkCover if worker asks for, or employer makes, a payment)

75 Section 66 (Employer's liability for excess period)

76 Chapter 13 (Reviews and appeals)

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

- (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 170(2)(b).<sup>77</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.

**111 Public trustee may act for claimant**

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.

**112 Public trustee may receive payments for minors**

- (1) This section applies if a person entitled to payment of lump sum compensation or a redemption payment is under 18 years.
- (2) The insurer liable to pay the compensation may pay the amount of the lump sum compensation or redemption payment to the public trustee.

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<sup>77</sup> Section 170 (Recovery of compensation overpaid)

## **Division 2                      Entitlement according to jurisdiction**

### **113      Employment must be connected with State**

- (1) Compensation under this Act is only payable in relation to employment that is connected with this State.
- (2) The fact that a worker is outside this State when the injury is sustained does not prevent compensation being payable under this Act in relation to employment that is connected with this State.
- (3) A worker's employment is connected with—
  - (a) the State in which the worker usually works in that employment; or
  - (b) if no State or no 1 State is identified by paragraph (a), the State in which the worker is usually based for the purposes of that employment; or
  - (c) if no State or no 1 State is identified by paragraph (a) or (b), the State in which the employer's principal place of business in Australia is located.
- (4) In the case of a worker on a ship, if no State or no 1 State is identified by subsection (3), a worker's employment is, while on a ship, connected with the State in which the ship is registered or (if the ship is registered in more than 1 State) the State in which the ship most recently became registered.
- (5) If no State is identified by subsection (3) or (if applicable) (4), a worker's employment is connected with this State if—
  - (a) the worker is in this State when the injury is sustained; and
  - (b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.
- (6) In deciding whether a worker usually works in a State, regard must be had to the worker's work history with the employer and the intention of the worker and employer.

- (7) However, regard must not be had to any temporary arrangement under which the worker works in a State for a period of not longer than 6 months.
- (8) Compensation under this Act does not apply in relation to the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* (Cwlth) applies to the worker's employment.
- (9) In this section—  
*State*, in a geographical sense, includes a State's relevant adjacent area as described in schedule 4.

#### **114 Recognition of determination of State of connection in another State**

- (1) If a designated court makes a determination of the State with which a worker's employment is connected for the purposes of a corresponding law, that State is to be recognised for the purposes of section 113 as the State with which the worker's employment is connected.
- (2) Subsection (1) does not prevent or affect the operation of a determination of the State with which a worker's employment is connected for the purposes of section 113 made by a court of this State before the determination is made by a designated court.
- (3) Subsection (1) does not prevent any appeal relating to a determination of a designated court and, if the determination is altered on appeal, the altered determination is to be recognised under subsection (1).
- (4) In this section—

*corresponding law* means the provisions of the statutory workers' compensation scheme of another State that correspond with section 113.

*designated court* means—

- (a) the Supreme Court of a State in which a corresponding law is in force; or
- (b) a court, tribunal or other decision-making body of a State in which a corresponding law is in force that is

declared under a regulation to be a designated court for the purposes of this section.

## **Division 3 Overseas arrangements**

### **115 Overseas arrangements**

- (1) If—
  - (a) an injury is sustained by a worker in another 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 country;compensation is not payable for the injury.
- (3) For this section, a worker's principal place of employment is in a country if—
  - (a) the worker usually works in that country; or
  - (b) for a worker who usually works in more than 1 country—the employer's principal place of business is in that country.
- (4) In deciding whether a worker usually works in a 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 country for a period of not longer than 6 months.

## **Division 4                      Relationship of entitlement to other compensation**

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

- (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.

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

- (1) This section applies if, for an injury—
  - (a) an insurer has paid compensation 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) The insurer may recover the amount paid as compensation under this Act from the person to whom, or on whose account, it was paid.

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

- (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 the insurer 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.

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

- (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 10.<sup>78</sup>

## **Part 3 Compensation entitlements of particular workers**

### **Division 1 Workers on ships**

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

This division applies to an injury sustained by a worker who was employed on a ship when the injury was sustained.

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78 Section 10 (Meaning of *damages*)

**121 Payment on account of workers on ships**

- (1) Compensation is not payable for the death of the worker who leaves no dependants, if the owner or charterer of the ship on which the worker 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 worker's funeral.
- (2) Compensation is not payable for injury sustained by the worker for a period during which the owner or charterer of the ship on which the worker 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 worker.
- (3) Compensation payable for injury sustained by the worker must be paid in full, despite any limitation of liability prescribed by another law.
- (4) Subsection (3) applies subject to section 116.<sup>79</sup>

**Division 2 Miners****122 Application of div 2**

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.

**123 Entitlements of miners**

- (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

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<sup>79</sup> Section 116 (Entitlement ends if compensated under corresponding laws)

- (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.
- (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**

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

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

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

- (1) The worker is entitled to compensation for the industrial deafness under part 10 and sections 211(1)(a) and 219(1)<sup>80</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

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<sup>80</sup> Part 10 (Entitlement to compensation for permanent impairment) and sections 211 (Extent of liability for medical treatment) and 219 (Extent of liability for travelling expenses)

- (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 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 a significant contributing factor to 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) The insurer must ask that the worker's degree of permanent impairment resulting from the diminution of hearing be assessed under section 179.<sup>81</sup>

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

- (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 the insurer.
- (3) The worker is entitled to further lump sum compensation if the worker has sustained a further diminution of hearing of more than 1%.
- (4) The further application must be decided under section 125.

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81 Section 179 (Assessment of permanent impairment)

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

### **127      Application of div 4**

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

### **128      Entitlements of worker who sustains prescribed disfigurement**

- (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**

### **129      Self-inflicted injuries**

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

### **130      Injuries caused by misconduct**

- (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) the insurer 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 the insurer 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) the insurer 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**

### **131 Time for applying**

- (1) An application for compensation is valid and enforceable only if the application is lodged by the claimant within 6 months after the entitlement to compensation arises.
- (2) If an application is lodged more than 20 business days after the entitlement to compensation arises, the extent of the insurer's liability to pay compensation is limited to a period starting no earlier than 20 business days before the day on which the valid application is lodged.
- (3) Subsection (2) does not apply if death is, or results from, the injury.

- (4) An insurer must 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) An insurer may waive subsection (1) or (2) for a particular application if the insurer is satisfied that a claimant's failure to lodge the application was due to—
  - (a) mistake; or
  - (b) the claimant's absence from the State; or
  - (c) a reasonable cause.

### **132 Applying for compensation**

- (1) An application for compensation must be made in the approved form by the claimant.
- (2) The application must be lodged with the insurer.
- (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.

### **133 Employer's duty to report injury**

- (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 8 business 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.

### **133A Employer's duty to tell WorkCover if worker asks for, or employer makes, a payment**

- (1) An employer, other than a self-insurer, must give WorkCover written notice in the approved form if—
- (a) a worker asks the employer for compensation for an injury sustained by the worker; or
  - (b) the employer pays the worker an amount, either in compensation or instead of compensation, that is payable by the employer or WorkCover under the Act for an injury sustained by the worker.
- (2) If the employer fails to comply with subsection (1) within 8 business days after the request or payment is made, the employer commits an offence, unless the employer has a reasonable excuse.

Maximum penalty—50 penalty units.

### **134 Decision about application for compensation**

- (1) A claimant's application for compensation must be allowed or rejected in the first instance by the insurer.
- (2) The insurer must make a decision on the application—
- (a) for a psychiatric or psychological injury, or for the death of a worker—within 60 business days after the application is made; or
  - (b) for another injury—within 40 business days after the application is made.

- (3) The insurer must notify the claimant of its decision on the application.
- (4) If the insurer rejects the application, the insurer must also, when giving the claimant notice of its decision, give the claimant written reasons for the decision and the information prescribed under a regulation.
- (5) Subsection (6) applies if the insurer does not make a decision on the application within the time stated in subsection (2).
- (6) The insurer must, within 5 business days after the end of the time stated in subsection (2), notify the claimant of its reasons for not making the decision and that the claimant may have the claimant's application reviewed under chapter 13.

### **135 Examination by registered person**

- (1) An insurer 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, without reasonable excuse, to attend for the examination at the time and place advised by the insurer; 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.

### **136 Worker must notify return to work or engagement in a calling**

- (1) A worker receiving compensation for an injury must give written notice within 10 business 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 to the insurer.
- (3) The notice may be a certificate in the approved form of a doctor stating the worker's capacity for work.

### **137 Suspension of compensation during term of imprisonment**

An insurer may suspend compensation payable to a worker if the worker is serving a term of imprisonment.

### **138 Compensation not payable during suspension**

If an entitlement to compensation is suspended under this chapter or chapter 4, 11 or 13,<sup>82</sup> no compensation is payable for the period of suspension.

## **Part 6 Maximum statutory compensation**

### **139 Application of pt 6**

This part applies to 1 injury or multiple injuries sustained by a worker in any 1 event.

### **140 Maximum entitlement**

- (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 9<sup>83</sup>—\$174 625;

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82 Chapter 4 (Injury management), 11 (Medical assessment tribunals) or 13 (Reviews and appeals)

83 Part 9 (Weekly payment of compensation)

- (b) for lump sum compensation payable under section 180<sup>84</sup>—\$174 625.
- (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 10, division 4.<sup>85</sup>
- (4) In subsection (1)—  
*compensation* does not include compensation provided for under part 8.

## **Part 7                      Payment of compensation**

### **141      Time from which compensation payable**

- (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

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84 Section 180 (Calculation of lump sum compensation)

85 Part 10 (Entitlement to compensation for permanent impairment), division 4 (Additional lump sum compensation)

the day the worker stops work because of the injury—the day the doctor or dentist assesses the injury.

- (3) Subsections (1) and (2) are not intended to limit any availability for compensation for the day of injury provided for under part 8.
- (4) Subsection (2) is subject to section 131(2).<sup>86</sup>

## **Part 8 Compensation for day of injury**

### **142 Application of pt 8**

This part applies only if, under an industrial instrument, a worker is not entitled to be paid for the whole of the day on which the worker stops work because of an injury.

### **143 Definition for pt 8**

In this part—

*compensation under this part* means an amount equal to the amount the worker would have received from the worker's employment for the day on which the worker stops work because of an injury if the worker were at work and the injury had not been sustained.

### **144 When employer must pay worker for day of injury**

- (1) For the day the worker stops work because of the injury, the worker is entitled to compensation under this part for the injury.
- (2) Despite section 109,<sup>87</sup> the employer must pay the compensation.

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<sup>86</sup> Section 131 (Time for applying)

<sup>87</sup> Section 109 (Who must pay compensation)

- (3) The amount of compensation under this part that is payable is in addition to any other compensation payable to the worker under this Act.
- (4) The day for which compensation under this part is payable is not to be included in the excess period under section 66.<sup>88</sup>

## **Part 8A                      When entitlement to    compensation stops**

### **144A    When weekly payments of compensation stop**

- (1) The entitlement of a worker to weekly payments of compensation under part 9 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>89</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.

### **144B    When payment of medical treatment, hospitalisation and expenses stops**

The entitlement of a worker to the payment of medical treatment, hospitalisation and expenses under chapter 4<sup>90</sup> for an injury stops when—

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88    Section 66 (Employer's liability for excess period)

89    Part 6 (Maximum statutory compensation)

90    Chapter 4 (Injury management)



- (a) ascertained; or
- (b) reviewed under chapter 13.<sup>92</sup>

### **Division 3                      Adjustment of entitlements under pt 9**

#### **147      Worker can not receive more than if injury had not been sustained**

- (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.

#### **148      Regard to other benefits for workers**

Despite divisions 4 and 5,<sup>93</sup> in assessing the amount of weekly payment of compensation, the insurer—

- (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.

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<sup>92</sup> Chapter 13 (Reviews and appeals)

<sup>93</sup> Divisions 4 (Entitlement for total incapacity) and 5 (Entitlement for partial incapacity)

## **Division 4            Entitlement for total incapacity**

### **Subdivision 1        Application of div 4**

#### **149    Entitlement to weekly payments**

Compensation payable to a totally incapacitated worker or person to whom subdivision 3 or 4<sup>94</sup> applies is a weekly payment under this division.

### **Subdivision 2        Workers**

#### **150    Total incapacity—workers whose employment is governed by an industrial instrument**

- (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 39 weeks of the incapacity, the greater of the following—
    - (i) 75% of the worker's NWE;
    - (ii) 70% of QOTE; and
  - (c) from the end of the first 39 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;

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94 Subdivision 3 (Persons entitled to compensation other than workers, students and eligible persons) or 4 (Eligible persons)

- (ii) 60% of QOTE; and
  - (d) 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 the insurer 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), (c) or (d) must not be more than the amount to which the worker would be entitled under subsection (1)(a).

**151 Total incapacity—workers whose employment is not governed by industrial instrument**

- (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 39 weeks of the incapacity, the greater of the following—
    - (i) 75% of the worker's NWE;
    - (ii) 65% of QOTE; and
  - (c) from the end of the first 39 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

- (d) 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 the insurer 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.

### **152 Total incapacity—certain contract workers**

- (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 39 weeks of the incapacity, the greater of the following—
    - (i) 75% of the worker's NWE;
    - (ii) 65% of QOTE; and
  - (c) from the end of the first 39 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
  - (d) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—

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- (i) if a worker demonstrates to the insurer 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), (c) or (d) 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 a public service officer; 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.

**153 Total incapacity—casual or part-time workers**

- (1) The compensation payable to a totally incapacitated worker engaged in casual or part-time employment is a payment under section 150, 151 or 152.<sup>95</sup>
- (2) However, the payment must not be more than the worker's NWE.

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<sup>95</sup> Section 150 (Total incapacity—workers whose employment is governed by an industrial instrument), 151 (Total incapacity—workers whose employment is not governed by industrial instrument) or 152 (Total incapacity—certain contract workers)

**154 Total incapacity—workers receiving certain benefits under Commonwealth law**

- (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.

**155 Total incapacity—workers with more than 1 employer**

- (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) The insurer 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 the insurer makes a decision under subsection (2), the entitlement to compensation is calculated under the industrial instrument decided by the insurer.

**Subdivision 3 Persons entitled to compensation other than workers, students and eligible persons****156 Application of sdiv 3**

This subdivision applies to a person entitled to compensation, other than a worker, a student or an eligible person.

**157 Total incapacity**

- (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 150, 151, 152, 153, 154 or 155.<sup>96</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 39 weeks of the incapacity, the greater of the following—
    - (i) 65% of QOTE;
    - (ii) the reasonable cost of labour paid to replace the person; and
  - (c) from the end of the first 39 weeks of the incapacity until the end of the first 2 years of the incapacity, the lesser of the following—
    - (i) 60% of QOTE;

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96 Section 150 (Total incapacity—workers whose employment is governed by an industrial instrument), 151 (Total incapacity—workers whose employment is not governed by industrial instrument), 152 (Total incapacity—certain contract workers), 153 (Total incapacity—casual or part-time workers), 154 (Total incapacity—workers receiving certain benefits under Commonwealth law) or 155 (Total incapacity—workers with more than 1 employer)

- (ii) the reasonable cost of labour paid to replace the person; and
- (d) 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      Eligible persons**

### **158      Application of sdiv 4**

This subdivision applies to an eligible person.

### **159      Total incapacity**

- (1) The compensation payable to a totally incapacitated person is, for each week—
  - (a) for the first 26 weeks of the incapacity—
    - (i) the lesser of the following—
      - (A) 85% of the amount stated in the person's contract of insurance;
      - (B) the person's actual earnings when the injury was sustained; or

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- (ii) if the person replaces the person's labour—the payment under subsection (2); and
  - (b) from the end of the first 26 weeks of the incapacity until the end of the first 39 weeks of the incapacity, the greater of the following—
    - (i) the greater of the following—
      - (A) 75% of the amount stated in the person's contract of insurance;
      - (B) 65% of QOTE;
    - (ii) if the person replaces the person's labour—the payment under subsection (2); and
  - (c) from the end of the first 39 weeks of the incapacity until the end of the first 2 years of the incapacity—
    - (i) the greater of the following—
      - (A) 65% of the amount stated in the person's contract of insurance;
      - (B) 60% of QOTE; or
    - (ii) if the person replaces the person's labour—the payment under subsection (2); and
  - (d) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
    - (i) if the 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 amount stated in the person's contract of insurance;
      - (B) 60% of QOTE; or
    - (ii) otherwise—an amount equal to the single pension rate.
- (2) For subsection (1)(a)(ii), (b)(ii) and (c)(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 85% of the amount stated in the

person's contract of insurance—the reasonable cost of labour paid to replace the person.

- (3) However, the amount paid under subsection (1)(b), (c) or (d) must not be more than the amount to which the person would be entitled under subsection (1)(a).

## **Subdivision 5      Reference to tribunal**

### **160      Total incapacity—reference about impairment to medical assessment tribunal**

- (1) This section applies if—
  - (a) for section 150(1)(d)(i), 151(1)(d)(i), 152(1)(d)(i), 157(5)(d)(i) or 159(1)(d)(i), an insurer 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 150(1)(d)(ii), 151(1)(d)(ii), 152(1)(d)(ii), 157(5)(d)(ii) or 159(1)(d)(ii), an insurer 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) The insurer 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****Subdivision 1                Persons entitled to compensation  
other than eligible persons****161      Application of sdiv 1**

This subdivision applies to a person entitled to compensation, other than an eligible person.

**162      Definitions for sdiv 1**

In this subdivision—

**LE** means the worker's or person'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 or person's normal weekly earnings at the time of injury; and
- (b) the amount—
  - (i) of the worker's or person's weekly earnings from employment during the period of partial incapacity; or
  - (ii) if the worker or person is not in employment during the period of partial incapacity—that could be reasonably expected to be derived by the worker or person during the period, having regard to the worker's or person'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 or person resulted from the injury.

**NWE** see section 106.<sup>97</sup>

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97 Section 106 (Meaning of *normal weekly earnings*)

*PC* means the compensation expressed as a weekly rate, payable for the injury on account of the partial incapacity.

### **163 Partial incapacity**

- (1) Compensation payable to a partially incapacitated worker or person is a weekly payment under this section.
- (2) The weekly payment is an amount calculated under the following formula—

$$PC = \frac{MC \times LE}{NWE}$$

- (3) However, the amount must not be more than MC.

## **Subdivision 2 Eligible persons**

### **164 Application of sdiv 2**

This subdivision applies to an eligible person.

### **165 Definitions for sdiv 2**

In this subdivision—

*AP* means the amount payable under section 159(1)(a).<sup>98</sup>

*LE* means the person's loss of earnings, expressed as a weekly rate, because of the injury.

*loss of earnings* means the difference between—

- (a) the amount payable under section 159(1)(a); and
- (b) the amount of the person's weekly earnings from employment during the period of partial incapacity.

*MC* means the maximum compensation expressed as a weekly rate, that would have been payable under this part had total incapacity of the person resulted from the injury.

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98 Section 159 (Total incapacity)

*PC* means the compensation expressed as a weekly rate, payable for the injury on account of the partial incapacity.

### **166 Partial incapacity**

- (1) Compensation payable to a partially incapacitated person is a weekly payment under this section.
- (2) The weekly payment is an amount calculated under the following formula—

$$PC = \frac{MC \times LE}{AP}$$

- (3) However, the amount must not be more than MC.

## **Subdivision 3 Requiring information**

### **167 Insurer may require information from partially incapacitated worker or person**

- (1) An insurer may, by written notice given to a partially incapacitated worker or person, require the worker or person to give the insurer information about, and particulars of, the worker's or person's employment and earnings during a period of partial incapacity.
- (2) If a worker or person fails to give the insurer the required information or particulars within 10 business days after receiving the notice, the insurer may suspend the worker's or person's entitlement to weekly payments of compensation until the worker or person fully complies with the request.

## **Division 6 Review of compensation**

### **168 Review of compensation and associated payments**

- (1) An insurer may, from time to time, review a person's entitlement to compensation.
- (2) On a review, the insurer may terminate, suspend, decrease or increase an entitlement.

**169 Review of weekly payments—worker under 18**

- (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.

**170 Recovery of compensation overpaid**

- (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) The insurer 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**

### **171      Redemption—worker receiving weekly payments for at least 2 years**

- (1) This section applies if—
  - (a) a worker has been receiving weekly payments of compensation for at least 2 years; and
  - (b) the insurer receives a report from a doctor that the worker's injury is not stable and stationary for the purposes of assessing permanent impairment.
- (2) The insurer's liability to make weekly payments of compensation may be discharged by a redemption payment to the worker in an amount agreed between the insurer and the worker.

### **172      Redemption—worker moves interstate**

- (1) This section applies if—
  - (a) a worker receiving weekly payments of compensation moves interstate permanently; and
  - (b) the insurer receives a report from a doctor that the worker's injury is not stable and stationary for the purposes of assessing permanent impairment.
- (2) The insurer's liability to make weekly payments of compensation may be discharged by a redemption payment to the worker in an amount agreed between the insurer and the worker.

### **173      Redemption—worker moves abroad**

- (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 the insurer 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 the insurer and the worker.

#### **174 Calculation of redemption payment**

- (1) The amount of a redemption payment that the insurer 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.

#### **175 Review of redemption payment**

- (1) If a worker asks, a redemption payment may be reviewed by the insurer within 12 months after the payment is made.
- (2) On a review, the insurer may decrease or, subject to section 174, increase the payment.

#### **176 No compensation after redemption payment made**

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.

## **Part 10                      Entitlement to compensation for permanent impairment**

### **Division 1                      General statement**

#### **178      Entitlement to assessment of permanent impairment and lump sum compensation**

- (1) Under this part, an insurer 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**

#### **179      Assessment of permanent impairment**

- (1) An insurer may decide, or a worker may ask the insurer, to have the worker's injury assessed to decide if the worker's injury has resulted in a degree of permanent impairment.
- (2) The insurer 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 the insurer 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.

### **180 Calculation of lump sum compensation**

- (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>99</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 the insurer makes an offer of lump sum compensation to the worker under section 187.<sup>100</sup>

### **181 Regard to previous entitlement to lump sum compensation for injury other than industrial deafness**

- (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 180 for the later injury must be reduced by the worker's previous entitlement.

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<sup>99</sup> For the maximum amount of lump sum compensation payable under section 198, see part 6 (Maximum statutory compensation).

<sup>100</sup> Section 187 (Offer of lump sum compensation)

*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.

**182 Regard to previous assessment for industrial deafness**

- (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 180 for the further industrial deafness, the assessed percentage loss of hearing must be reduced by the previously assessed percentage loss of hearing.

**183 Calculation of WRI**

- (1) If the worker is assessed as having a degree of permanent impairment, the insurer must calculate the worker's WRI.
- (2) The WRI must be calculated under a regulation having regard to—
  - (a) the worker's entitlement to lump sum compensation calculated under section 180; 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.
- (3) However, in relation to an event, 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 injury.

## **Division 3                      Notification of assessment of permanent impairment**

### **184      Application of div 3**

This division applies if an assessment of permanent impairment of a worker's injury has been made under section 179.<sup>101</sup>

### **185      Insurer to give notice of assessment of permanent impairment**

- (1) The insurer must, within 10 business 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, the insurer 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; and
    - (iii) the amount of lump sum compensation under section 180<sup>102</sup> to which the worker is entitled for the injury; and
  - (c) if the worker's WRI is 50% or more—the worker's entitlement to additional lump sum compensation under section 192;<sup>103</sup> and

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101 Section 179 (Assessment of permanent impairment)

102 Section 180 (Calculation of lump sum compensation)

103 Section 192 (Additional lump sum compensation for certain workers)

- (d) if the worker's WRI is 15% or more—the worker's entitlement to additional lump sum compensation (if any) for gratuitous care under section 193.<sup>104</sup>
- (4) If the notice states the worker has not sustained a degree of permanent impairment, the insurer must also give the worker a copy of sections 10, 237(3), 239, 240 and 316.<sup>105</sup>

### **186 Worker's disagreement with assessment of permanent impairment**

- (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 the insurer within 20 business 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.
- (4) The insurer must refer the question of degree of permanent impairment to a tribunal for decision.

### **187 Offer of lump sum compensation**

If the worker has an entitlement to lump sum compensation under section 180,<sup>106</sup> the insurer must include, in the notice of assessment, an offer of lump sum compensation to the worker (the *offer*).

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104 Section 193 (Additional lump sum compensation for gratuitous care)

105 Sections 10 (Meaning of *damages*), 237 (General limitation on persons entitled to seek damages), 239 (Worker who is required to make election to seek damages), 240 (Consequences, to costs, of seeking damages) and 316 (Principles about orders as to costs)

106 Section 180 (Calculation of lump sum compensation)

**188 Worker's decision about lump sum compensation—WRI 20% or more**

- (1) This section applies if—
  - (a) the worker has—
    - (i) a psychiatric or psychological injury from an event that results in a WRI of the worker of 20% or more; or
    - (ii) another injury from an event that results in a WRI of the worker of 20% or more; and
  - (b) the worker has an entitlement to lump sum compensation.
- (2) The worker may accept or defer a decision about the offer by giving the insurer 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 the insurer that—
  - (a) the offer is accepted; or
  - (b) the worker wants to defer the decision.
- (4) If the worker accepts the offer, the insurer must pay the worker the amount of lump sum compensation.

**189 Worker's decision about lump sum compensation—WRI less than 20% or no WRI**

- (1) This section applies if—
  - (a) the worker—
    - (i) has—
      - (A) a psychiatric or psychological injury from an event that results in a WRI of the worker of less than 20%; or
      - (B) another injury from an event that results in a WRI of the worker of less than 20%; and
    - (ii) has an entitlement to lump sum compensation; or
  - (b) the worker has an injury that does not result in any WRI of the worker.

- (2) The insurer must also, when giving the notice of assessment—
  - (a) give the worker a copy of sections 10, 239, 240 and 316;<sup>107</sup> and
  - (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 the insurer 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 the insurer that the offer is accepted or rejected.
- (5) If the worker accepts the offer, the insurer must pay the worker the amount of lump sum compensation.
- (6) If the worker fails to give the insurer 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>108</sup>

### **190 No further compensation after fixed time**

- (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—

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107 Sections 10 (Meaning of *damages*), 239 (Worker who is required to make election to seek damages), 240 (Consequences, to costs, of seeking damages) and 316 (Principles about orders as to costs)

108 Chapter 5 (Access to damages)

- (a) the worker notifies the insurer of the worker's decision about the offer within the decision period;
  - (b) 20 business 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 188(4) or 189(5);<sup>109</sup> or
  - (b) additional compensation, if any, under division 4.

## **Division 4                      Additional lump sum compensation**

### **191      Application of div 4**

This division applies only if a worker's WRI has been calculated.

### **192      Additional lump sum compensation for certain workers**

- (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 \$174 625 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.

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<sup>109</sup> Section 188 (Worker's decision about lump sum compensation—WRI 20% or more) or 189 (Worker's decision about lump sum compensation—WRI less than 20% or no WRI)

**193 Additional lump sum compensation for gratuitous care**

- (1) This section applies if a worker sustains an injury that results in—
  - (a) a WRI of 15% 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) The insurer 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 the insurer 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) The insurer must decide the amount of the worker's entitlement to additional compensation of up to \$216 635, payable according to a graduated scale prescribed under a regulation, having regard to—



- (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.

### **197 Total and partial dependants**

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.

### **198 Dependant's compensation payable to public trustee**

An insurer may pay an amount of compensation payable to the worker's dependant to the public trustee for the dependant's benefit.

### **199 Medical and funeral expenses must be paid by insurer**

An insurer must pay the reasonable expenses—

- (a) of the medical treatment of, or attendance on, the worker; and
- (b) the worker's funeral.

### **200 Total dependency**

- (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—\$300 000; 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—\$10 925; 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 203.<sup>110</sup>

## **201 Partial dependency**

- (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 the insurer 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)—

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110 Section 203 (Reduction of amount payable on death)

- (a) is subject to any reduction made under section 203; but
- (b) must not be less than 15% of the amount payable under section 200(2)(a); and
- (c) must not be more than the amount payable under section 200(2)(a).

## **202 Workers under 21**

- (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 \$16 480.
- (3) If more than 1 parent is entitled to compensation—
  - (a) the total amount of compensation payable to the parents is \$16 480; and
  - (b) the amount payable to each parent is to be decided by the insurer.

## **203 Reduction of amount payable on death**

- (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 200(2)(a) or 201(2)(a)<sup>111</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 200(2)(a).

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111 Section 200 (Total dependency) or 201 (Partial dependency)

**204 Reduced compensation if dependant dies before payment made**

- (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.
- (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 12                      Automatic variation of    compensation payable**

### **205      Variation of payments for injuries**

- (1) If QOTE varies, each payment or amount under part 6, 10 or 11<sup>112</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) The Authority must notify a variation under this section by industrial gazette notice.

### **206      Construing entitlements in light of variation**

- (1) This section applies if an amount is varied under section 205.
- (2) An entitlement to an amount mentioned in section 205 is to be construed as an entitlement to the payment or amount as varied for the time being under section 205.
- (3) A reference in part 6, 10 or 11 to the amount is to be construed as a reference to the amount as varied for the time being under section 205.

### **207      Application of part to existing benefits**

- (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 206(3) of this Act to part 6, 10 or 11 is to be construed as a reference to the corresponding provision of the former Act under which an entitlement arose.

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112 Part 6 (Maximum statutory compensation), 10 (Entitlement to compensation for permanent impairment) or 11 (Compensation on worker's death)

## **Chapter 4      Injury management**

### **Part 1              Application**

#### **208      Application and object of ch 4**

- (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**

#### **209      Application of pt 2**

This part applies if medical treatment or hospitalisation of a worker is required for the management of an injury sustained by the worker.

#### **210      Insurer's liability for medical treatment, hospitalisation and expenses**

- (1) The insurer must pay the cost of the medical treatment or hospitalisation that the insurer considers reasonable, having regard to the worker's injury.
- (2) Under the table of costs, the Authority may impose conditions on the provision of the medical treatment.

## **Division 2                      Medical treatment costs**

### **211      Extent of liability for medical treatment**

- (1) The insurer 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 the insurer 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 hospital—the cost that the insurer accepts as reasonable.
- (2) The insurer'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.

### **212      Extent of liability for prosthetic expenses**

- (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) The insurer must pay expenses necessarily incurred by the worker that the insurer 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.

**213 Accounts for medical treatment, certificate in approved form**

- (1) This section applies if an insurer is liable for the costs of medical treatment.
- (2) Accounts for medical treatment must be sent to the insurer 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.

**214 Review of costs payable**

- (1) This section applies if a person who provides medical treatment considers that the cost that an insurer accepts as reasonable, in a particular case, is inadequate because of special circumstances.
- (2) The person may apply to the insurer 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) The insurer may approve the increase if, after considering the application, the insurer accepts that the increase is justified.

## **Division 3            Hospitalisation**

### **Subdivision 1        Interpretation**

#### **215    Definitions for div 3**

In this division—

*contracted hospital* means a hospital that provides public health services to a patient under a contractual arrangement with the State, but does not include—

- (a) a public sector hospital under the *Health Services Act 1991*; or
- (b) a Mater Misericordiae Public Hospital.

*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.

*hospital* includes a day hospital.

*private hospital* means a hospital to which a worker is admitted as a private patient.

*private patient* means a worker who is a patient of a private doctor at a hospital that is not a contracted hospital.

*public hospital* means a hospital to which a worker is admitted as a public patient.

*public patient* means a patient who is not a private patient.

### **Subdivision 2        Private hospitalisation**

#### **216    Extent of liability for hospitalisation at private hospital**

- (1) An insurer's liability for the cost of hospitalisation of a worker at a private hospital 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 the insurer under arrangements entered into between the insurer 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 the insurer under arrangements entered into between the insurer and the worker or someone for the worker before the hospitalisation.
- (2) Before agreeing to arrangements under subsection (1)(b) or (c), the insurer 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.

## **217 Cost of hospitalisation at private hospital**

- (1) The cost for which an insurer is liable for hospitalisation of a worker as an in-patient at a private hospital is the cost for the provision of the facility at a private hospital where a procedure is carried out.
- (2) The insurer must pay the cost of hospitalisation, whether the hospitalisation is provided at 1 time or at different times.
- (3) The insurer must pay the cost of hospitalisation that—
  - (a) is published by the Authority by industrial gazette notice; or
  - (b) if a cost of hospitalisation is not published—the cost lawfully charged by the hospital.

### **Subdivision 3      Public hospitalisation**

#### **218      Extent of liability for hospitalisation in public hospital**

- (1) An insurer's liability for the cost of hospitalisation of a worker at a public hospital extends only to the cost of hospitalisation of the worker as an in-patient at the public hospital—
  - (a) for non-elective hospitalisation—for not more than 4 days; or
  - (b) for non-elective hospitalisation for more than 4 days—if the insurer considers the hospitalisation is reasonable, having regard to the worker's injury; or
  - (c) for elective hospitalisation—to the extent agreed to by the insurer under arrangements entered into between the insurer and the worker or someone for the worker before the hospitalisation.
- (2) Subject to the *Health Services Act 1991*, a worker is not liable for the cost of hospitalisation, including medical treatment, as an in-patient at a public hospital for an injury sustained by the worker.

#### **218A      Cost of hospitalisation**

- (1) The costs for which an insurer is liable for hospitalisation of a worker as an in-patient at a public hospital are—
  - (a) the cost for the provision of the facility at a public hospital where a procedure is carried out; and
  - (b) the cost of medical treatment provided at the hospital.
- (2) The insurer must pay the cost of hospitalisation and medical treatment, whether the hospitalisation is provided at 1 time or at different times.
- (3) The insurer must pay the cost of hospitalisation that is published by the Authority by industrial gazette notice.

## **Division 4                      Travelling expenses**

### **219      Extent of liability for travelling expenses**

- (1) An insurer must pay the travelling expenses, that the insurer 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) An insurer must pay the cost of the worker's transportation by ambulance vehicle provided by the Queensland Ambulance Service, irrespective of distance, if the transportation—
  - (a) 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
  - (b) 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) The insurer must also pay the cost of the worker's transportation by ambulance vehicle not provided by the Queensland Ambulance Service, irrespective of distance, if the transportation—
  - (a) 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
  - (b) for transportation subsequently provided—is certified in writing by a doctor as necessary because of the worker's physical condition resulting from the injury.
- (4) The cost of transportation by ambulance vehicle that the insurer must pay is—
  - (a) the cost the insurer accepts as reasonable, having regard to the relevant table of costs; or

- (b) if there is no relevant table of costs—the cost the insurer approves.
- (5) The insurer must also pay the cost of transportation by ambulance vehicle if the insurer gives written approval for the transportation.
- (6) Other than as provided by subsections (2), (3), (4), (5) and (7), the insurer is not liable for travelling expenses incurred by the 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.
- (7) The insurer must reimburse the worker for expenses if—
  - (a) the worker is not entitled under subsection (6)(a) to be reimbursed by the insurer 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                      Responsibility for rehabilitation**

#### **220      Insurer's responsibility for worker's rehabilitation**

An insurer 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.

#### **221      Authority's responsibility for rehabilitation**

The Authority must—

- (a) provide rehabilitation advisory services for workers, employers and insurers; and
- (b) approve or provide workplace rehabilitation courses; and
- (c) ensure employers and insurers comply with their rehabilitation requirements under this Act.

## **Division 2                    Insurer's liability for rehabilitation fees and costs**

### **222    Liability for rehabilitation fees and costs**

- (1) This section applies if an insurer considers rehabilitation is necessary for a worker for whose injury the insurer has accepted liability.
- (2) In addition to compensation otherwise payable, the insurer must pay the fees or costs of rehabilitation that the insurer accepts to be reasonable, having regard to the worker's injury.
- (3) Under the table of costs, the Authority may impose conditions on the provision of the rehabilitation.
- (4) The insurer's liability under this division stops when the worker's entitlement to compensation stops.

### **223    Extent of liability for rehabilitation fees and costs**

An insurer 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 to a worker by a registered person—the fees or costs accepted by the insurer to be reasonable, having regard to the relevant table of costs;
- (b) for other rehabilitation—the fees or costs approved by the insurer.

## **Division 3                    Caring allowance**

### **224    Liability for caring allowance**

- (1) This section applies if a worker is receiving weekly payments of compensation.
- (2) A caring allowance may be paid if the insurer 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) The insurer 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 the insurer 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 the worker, means a private dwelling where the worker usually resides.

### **225    Extent of liability for caring allowance**

The insurer 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**

### **226      Employer's obligation to appoint rehabilitation coordinator**

- (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 the Authority.

Maximum penalty—50 penalty units.
- (4) An employer may, with the Authority's written approval, appoint 1 rehabilitation coordinator for more than 1 workplace of 30 or more workers.
- (5) A rehabilitation coordinator is not civilly liable for an act done, or an omission made, in giving effect to the workplace rehabilitation policy and procedures of an employer.
- (6) If subsection (5) prevents a civil liability attaching to a rehabilitation coordinator, the liability attaches instead to the employer.

### **227      Employer's obligation to have workplace rehabilitation policy and procedures**

- (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 the Authority.

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.

## **228 Employer's obligation to assist or provide rehabilitation**

- (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.

## **229 Employer's failure in relation to rehabilitation**

- (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



- (3) The worker's duty under this section is in addition to any duty the worker may have under section 267.<sup>114</sup>

### **232 Worker must participate in rehabilitation**

- (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 the worker fails or refuses to participate in rehabilitation without reasonable excuse, the insurer may, by written notice given to the worker, suspend the worker's entitlement to compensation until the worker satisfactorily participates in rehabilitation.
- (3) If the insurer suspends the worker's entitlement to compensation, the worker may have the decision reviewed under chapter 13.

## **Chapter 5 Access to damages**

### **Part 1 Interpretation and application**

#### **233 Definitions for ch 5**

In this chapter—

*claimant* means a person entitled to seek damages.

*party* includes contributor.

*worker* for a claim, means the worker in relation to whose injury the claim is made.

*written final offer* means written final offer under section 292.

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114 Section 267 (Mitigation of loss)

**234 Meaning of *terminal condition***

- (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 the insurer accepts the doctor's diagnosis of the terminal nature of the condition.

**235 Requirements of chapter to prevail and are substantive law**

- (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.

**236 Period of limitation under *Limitation of Actions Act 1974* never affected**

- (1) It is declared that nothing in this Act affects, or has ever affected, the commencement of the period of limitation provided by the *Limitation of Actions Act 1974*, section 11.<sup>115</sup>
- (2) To remove any doubt, it is declared that the period of limitation provided by the *Limitation of Actions Act 1974*, section 11 applicable to an action for 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 for the injury is, and always has been, the same as would have been applicable to that action if this Act had not been enacted.
- (3) This section is subject to section 302.<sup>116</sup>

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115 *Limitation of Actions Act 1974*, section 11 (Actions in respect of personal injury)

116 Section 302 (Alteration of period of limitation)

## **Part 2                      Entitlement conditions**

### **Division 1                      Limitations on persons entitled to seek damages**

#### **237      General limitation on persons entitled to seek damages**

- (1) The following are the only persons entitled to seek damages for an injury sustained by a worker—
  - (a) the worker, if the worker—
    - (i) has received a notice of assessment from the insurer for the injury; or
    - (ii) has not received a notice of assessment for the injury, but—
      - (A) has received a notice of assessment for any injury resulting from the same event (the *assessed injury*); and
      - (B) for the assessed injury, the worker has a WRI of 20% or more or, under section 239,<sup>117</sup> the worker has elected to seek damages; or
  - (b) the worker, if the worker's application for compensation was allowed and the injury has not been assessed for permanent impairment; or
  - (c) the worker, if—
    - (i) the worker has lodged an application, for compensation for the injury, that is or has been the subject of a review or appeal under chapter 13; and
    - (ii) the application has not been decided in or following the review or appeal; or
  - (d) the worker, if the worker has not lodged an application for compensation for the injury; or
  - (e) a dependant of the deceased worker, if the injury results in the worker's death.

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117 Section 239 (Worker who is required to make election to seek damages)

- (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) If a worker—
  - (a) is required under section 239 to make an election to seek damages for an injury; and
  - (b) has accepted an offer of payment of lump sum compensation under chapter 3, part 10, division 3<sup>118</sup> for the injury;
 the worker is not entitled under subsection (1)(a)(ii) to seek damages.
- (4) However, subsection (3) does not prevent a worker from seeking damages under section 266.<sup>119</sup>
- (5) 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.

### **238 Worker with terminal condition**

- (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) section 267(2);<sup>120</sup>
  - (b) part 6, other than section 293;<sup>121</sup>
  - (c) part 7, other than sections 300 to 302.<sup>122</sup>

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118 Chapter 3 (Compensation), part 10 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

119 Section 266 (Decision not to seek damages reviewable in certain circumstances)

120 Section 267 (Mitigation of loss)

121 Part 6 (Settlement of claims), other than section 293 (Settlement of claim for damages)

122 Part 7 (Start of court proceedings), other than sections 300 (Carriage of proceedings), 301 (Exclusion of jury trial) and 302 (Alteration of period of limitation)

- (3) However, this section does not stop the worker from voluntarily complying with the provisions mentioned in subsection (2).

**239 Worker who is required to make election to seek damages**

- (1) This section applies if a worker's notice of assessment states that—
- (a) the worker's WRI is less than 20%; or
  - (b) the worker has an injury that does not result in any WRI of the worker.
- (2) If, in the notice of assessment, the worker is offered a payment of lump sum compensation under chapter 3, part 10, division 3<sup>123</sup> for the injury, the worker 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 of assessment, the worker is required to make an election to seek damages for the injury, the worker can not change the worker's election—
- (a) if the worker has elected to seek damages for the injury—after notice of the election is given to the insurer; or
  - (b) if the worker is taken, under section 189(7),<sup>124</sup> to have elected to seek damages for the injury—after the worker lodges a notice of claim.

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123 Chapter 3 (Compensation), part 10 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

124 Section 189 (Worker's decision about lump sum compensation—WRI less than 20% or no WRI)

## **Division 2                      Consequences, to costs, of seeking damages**

### **240      Consequences, to costs, of seeking damages**

- (1) If the claimant is a worker and the claimant's notice of assessment states that the claimant's WRI is 20% or more, part 12, division 1<sup>125</sup> applies in relation to costs in the claimant's proceeding for damages.
- (2) If the claimant is a worker and the claimant's notice of assessment states that—
  - (a) the claimant's WRI is less than 20%; or
  - (b) the claimant has an injury that does not result in any WRI of the claimant;part 12, division 2<sup>126</sup> applies in relation to costs in the claimant's proceeding for damages.
- (3) If the claimant is a dependant, part 12, division 1 applies in relation to costs in the claimant's proceeding for damages.

## **Division 3                      Claimant who has received notice of assessment**

### **Subdivision 1              Application of division 3**

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

This division applies to a claimant who is a person mentioned in section 237(1)(a).

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125 Part 12 (Costs), division 1 (Costs applying to worker with WRI of 20% or more or dependant)

126 Part 12 (Costs), division 2 (Costs applying to worker with WRI less than 20% or no WRI)

**Subdivision 2 Claimant mentioned in s 237(1)(a)(i)****242 Application of subdiv 2**

This subdivision applies to a claimant who is a person mentioned in section 237(1)(a)(i).

**243 Need for urgent proceedings**

- (1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages.
- (2) Section 276<sup>127</sup> provides a way for the claimant to satisfy section 302(1)(a)(ii).<sup>128</sup>
- (3) Also, the claimant may, under section 298,<sup>129</sup> seek leave to start a proceeding for damages for an injury without complying with section 295.<sup>130</sup>
- (4) However, if the leave mentioned in subsection (3) is given, a proceeding started by leave is stayed until the claimant complies with section 295.

**Subdivision 3 Claimant mentioned in s 237(1)(a)(ii)****244 Application of subdiv 3**

This subdivision applies to a claimant who is a person mentioned in section 237(1)(a)(ii).

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127 Section 276 (Noncompliance with s 275 and urgent proceedings)

128 Section 302 (Alteration of period of limitation)

129 Section 298 (Court to have given leave despite noncompliance)

130 Section 295 (Compliance necessary before starting proceeding)

**245 Claimant with more than 1 injury from an event**

- (1) The claimant need not have, and the insurer can not decide to have, the injury assessed under chapter 3, part 10<sup>131</sup> to decide if the injury has resulted in a degree of permanent impairment.
- (2) The insurer can not decide that the claimant's notice of claim does not comply with section 275<sup>132</sup> only because the claimant has not received a notice of assessment for the injury.
- (3) However, the claimant may seek damages for the injury only if the insurer decides that the claimant—
  - (a) was a worker when the injury was sustained; and
  - (b) has sustained an injury.
- (4) The insurer must make a decision for the purpose of subsection (3) within 3 months after—
  - (a) the claimant gives, or is taken to have given, a complying notice of claim; or
  - (b) the claimant gives a notice of claim for which the insurer waives compliance with the requirements of section 275, with or without conditions; or
  - (c) a court makes a declaration under section 297.<sup>133</sup>
- (5) If the insurer is WorkCover, WorkCover must notify the claimant and the claimant's employer of a decision it makes for the purpose of subsection (3).
- (6) If the insurer decides that the claimant—
  - (a) was not a worker when the injury was sustained; or
  - (b) has not sustained an injury;the notification must include written reasons for the decision.
- (7) If the insurer does not make a decision for the purpose of subsection (3) within the time mentioned in subsection (4), the claimant may have the failure to make a decision reviewed under chapter 13.

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131 Chapter 3 (Compensation), part 10 (Entitlement to compensation for permanent impairment)

132 Section 275 (Notice of claim for damages)

133 Section 297 (Court to have made declaration about noncompliance)

- (8) A person aggrieved by a decision made by the insurer for the purpose of subsection (3) may have the decision reviewed under chapter 13.

#### **246 Claimant may ask for injury to be assessed for permanent impairment**

- (1) Despite section 245, the claimant may ask the insurer to have the injury assessed under chapter 3, part 10 to decide if the injury has resulted in a degree of permanent impairment.
- (2) The insurer must have the degree of permanent impairment assessed under chapter 3, part 10 and give the claimant a notice of assessment.
- (3) Chapter 3, part 10 applies to the assessment, but only for the purpose of assessing the degree of permanent impairment for the purposes of part 12.
- (4) To remove any doubt, it is declared that the assessment does not give the claimant an entitlement to lump sum compensation under chapter 3, part 10, division 3<sup>134</sup> for the injury.

#### **247 Need for urgent proceedings**

- (1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages.
- (2) Section 276<sup>135</sup> provides a way for the claimant to satisfy section 302(1)(a)(ii).<sup>136</sup>
- (3) Also, the claimant may, under section 298,<sup>137</sup> seek leave to start a proceeding for damages for an injury without complying with section 295.<sup>138</sup>

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134 Chapter 3 (Compensation), part 10 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

135 Section 276 (Noncompliance with s 275 and urgent proceedings)

136 Section 302 (Alteration of period of limitation)

137 Section 298 (Court to have given leave despite noncompliance)

138 Section 295 (Compliance necessary before starting proceeding)

- (4) However, if the leave mentioned in subsection (3) is given, the proceeding started by leave is stayed until—
- (a) the insurer decides that the claimant was a worker when the injury was sustained; and
  - (b) the insurer decides that the claimant has sustained an injury; and
  - (c) any review or appeal under chapter 13 ends; and
  - (d) if the claimant decides to have the injury assessed under chapter 3, part 10—the insurer gives the claimant a notice of assessment; and
  - (e) the claimant complies with section 295.

#### **248 When urgent proceeding must be discontinued**

- (1) This section applies to a proceeding mentioned in section 247(4).
- (2) The claimant must discontinue the proceeding if it is decided by the insurer, or on review or appeal under chapter 13, that the claimant—
- (a) was not a worker when the injury was sustained; or
  - (b) has not sustained an injury.

### **Division 4 Claimant mentioned in s 237(1)(b)**

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

This division applies to a claimant who is a person mentioned in section 237(1)(b).<sup>139</sup>

#### **250 Claimant may seek damages only after being assessed**

- (1) The claimant may seek damages for the injury only if the insurer gives the claimant a notice of assessment.

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<sup>139</sup> Section 237 (General limitation on persons entitled to seek damages)

- (2) For subsection (1), the insurer must have the degree of permanent impairment assessed under chapter 3, part 10 and give the claimant a notice of assessment.
- (3) Chapter 3, part 10 applies to the assessment.

## **251 Need for urgent proceedings**

- (1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages.
- (2) Section 276<sup>140</sup> provides a way for the claimant to satisfy section 302(1)(a)(ii).<sup>141</sup>
- (3) Also, the claimant may, under section 298,<sup>142</sup> seek leave to start a proceeding for damages for an injury without complying with section 295.<sup>143</sup>
- (4) However, if the leave mentioned in subsection (3) is given, the proceeding started by leave is stayed until—
  - (a) the insurer gives the claimant a notice of assessment; and
  - (b) the claimant—
    - (i) elects to seek damages for the injury; and
    - (ii) complies with section 295.

## **252 When urgent proceeding must be discontinued**

- (1) This section applies if a claimant has started a proceeding mentioned in section 251(4).
- (2) The claimant must discontinue the proceeding if the claimant—
  - (a) is required under section 239<sup>144</sup> to make an election to seek damages for the injury; and

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140 Section 276 (Noncompliance with s 275 and urgent proceedings)

141 Section 302 (Alteration of period of limitation)

142 Section 298 (Court to have given leave despite noncompliance)

143 Section 295 (Compliance necessary before starting proceeding)

144 Section 239 (Worker who is required to make election to seek damages)

- (b) accepts an offer of payment of lump sum compensation under chapter 3, part 10, division 3 for the injury.

## **Division 5                      Claimant mentioned in s 237(1)(c)**

### **253      Application of div 5**

This division applies to a claimant who is a person mentioned in section 237(1)(c).<sup>145</sup>

### **254      Access to damages if application for compensation is subject to review or appeal**

- (1) The claimant may seek damages for the injury only after—
  - (a) any review or appeal under chapter 13 ends; and
  - (b) the application for compensation is decided; and
  - (c) the insurer gives the claimant a notice of assessment.
- (2) For subsection (1)(c), the insurer must have the degree of permanent impairment assessed under chapter 3, part 10 and give the claimant a notice of assessment.
- (3) Chapter 3, part 10 applies to the assessment.

### **255      Need for urgent proceedings**

- (1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages.
- (2) Section 276<sup>146</sup> provides a way for the claimant to satisfy section 302(1)(a)(ii).<sup>147</sup>

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145 Section 237 (General limitation on persons entitled to seek damages)

146 Section 276 (Noncompliance with s 275 and urgent proceedings)

147 Section 302 (Alteration of period of limitation)

- (3) Also, the claimant may, under section 298,<sup>148</sup> seek leave to start a proceeding for damages for an injury without complying with section 295.<sup>149</sup>
- (4) However, if the leave mentioned in subsection (3) is given, the proceeding started by leave is stayed until—
  - (a) any review or appeal under chapter 13 ends; and
  - (b) the insurer gives the claimant a notice of assessment; and
  - (c) the claimant—
    - (i) elects to seek damages for the injury; and
    - (ii) complies with section 295.

## **256 When urgent proceedings must be discontinued**

- (1) This section applies if the claimant has started a proceeding mentioned in section 255(4) and—
  - (a) it has been decided by the insurer, or on review or appeal under chapter 13, that the claimant—
    - (i) was not a worker when the injury was sustained; or
    - (ii) has not sustained an injury; or
  - (b) the claimant—
    - (i) is required under section 239 to make an election to seek damages for the injury; and
    - (ii) accepts an offer of payment of lump sum compensation under chapter 3, part 10, division 3 for the injury.
- (2) The claimant must discontinue the proceeding.

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148 Section 298 (Court to have given leave despite noncompliance)

149 Section 295 (Compliance necessary before starting proceeding)

**Division 6                      Claimant mentioned in s 237(1)(d)****257      Application of div 6**

This division applies to a claimant who is a person mentioned in section 237(1)(d).<sup>150</sup>

**258      Access to damages if claimant has not lodged application for compensation**

- (1) The claimant may seek damages for the injury only if the insurer—
  - (a) decides that the claimant—
    - (i) was a worker when the injury was sustained; and
    - (ii) has sustained an injury; and
  - (b) gives the claimant a notice of assessment for the injury.
- (2) For subsection (1), the insurer must have the degree of permanent impairment assessed under chapter 3, part 10 and give the claimant a notice of assessment.
- (3) Chapter 3, part 10 applies to the assessment, but only for the purpose of assessing the degree of permanent impairment for the purposes of part 12.
- (4) To remove any doubt, it is declared that the assessment does not give the claimant an entitlement to lump sum compensation under chapter 3, part 10, division 3<sup>151</sup> for the injury.
- (5) The insurer must make a decision or decisions for the purpose of subsection (1) within 3 months after—
  - (a) the claimant gives, or is taken to have given, a complying notice of claim; or
  - (b) the claimant gives a notice of claim for which the insurer waives compliance with the requirements of section 275, with or without conditions; or

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150 Section 237 (General limitation on persons entitled to seek damages)

151 Chapter 3 (Compensation), part 10 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

- (c) a court makes a declaration under section 297.
- (6) If the insurer is WorkCover, WorkCover must notify the claimant and the claimant's employer of any decision it makes for the purpose of subsection (1).
- (7) If, for any injury, the insurer decides that the claimant—
- (a) was not a worker when the injury was sustained; or
  - (b) has not sustained an injury;
- the notification must include written reasons for the decision.
- (8) If, for any injury, the insurer does not make a decision for the purpose of subsection (1) within the time mentioned in subsection (5), the claimant may have the failure to make a decision reviewed under chapter 13.
- (9) A person aggrieved by a decision made by the insurer for the purpose of subsection (1) may have the decision reviewed under chapter 13.
- (10) For any assessment mentioned in subsection (1) made by the insurer with which the person does not agree, section 186<sup>152</sup> applies.

## **259 Need for urgent proceedings**

- (1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages for any injury resulting from the event.
- (2) Section 276<sup>153</sup> provides a way for the claimant to satisfy section 302(1)(a)(ii).<sup>154</sup>
- (3) Also, the claimant may, under section 298,<sup>155</sup> seek leave to start a proceeding for damages for an injury without complying with section 295.<sup>156</sup>

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152 Section 186 (Worker's disagreement with assessment of permanent impairment)

153 Section 276 (Noncompliance with s 275 and urgent proceedings)

154 Section 302 (Alteration of period of limitation)

155 Section 298 (Court to have given leave despite noncompliance)

156 Section 295 (Compliance necessary before starting proceeding)

- (4) However, if the leave mentioned in subsection (3) is given, the proceeding started by leave is stayed until—
- (a) the insurer decides that the claimant—
    - (i) was a worker when the injury was sustained; and
    - (ii) has sustained an injury; and
  - (b) any review or appeal under chapter 13 ends; and
  - (c) the insurer gives the claimant a notice of assessment; and
  - (d) the claimant complies with section 295.

### **260 When proceedings must be discontinued**

- (1) This section applies to a proceeding mentioned in section 259(4).
- (2) The claimant must discontinue the proceeding if it has been decided by the insurer, or on review or appeal under chapter 13, that the claimant—
  - (a) was not a worker when the injury was sustained; or
  - (b) has not sustained an injury.

## **Division 7 Person mentioned in s 237(1)(e)**

### **261 Application of div 7**

This division applies to a claimant who is a person mentioned in section 237(1)(e).

### **262 Claimant may seek damages only in particular cases**

- (1) The claimant may seek damages for the injury only if any of the following apply—
  - (a) an application has been made for compensation under chapter 3, part 11<sup>157</sup> and—

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<sup>157</sup> Chapter 3 (Compensation), part 11 (Compensation on worker's death)

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- (i) the insurer has paid compensation under chapter 3, part 11 for the worker's death to the claimant as a dependant of a worker; or
  - (ii) the application is or has been the subject of a review or appeal under chapter 13 and the application has not been decided in or following the review or appeal;
- (b) an application for compensation mentioned in paragraph (a) has not been made and the insurer decides that—
  - (i) the claimant was a dependant of the worker; and
  - (ii) the deceased was a worker when the event happened; and
  - (iii) the worker sustained an injury in the event; and
  - (iv) the injury caused the worker's death.
- (2) The insurer must make a decision for the purpose of subsection (1)(b) within 3 months after—
  - (a) the claimant gives, or is taken to have given, a complying notice of claim; or
  - (b) the claimant gives a notice of claim for which the insurer waives compliance with the requirements of section 275, with or without conditions; or
  - (c) a court makes a declaration under section 297.
- (3) If the insurer is WorkCover, WorkCover must notify the claimant and the worker's employer of a decision it makes for the purpose of subsection (1)(b).
- (4) If the insurer decides that—
  - (a) the claimant was not a dependant of the worker; or
  - (b) the deceased was not a worker when the event happened; or
  - (c) the worker did not sustain an injury resulting from the event; or
  - (d) the injury did not cause the worker's death;the notification must include written reasons for the decision.

- (5) If the insurer does not make a decision for the purpose of subsection (1)(b) within the time mentioned in subsection (2), the claimant may have the failure to make a decision reviewed under chapter 13.
- (6) A person aggrieved by a decision made by the insurer for the purpose of subsection (1)(b) may have the decision reviewed under chapter 13.

### **263 Need for urgent proceedings**

- (1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages for the injury.
- (2) Section 276<sup>158</sup> provides a way for the claimant to satisfy section 302(1)(a)(ii).<sup>159</sup>
- (3) Also, the claimant may, under section 298,<sup>160</sup> seek leave to start a proceeding for damages for the injury without complying with section 295.<sup>161</sup>
- (4) However, if the leave mentioned in subsection (3) is given, for a claimant mentioned in section 262(1)(a)(i), the proceeding started by leave is stayed until the claimant complies with section 295.
- (5) Also, if the claimant is a claimant mentioned in section 262(1)(a)(ii) or (b), the proceeding is stayed until—
  - (a) the insurer decides that—
    - (i) the claimant was a dependant of the worker; and
    - (ii) the deceased was a worker when the event happened; and
    - (iii) the worker sustained an injury from the event; and
    - (iv) the injury caused the worker's death; and
  - (b) any review or appeal under chapter 13 ends; and
  - (c) the claimant complies with section 295.

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158 Section 276 (Noncompliance with s 275 and urgent proceedings)

159 Section 302 (Alteration of period of limitation)

160 Section 298 (Court to have given leave despite noncompliance)

161 Section 295 (Compliance necessary before starting proceeding)

**264 When proceedings must be discontinued**

- (1) This section applies to a proceeding mentioned in section 263(5).
- (2) The claimant must discontinue the proceeding if it is decided by the insurer, or on review or appeal under chapter 13, that—
  - (a) the claimant was not a dependant of the worker; or
  - (b) the deceased was not a worker when the event happened; or
  - (c) the worker did not sustain an injury from the event; or
  - (d) the injury did not cause the worker's death.

**Division 8                      Review of worker's decision to accept payment of lump sum compensation for injury—WRI less than 20% or no WRI****265 Application of div 8**

This division applies if—

- (a) a worker has elected, under section 189,<sup>162</sup> to accept payment of lump sum compensation for an injury; and
- (b) the worker has been assessed under chapter 3, part 10 as having sustained a degree of permanent impairment that—
  - (i) results in a WRI of the worker of less than 20%; or
  - (ii) does not result in any WRI of the worker.

**266 Decision not to seek damages reviewable in certain circumstances**

- (1) The worker may ask the insurer to consider fresh medical evidence about the worker's injury but only—

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162 Section 189 (Worker's decision about lump sum compensation—WRI less than 20% or no WRI)

- (a) to satisfy the insurer 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) The insurer is required to consider the medical evidence only if the worker satisfies the insurer that—
- (a) when the worker's degree of permanent impairment was assessed under section 179,<sup>163</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 189; and
  - (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 the insurer rejects the evidence, the insurer 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 the insurer or the review panel accepts the medical evidence, the insurer must refer the question of degree of

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163 Section 179 (Assessment of permanent impairment)



- (3) The worker's duty mentioned in this section is in addition to any duty the worker may have under section 231.<sup>165</sup>

## **268 Provision of rehabilitation**

- (1) An insurer may make rehabilitation available to a worker on the insurer's own initiative or if the worker asks.
- (2) If the insurer makes rehabilitation available to a worker before admitting or denying liability for damages, the insurer must not be taken, only for that reason, to have admitted liability.
- (3) If—
- (a) liability has been admitted for damages; or
  - (b) the insurer has agreed to fund rehabilitation without making an admission of liability;
- the insurer must, if the worker asks, ensure that reasonable and appropriate rehabilitation is made available to the worker.
- (4) The worker may, if not satisfied that the rehabilitation is reasonable and appropriate, apply to the insurer to appoint a mediator to help resolve the questions between the worker and the insurer.
- (5) An application for appointment of a mediator under subsection (4) must—
- (a) be made in writing; and
  - (b) give details of any attempts made by the applicant to resolve the matter in dispute.
- (6) The fees and expenses of the mediator are to be paid as agreed between the parties or, in the absence of agreement, by the parties in equal proportions.
- (7) The insurer must make rehabilitation available to the worker, and the worker must satisfactorily participate in the rehabilitation, in sufficient time to enable the insurer and the worker to comply with parts 5, 6 and 7.<sup>166</sup>

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<sup>165</sup> Section 231 (Worker must mitigate loss)

<sup>166</sup> Parts 5 (Pre-court procedures), 6 (Settlement of claims) and 7 (Start of court proceedings)

**269 Costs of rehabilitation**

- (1) If an insurer intends to ask a court to take the cost of rehabilitation into account in the assessment of damages payable to a worker, the insurer must, before providing the rehabilitation, give the worker a written statement estimating the cost of the rehabilitation.
- (2) The insurer must bear, or reimburse, the cost of providing the rehabilitation, unless the insurer's liability for the cost is reduced—
  - (a) by agreement with the worker; or
  - (b) by order of the court.
- (3) The cost to the insurer of providing the rehabilitation is to be taken into account in the assessment of damages on the claim if, and only if, the insurer gave the statement mentioned in subsection (1).
- (4) The following applies if the cost of rehabilitation is to be taken into account in the assessment of damages—
  - (a) the damages are first assessed, without reduction for contributory negligence, on the assumption that the worker has incurred the cost of the rehabilitation;
  - (b) then, any reduction of the damages assessed, on account of contributory negligence, is made;
  - (c) then, the total cost of rehabilitation is set-off against the amount assessed under paragraph (b).

*Example—*

Suppose that responsibility for an injury is apportioned equally between the worker and the insurer. Damages (exclusive of the cost of rehabilitation) before apportionment are fixed at \$100 000. The insurer has spent \$5 000 on rehabilitation. In this case, the worker's damages will be assessed under paragraph (a) at \$105 000 (that is, as if the worker had incurred the \$5 000 rehabilitation expense) and reduced to \$52 500 under paragraph (b), and the \$5 000 spent by the insurer on rehabilitation will be set off against this amount, resulting in a final award of \$47 500.

- (5) If an insurer is induced by a worker's fraud to provide rehabilitation to the worker—

- (a) if the insurer is WorkCover—WorkCover may recover the cost of providing the rehabilitation, as a debt, from the worker; or
- (b) if the insurer is a self-insurer—the Authority may recover, on behalf of the self-insurer, the cost of providing the rehabilitation, as a debt, from the worker.

## **Part 4                      Reduction of recoverable damages**

### **270      When damages are to be reduced**

- (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 an insurer by way of compensation for the injury.
- (2) However, the amount of damages must not be reduced by an amount paid under section 193.<sup>167</sup>
- (3) This section does not limit the reduction of the amount of the damages by any other amount that the insurer or the claimant is legally liable to pay on account of the worker under another law.

### **271      Assessment by court of total liability for damages**

- (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 270(1) in damages for compensation paid, the claimant or insurer may apply to—
  - (a) the court in which the proceeding is brought; or

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<sup>167</sup> Section 193 (Additional lump sum compensation for gratuitous care)

- (b) if a proceeding has not been started—the Industrial Magistrates Court.
- (3) The court's decision is binding on the insurer and all persons entitled to payment by the insurer for the injury.

## **272 Insurer's charge on damages for compensation paid**

- (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 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 the insurer 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 the insurer 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 the insurer's written consent.
- (6) If, without the insurer's consent, a settlement mentioned in subsection (5) is made, then to the extent that the damages

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recovered are insufficient to meet all payments due to the insurer under this section—

- (a) the insurer 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, the insurer 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) the insurer 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, the insurer 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 the insurer 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 10.



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- (b) a statement of the reasons why the claimant can not admit liability.
- (5) Any statement made by the claimant in the notice that is in the claimant's personal knowledge 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 the insurer 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) persons 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 the insurer; 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.

## **276 Noncompliance with s 275 and urgent proceedings**

- (1) The purpose of this section is to enable a claimant to avoid the need to bring an application under section 298.
- (2) Without limiting section 297 or 298,<sup>169</sup> if the claimant alleges an urgent need<sup>170</sup> to start a proceeding for damages despite noncompliance with section 275, the claimant must, in the claimant's notice of claim—
  - (a) state the reasons for the urgency and the need to start the proceeding; and
  - (b) ask the insurer to waive compliance with the requirements of section 275.
- (3) The claimant's lawyer may sign the notice of claim on the claimant's behalf if it is not reasonably practicable for the claimant to do so.
- (4) The claimant's notice of claim may be given by fax in the way provided for under a regulation.
- (5) The insurer must, before the end of 3 business days after receiving the notice of claim, advise the claimant that the insurer agrees or does not agree that there is an urgent need to start a proceeding for damages.
- (6) If the insurer agrees that there is an urgent need to start a proceeding for damages, the insurer may, in the advice to the claimant under subsection (5), impose the conditions the insurer considers necessary or appropriate to satisfy the insurer to waive compliance under section 278(2)(b).

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169 Section 297 (Court to have made declaration about noncompliance) or 298 (Court to have given leave despite noncompliance)

170 See sections 243, 247, 251, 255, 259 and 263.

- (7) The claimant must comply with the conditions within a reasonable time that is agreed between the insurer and the claimant.
- (8) The claimant's agreement to comply with the conditions is taken to satisfy section 302(1)(a)(ii).<sup>171</sup>

### **277 Claimant to tell insurer of change to information in notice of claim**

- (1) The claimant must give the insurer written notice of any significant change in relation to the information given in the notice of claim.
- (2) The notice must also state the date of, and reasons for, the change in the information.

### **278 Response to notice of claim**

- (1) This section applies if a notice of claim is given to an insurer.
- (2) The insurer must, within 10 business days after receiving the notice, give the claimant written notice—
  - (a) stating whether the insurer is satisfied that the notice of claim is a complying notice of claim; and
  - (b) if there is an urgent need to start a proceeding—stating that the insurer is only willing to waive compliance with the requirements if the claimant agrees to satisfy conditions imposed by the insurer under section 276; and
  - (c) if the insurer is not so satisfied—identifying the noncompliance and stating whether the insurer waives compliance with the requirements; and
  - (d) if the insurer does not waive compliance with the requirements—allowing the claimant a reasonable period of at least 10 business days either to satisfy the insurer that the claimant has complied with the requirements or to take reasonable action to remedy the noncompliance; and

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171 Section 302 (Alteration of period of limitation)

- (e) stating whether the insurer is prepared, without admitting liability on the claim, to meet the cost of the claimant's reasonable and appropriate rehabilitation.
- (3) If the insurer is not prepared to waive compliance with the requirements in the first instance, the insurer must, within 10 business days after the end of the period specified in subsection (2)(c), give the claimant written notice stating that—
- (a) the insurer—
    - (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
    - (iii) waives the noncompliance; or
  - (b) the insurer 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) If the insurer does not give the written notice mentioned in subsection (2) within 10 business days after receiving the notice of claim, the notice of claim is taken to be a complying notice of claim.
- (5) The insurer must, within 5 business days after receiving a complying notice of claim or waiving noncompliance with the requirements of section 275, advise the employer or employers against whom negligence is alleged.

### **278A Insurer may add other person as contributor**

- (1) An insurer who receives a notice of claim may, within the time prescribed under a regulation or, if no period is prescribed, within 20 business days after receiving the notice of claim, add someone else as a contributor for the purposes of this part by giving the person a written notice (*contribution notice*)—
- (a) claiming an indemnity from, or contribution towards—
    - (i) the employer's liability; and

- (ii) the insurer's liability; and
  - (b) stating the grounds on which the insurer holds the person liable; and
  - (c) stating any other information that may be prescribed under a regulation; and
  - (d) accompanied by copies of documents about the claim given to or received from any other party under this Act.
- (2) If the time prescribed under subsection (1) for adding a contributor has ended, an insurer may add someone else as a contributor only with the person's agreement and with—
  - (a) the agreement of the parties; or
  - (b) the court's leave.
- (3) If an insurer adds someone as a contributor under this section, the insurer must give a copy of the contribution notice to each other party within the time prescribed under a regulation or, if no period is prescribed, within 5 business days after adding someone as a contributor.

Maximum penalty for subsection (3)—50 penalty units.

### **278B Contributor's response**

- (1) A contributor must, within the period prescribed under a regulation or, if no period is prescribed, within 20 business days after receiving a contribution notice, give the insurer who gave the contribution notice a written response (*contributor's response*)—
  - (a) containing a statement of information prescribed under a regulation; and
  - (b) accompanied by any documents that may be prescribed under a regulation.
- (2) The contributor's response must also state—
  - (a) whether the claim for the contribution or indemnity claimed in the contribution notice is admitted, denied or admitted in part; and

- (b) if the claim for the contribution or indemnity is admitted in part, the extent, expressed as a percentage, to which it is admitted.
- (3) An admission of liability in the contributor's response—
  - (a) is not binding on the contributor in relation to any other claim; and
  - (b) is not binding on the contributor at all if it later appears the admission was induced by fraud.
- (4) If the insurer requires information provided by a contributor under this section to be verified by statutory declaration, the contributor must verify the information by statutory declaration.

## **279 Parties to cooperate**

- (1) The parties must cooperate in relation to a claim, in particular by—
  - (a) giving each other copies of relevant documents about—
    - (i) the circumstances of the event resulting in the injury; or
    - (ii) the worker's injury; or
    - (iii) the worker's prospects of rehabilitation; and
  - (b) giving information reasonably requested by each other party about—
    - (i) the circumstances of the event resulting in the injury; and
    - (ii) the nature of the injury and of any impairment or financial loss resulting from the injury; and
    - (iii) if applicable—the medical treatment and rehabilitation the worker has sought from, or been provided with, by the worker's employer or the insurer; and
    - (iv) the worker's medical history, as far as it is relevant to the claim; and

- (v) any applications for compensation made by the claimant or worker for any injury resulting from the same event.
- (2) Subsection (1)(a) applies to relevant documents that—
  - (a) are in the possession of a party; or
  - (b) are reasonably required by WorkCover from the worker's employer under section 280.
- (3) A claimant and an insurer must give each other copies of the relevant documents within 21 business days after the claimant gives the insurer a notice of claim.
- (3A) An insurer and a contributor must give each other copies of the relevant documents within 21 business days after the insurer gives the contributor a contribution notice.
- (3B) A contributor must give the claimant copies of the relevant documents within 21 business days after the insurer gives the contributor a contribution notice.
- (3C) If the relevant documents come into a party's possession later than the time mentioned in subsection (3), (3A) or (3B), a party mentioned in the subsection must give the other party mentioned in the subsection a copy of the relevant documents within 21 business days after they come into the party's possession.
- (4) A party must respond to a request from another party under subsection (1)(b) within 21 business days after receiving it.
- (5) This section is subject to section 284.<sup>172</sup>
- (6) In this section—
 

*relevant documents* means reports and other documentary material, including written statements made by the claimant, the worker's employer, a contributor, or by witnesses.

## **280 Employer to cooperate with WorkCover**

- (1) An employer against whom negligence is alleged in connection with a claim must cooperate fully with and give

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<sup>172</sup> Section 284 (Non-disclosure of certain material)

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 noncompliance with subsection (1)—an amount reflecting the extent of WorkCover's prejudice.

## **281 Parties to attempt to resolve claim**

- (1) The parties must endeavour to resolve a claim as quickly as possible.
- (2) The insurer must give the claimant a written notice under subsection (4) within 6 months after—
  - (a) the insurer receives a complying notice of claim or waives the claimant's noncompliance with the requirements of section 275;<sup>173</sup> or
  - (b) the court makes an order under section 297;<sup>174</sup> or
  - (c) the court makes an order under section 298.<sup>175</sup>
- (3) For subsection (2), for a worker with a terminal condition, the insurer 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 is admitted or denied and—
    - (i) if liability is admitted—

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173 Section 275 (Notice of claim for damages)

174 Section 297 (Court to have made declaration about noncompliance)

175 Section 298 (Court to have given leave despite noncompliance)

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- (A) state whether contributory liability is claimed from the worker or another party; and
    - (B) state the extent, expressed as a percentage, to which liability is admitted; and
  - (ii) if liability is denied, completely or partly—give particulars of the basis on which liability is denied; and
  - (b) state whether the insurer 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 the insurer is rejecting the offer—contain a genuine offer or counter-offer of settlement, or a statement of the reasons 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 the insurer's possession not previously given to the claimant that may help the claimant to make a proper assessment of the offer.
- (4A) The insurer must, within 5 business days after giving the claimant the written notice, give a copy of the notice to any contributor.
- (5) If the insurer is WorkCover, WorkCover must also, within 5 business days after giving the claimant the written notice, give a copy of the notice to the worker's employer.
- (6) The insurer or the claimant to whom a written offer or counter-offer of settlement is made must respond in writing to the offer within 10 business 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).
- (7) 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.
- (8) An admission of liability by an insurer under this section—
- (a) is not binding on the insurer 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 the insurer 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.
- (9) In calculating the period of 6 months mentioned in subsection (2), any period during which a decision of the insurer relevant to the claim is subject to a review or appeal is not counted.
- (10) In this section—
- decision***, for subsection (9), includes failure to make a decision.
- review or appeal*** means a review or appeal under chapter 13 that has been started.

## **282 Worker to undergo medical examination**

- (1) An insurer or a contributor may at any time ask the worker to undergo either or both of the following, whether at 1 time or at different times, at the expense of the insurer or contributor—
- (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;
  - (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.

### **283 Joint expert reports**

- (1) Some or all of the parties 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) None of the parties 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 the parties and have appropriate qualifications and experience in the relevant field.
- (4) The person preparing the report must give each party 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.

### **284 Non-disclosure of certain material**

- (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, the following must be disclosed even though otherwise protected by legal professional privilege—
  - (a) investigative reports;
  - (b) medical reports;
  - (c) reports relevant to the worker's rehabilitation;
  - (d) relevant documents mentioned in section 279,<sup>176</sup> other than correspondence between a party and the party's lawyer.
- (3) If an insurer or a contributor has reasonable grounds to suspect a claimant of fraud, the insurer or contributor 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) the insurer or contributor believes would meet the requirements of the *Freedom of Information Act 1992*, part 3, division 2.<sup>177</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).
- (5) Also, WorkCover or an employer is not obliged to disclose the estimate of damages calculated by WorkCover for the purpose of premium setting under chapter 2, part 3.<sup>178</sup>

## **285 Consequence of failure to give information**

- (1) This section applies if a party fails to comply with a provision of this chapter requiring the party to disclose a document to another party.

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176 Section 279 (Parties to cooperate)

177 *Freedom of Information Act 1992*, part 3 (Access to documents), division 2 (Exempt matter)

178 Chapter 2 (Employer's obligations) part 3 (Insurance under WorkCover policies generally)

- (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.

## **286 Privilege and duties**

Subject to this Act, information and documents disclosed under this chapter are protected by the same privileges, and are subject to the same duties, as if disclosed in a proceeding before the Supreme Court.

## **287 Court's power to enforce compliance with chapter**

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**

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

This division does not apply to a claim that is otherwise settled by negotiation between the parties.

### **289 Compulsory conference**

- (1) Before the claimant starts a proceeding for damages, there must be a conference of the parties (the *compulsory conference*).
- (2) Any party may call the compulsory conference.

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- (3) The compulsory conference must be held within 3 months after the insurer gives the claimant a written notice under section 281.<sup>179</sup>
- (4) However, if the parties agree, the conference may be held at a later date.
- (5) If the insurer is WorkCover, WorkCover must advise the worker's employer of the time and place of the compulsory conference.
- (6) On application by a party, the court—
  - (a) may—
    - (i) fix the time and place for the compulsory conference; or
    - (ii) dispense with the compulsory conference for good reason; and
  - (b) may make any other orders the court considers appropriate.
- (7) In considering whether to dispense with the compulsory conference, the court must take into account the extent of compliance by the parties with their respective obligations in relation to the claim.
- (8) The claimant in person, a person authorised to settle on the insurer's behalf and a person authorised to settle on behalf of any contributor must attend the conference and actively participate in an attempt to settle the claim, unless the claimant or person has a reasonable excuse.
- (9) 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 conferencing, video conferencing or another form of communication that allows reasonably contemporaneous and continuous communication between the parties.

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179 Section 281 (Parties to attempt to resolve claim)

**290 Procedure at conference**

- (1) The compulsory conference may be held with a mediator if all parties agree.
- (2) An agreement that the compulsory conference is to be held with a mediator must specify how the costs of the mediation are to be borne.
- (3) The mediator must be a person independent of the parties—
  - (a) agreed to by the parties; or
  - (b) nominated by the registrar of the court on application under subsection (4).
- (4) If the parties are unable to agree on the appointment of a mediator within 21 business days after the date for the compulsory conference is fixed, any party may apply to the registrar of the court for the nomination of a mediator.

**290A Exchange of material for compulsory conference**

- (1) At least 5 business days before the compulsory conference is to be held, each party must give each other party—
  - (a) copies of all documents not yet given to the party that are relevant and required to be given for the claim; and
  - (b) a statement verifying that all relevant documents in the possession of the party or the party's lawyer have been given as required; and
  - (c) details of the party's legal representation; and
  - (d) if the party has legal representation—a certificate (a *certificate of readiness*) signed by the party's lawyer to the effect that the party is ready for the conference.
- (2) A certificate of readiness must state that—
  - (a) the party is completely ready for the conference; and
  - (b) all investigative material required for the conference has been obtained, including witness statements from persons, other than expert witnesses; and
  - (c) medical or other expert reports have been obtained from all persons the party proposes to rely on as expert witnesses at the conference; and

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- (d) the party has complied fully with the party's obligations to give all other parties material that is relevant and required to be given for the claim; and
  - (e) the party's lawyer has given the party a statement (a ***financial statement***) containing the information required under section 290A(3).
- (3) A financial statement must state—
- (a) details of the legal costs payable by the party to the party's lawyer up to the completion of the conference; and
  - (b) an estimate of the party's likely legal costs and net damages if the claim proceeds to trial and is decided by the court; and
  - (c) an estimate of the party's likely legal costs and net damages if the claim is settled without proceeding to trial; and
  - (d) the consequences to the party, in terms of costs, in each of the following cases if the claim proceeds to trial and is decided by the court—
    - (i) the amount of the damages awarded by the court is equal to, or more than, the claimant's written final offer;
    - (ii) the amount of the damages awarded by the court is less than the claimant's written final offer but equal to, or more than, the insurer's written final offer;
    - (iii) the amount of the damages awarded by the court is equal to, or less than, the insurer's written final offer.
- (4) If the insurer is WorkCover, WorkCover must give a copy of the certificates of readiness and WorkCover's costs statement to the worker's employer at least 5 business days before the compulsory conference.
- (5) In this section—  
***party*** does not include contributor.

**291 Information to be given by party's lawyer before other type of settlement attempted**

Before settlement of a claim is attempted in a way other than by a compulsory conference, each party's lawyer must give the party a statement (also a *financial statement*) containing the information mentioned in section 290A(3).

**292 Claimant and insurer to make written final offer if claim not settled at compulsory conference**

- (1) If the claim is not settled at a conference, both the claimant and the insurer must make a written final offer at the conference.
- (1A) If more than 1 claim was the subject of the compulsory conference, the written final offer may be a consolidated final offer for all the claims.
- (1B) A consolidated final offer must detail the portion of the offer applicable to each claim.
- (1C) A consolidated final offer can only be accepted or rejected in full.
- (2) The final offer must remain open for 10 business 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) The insurer must, after being served with the legal process that starts the proceeding, file at the court a sealed envelope containing a copy of the insurer'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.

**292A Offer to contribute**

- (1) This section applies if an insurer makes a claim (a *contribution claim*) to recover contribution or indemnity against a person in relation to a claim made by a claimant.

- (2) A party to the contribution claim may give another party to the contribution claim an offer to contribute towards the settlement of the claim on the conditions specified in the offer.
- (3) The court may take account of an offer to contribute in deciding whether it should order that the party to whom the offer to contribute was given should pay all or part of—
  - (a) the costs of the party who made the offer; and
  - (b) any costs the party is liable to pay to the claimant.

## **Division 2                      Settlement before court proceedings**

### **293      Settlement of claim for damages**

If a claim or contribution 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**

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

This division states the conditions that must be satisfied before a claimant can start a court proceeding.

#### **295      Compliance necessary before starting proceeding**

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>180</sup> to the extent the division imposes a requirement on the person; and
- (b) part 5, other than as provided by sections 297 and 298;<sup>181</sup> and
- (c) part 6;<sup>182</sup> and
- (d) section 296.

**296 Claimant to have given complying notice of claim or insurer to have waived compliance**

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, or is taken to have given, a complying notice of claim; or
  - (ii) the insurer has waived the claimant's noncompliance with the requirements of section 275 with or without conditions; or
  - (iii) the court has made an order under section 297 or 298;
- (b) the insurer has admitted liability, but is claiming contributory liability from the claimant, a contributor or another party, and the claimant has given the insurer written notice that the extent of the admission is disputed;
- (c) the insurer has admitted liability but damages can not be agreed.

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180 Part 2 (Entitlement conditions)

181 Part 5, (Pre-court procedures) (other than as provided by sections 297 (Court to have made declaration about noncompliance) and 298 (Court to have given leave despite noncompliance))

182 Part 6 (Settlement of claims)

**297 Court to have made declaration about noncompliance**

- (1) Subject to section 296,<sup>183</sup> the claimant may start the proceeding if the court, on application by the claimant dissatisfied with the insurer's response under section 278<sup>184</sup> to a notice of claim, declares that—
  - (a) notice of claim has been given under section 275;<sup>185</sup> or
  - (b) the claimant is taken to have remedied noncompliance with the requirements of section 275.
- (2) A declaration that a claimant is taken to have remedied noncompliance with section 275 may be made on conditions the court considers necessary or appropriate to minimise prejudice to the insurer from the claimant's failure to comply with the requirements of section 275.

**298 Court to have given leave despite noncompliance**

- (1) Subject to section 296, 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 275.
- (2) The order giving leave to bring the proceeding may be made on conditions the court considers necessary or appropriate to minimise prejudice to the insurer from the claimant's failure to comply with the requirements of section 275.

**299 Other provision for urgent proceedings**

Part 2, divisions 3 to 7 provide for the urgent starting of proceedings by persons mentioned in section 237(1), and for the staying and discontinuance of those proceedings.

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183 Section 296 (Claimant to have given complying notice of claim or insurer to have waived compliance)

184 Section 278 (Response to notice of claim)

185 Section 275 (Notice of claim for damages)

## **Division 2                      Court proceedings**

### **300      Carriage of proceedings**

- (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 280(1),<sup>186</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).

### **301 Exclusion of jury trial**

A proceeding for damages must be decided by a judge without a jury.

### **302 Alteration of period of limitation**

- (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, or is taken to have given, a complying notice of claim; or
    - (ii) the claimant gives a notice of claim for which the insurer waives compliance with the requirements of section 275 with or without conditions; or
    - (iii) a court makes a declaration under section 297;<sup>187</sup> or

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<sup>186</sup> Section 280 (Employer to cooperate with WorkCover)

<sup>187</sup> Section 297 (Court to have made declaration about noncompliance)

- (iv) a court gives leave under section 298;<sup>188</sup> and
  - (b) the claimant complies with section 295.<sup>189</sup>
- (2) However, the proceeding must be brought within 60 days after a compulsory conference for the claim is held.

**303 Court may have regard to claimant's non-compliance with s 275 in relation to costs and interest**

If a claimant does not comply with the requirements of section 275, the court before which the claimant brings a proceeding for damages—

- (a) on the application of the insurer, may award in the insurer's favour costs, including legal and investigation costs, reasonably incurred by the insurer because of the claimant's default; and
- (b) 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.

**304 Court may have regard to compulsory conference**

A court may have regard to the compulsory conference between the parties in deciding—

- (a) whether the matter of the damages should be referred to an alternative dispute resolution process; or
- (b) costs in the proceeding for damages.

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188 Section 298 (Court to have given leave despite noncompliance)

189 Section 295 (Compliance necessary before starting proceeding)

## **Part 8                      Structured settlements**

### **305      Court may make consent order for structured settlement**

- (1) This section applies if the parties to a claim agree to settle the claim by making a structured settlement and apply to a court for an order approving of or in the terms of the structured settlement.
- (2) The court may make the order even though the payment of damages is not in the form of a lump sum award of damages.
- (3) In this section—

*structured settlement* means an agreement providing for the payment of all or part of an award of damages in the form of periodic payments funded by an annuity or other agreed means.

## **Part 9                      Particular matters affecting assessments of liability**

### **306      Absolute defences not reintroduced**

This Act does not reintroduce the absolute defence of contributory negligence or common employment.

### **307      Contributory negligence**

- (1) A court may make a finding of contributory negligence if the worker relevantly—
  - (a) 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; 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; 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; 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 adversely affected by the intentional consumption of a substance that induces impairment; or
  - (f) failed, without reasonable excuse, to attend safety training organised by the worker's employer that was 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 resulting in the worker's injury.
- (2) Subsection (1) does not limit the discretion of a court to make a finding of contributory negligence in any other circumstances.

## **Part 10                      No right to damages for particular services**

### **308      Application of pt 10**

This part sets out the principles a court must apply in awarding damages for services that are provided, or are to be provided, to a worker by another person after the worker sustains an injury.

### **308A    Definitions for pt 10**

In this part—

*gratuitous services* means services, other than paid services, that are provided to a worker by a member of the worker's family or household, or by a friend of the worker.

***paid services*** means services that are provided to a worker at commercial rates by another person in the person's professional capacity or in the course of the person's business.

***services*** means services of a domestic, nursing or caring nature.

*Examples of services—*

- changing bandages
- cleaning
- cooking
- dressing wounds
- gardening
- housekeeping
- mowing the lawn
- assisting with personal hygiene needs

### **308B Paid services provided to worker before injury**

- (1) This section applies if—
  - (a) before the worker sustained the injury, the worker was usually provided with particular services that were paid services; and
  - (b) after the worker sustains the injury—
    - (i) the worker is, or is to be, provided with paid services that are substantially of the same kind; or
    - (ii) the worker is, or is to be, provided with gratuitous services that are substantially of the same kind.
- (2) A court can not award damages for the cost or value of the services that have been provided to the worker after the worker sustained the injury or that are to be provided to the worker in the future.

### **308C Worker performed services before injury**

- (1) This section applies if, before the worker sustained the injury, the worker usually performed particular services.

- (2) A court can not award damages for the cost or value of services of substantially the same type that have been provided to the worker after the worker sustained the injury, or that are to be provided to the worker in the future as either gratuitous services or paid services, if the services that have been provided to the worker after the worker sustained the injury are gratuitous services.

### **308D Gratuitous services provided to worker before injury**

- (1) This section applies if—
  - (a) before the worker sustained the injury, the worker was usually provided with particular services that were gratuitous services; and
  - (b) after the worker sustains the injury—
    - (i) the worker is, or is to be, provided with paid services of substantially the same type; or
    - (ii) the worker is, or is to be, provided with gratuitous services of substantially the same type.
- (2) A court can not award damages for the cost or value of the services that have been provided to the worker after the worker sustained the injury or that are to be provided to the worker in the future.

### **308E Services not required by or provided to worker before injury**

- (1) This section applies if the worker usually did not require or was not provided with particular services before the worker sustained the injury.
- (2) A court can not award damages for the cost or value of any services provided to the worker after the worker sustained the injury, or that are to be provided to the worker in the future as either gratuitous services or paid services, if the services that have been provided to the worker after the worker sustained the injury are gratuitous services.

## **Part 11 Exemplary damages**

### **309 Exemplary damages**

- (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.

## **Part 12 Costs**

### **Division 1 Costs applying to worker with WRI of 20% or more or dependant**

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

This division applies only if the claimant is—

- (a) a worker, if the worker's WRI is 20% or more; or
- (b) a dependant.

#### **311 Principles about orders as to costs**

If a court has assessed damages in the claimant's proceeding for damages, it must apply the principles set out in sections 312 to 314.

#### **312 Costs if written final offer by claimant**

- (1) This section applies if—

- (a) the claimant makes a written final offer that is not accepted by the insurer; and
  - (b) the claimant obtains a judgment no less favourable to the claimant than the written final offer; and
  - (c) the court is satisfied that the claimant was at all material times willing and able to carry out what was proposed in the written final offer.
- (2) The court must order the insurer to pay the claimants's costs, calculated on the indemnity basis, unless the insurer shows another order for costs is appropriate in the circumstances.

### **313 Costs if written final offer by insurer**

- (1) This section applies if—
- (a) the insurer makes a written final offer that is not accepted by the claimant; and
  - (b) the claimant obtains a judgment that is not more favourable to the claimant than the written final offer; and
  - (c) the court is satisfied that the insurer was at all material times willing and able to carry out what was proposed in the written final offer.
- (2) Unless the insurer or the claimant shows another order for costs is appropriate in the circumstances, the court must—
- (a) order the insurer to pay the claimant's costs, calculated on the standard basis, up to and including the day of service of the written final offer; and
  - (b) order the claimant to pay the insurer's costs, calculated on the standard basis, after the day of service of the written final offer.

### **314 Interest after service of written final offer**

- (1) This section applies if the court gives judgment for the claimant for the recovery of a debt or damages and—
- (a) the judgment includes interest or damages in the nature of interest; or

- (b) under an Act, the court awards the claimant interest or damages in the nature of interest.
- (2) For giving judgment for costs under section 312 or 313, the court must disregard the interest or damages in the nature of interest relating to the period after the day the written final offer is given.

## **Division 2                      Costs applying to worker with WRI less than 20% or no WRI**

### **315      Application of div 2**

This division applies if the claimant is a worker who has a WRI of less than 20% or no WRI.

### **316      Principles about orders as to costs**

- (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 claimant or an insurer 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 written final offer—an order that the insurer pay the worker's costs on the standard basis from the day of the written final offer;
  - (b) if the amount of damages awarded is equal to or less than the insurer's written final offer—an order that the worker pay the insurer's costs on the standard basis 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 the insurer's written 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 the insurer 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 the insurer under subsection (5) only if—
- (a) the order is in favour of the entity; and
  - (b) the worker's employer or the insurer joined the entity as a defendant.

### **Division 3                      Costs generally**

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

This division applies to all claimants.

#### **318      Costs if proceeding could have been brought in a lower court**

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 13                              Excess damages awarded in another jurisdiction**

#### **319      Application of pt 13**

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 1987*; 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) an insurer would be liable to pay all the damages if section 320 did not apply.

### **320 No liability for excess damages**

The insurer 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 Choice of law for damages**

### **Part 1 Application of chapter 6**

#### **321 Claims to which chapter applies**

- (1) This chapter applies only to a claim for damages against a worker's employer in relation to an injury that was caused by—
  - (a) the negligence or other tort (including breach of statutory duty) of the worker's employer; or
  - (b) a breach of contract by the worker's employer.
- (2) Subsection (1)(a) applies even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.

## Part 2 Interpretation

### 322 Meaning of *substantive law*

- (1) In this chapter, *substantive law* includes—
- (a) a law that establishes, modifies, or extinguishes a cause of action or a defence to a cause of action; and
  - (b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgment of that time); and
  - (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not commenced within a particular time limit; and
  - (d) a law that limits the kinds of injury, loss or damage for which damages or compensation may be recovered; and
  - (e) a law that precludes the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered; and
  - (f) a law expressed as a presumption, or rule of evidence, that affects substantive rights; and
  - (g) a provision of a State's legislation about damages for a work related injury, whether or not it would be otherwise regarded as procedural in nature;

but does not include a law prescribing rules for choice of law.

- (2) In this section—

*a State's legislation about damages for a work related injury* means—

- (a) for Queensland—chapter 5 and any other provision of this Act providing for the interpretation of anything in chapter 5; and
- (b) otherwise—any provisions of a law of a State that are declared under a regulation to be the State's legislation about damages for work related injury.

**323 What constitutes injury and employment and who is employer**

For this chapter—

- (a) injury and employer include anything that is within the scope of a corresponding term in the statutory workers' compensation scheme of another State; and
- (b) the determination of what constitutes employment or whether or not a person is the worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers' compensation scheme of another State.

**Part 3 Substantive law that governs claim****324 The applicable substantive law for work injury claims**

- (1) If compensation is payable (whether or not it has been paid) under the statutory workers' compensation scheme of a State in relation to an injury to a worker, the substantive law of that State is the substantive law that governs—
  - (a) whether or not a claim for damages in relation to the injury can be made; and
  - (b) if it can be made, the determination of the claim.
- (2) For the purposes of this section, compensation is considered to be payable under a statutory workers' compensation scheme of a State in relation to an injury if compensation in relation to it—
  - (a) would have been payable apart from a provision of the scheme that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision; or

- (b) would have been payable if a claim for that compensation had been properly made, and (if applicable) an election to claim that compensation (instead of damages) had been properly made.

### **325 Availability of action in another State not relevant**

- (1) It makes no difference for the purposes of this chapter that, under the substantive law of another State—
  - (a) it is the nature of the circumstances that they would not have given rise to a cause of action had they occurred in that State; or
  - (b) the circumstances on which the claim is based do not give rise to a cause of action.
- (2) In this section—

*another State* means a State other than the State with which the injury is connected.

## **Chapter 7 The Authority**

### **Part 1 Establishment**

#### **326 Authority is established**

The Workers' Compensation Regulatory Authority (*the Authority*) is established.

#### **327 Authority is a body corporate etc.**

The Authority—

- (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.

**328 Authority may operate under trading name**

The Authority may operate under a trading name prescribed under a regulation.

**329 Authority represents the State**

The Authority represents the State.

## **Part 2 Functions and powers**

**330 General statement of Authority's functions**

- (1) The Authority's primary function is to regulate the workers' compensation scheme.
- (2) In enforcing this Act as the regulator, the Authority's functions include the following—
  - (a) to monitor the compliance of insurers with this Act;
  - (b) to monitor the performance of insurers under this Act, including the consistent application of this Act;
  - (c) to decide applications relating to self-insurance;
  - (d) to approve amounts payable under an industrial instrument for the purposes of section 107B;<sup>190</sup>
  - (e) to undertake reviews of decisions under chapter 13, part 2 and manage appeals under chapter 13, part 3;<sup>191</sup>
  - (f) to support and oversee the efficient administration of medical assessment tribunals;
  - (g) to undertake workplace rehabilitation accreditation and compliance activities;
  - (h) to provide rehabilitation advisory services;

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190 Section 107B (Meaning of *amount payable* under an industrial instrument)

191 Chapter 13 (Reviews and appeals), part 2 (Authority's review of decisions) and part 3 (Appeals)

- (i) to maintain a database for scheme-wide reporting;
- (j) to promote education about the workers' compensation scheme;
- (k) to collect fees under the Act;
- (l) to administer grants under the Act;
- (m) to perform other functions given to the Authority under this or another Act.

### **331 Authority's general powers**

- (1) The Authority 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), the Authority has the powers that are conferred on it by this or another Act.
- (3) The Authority may exercise its powers inside and outside Queensland.
- (4) Without limiting subsection (3), the Authority may exercise its powers in a foreign country.
- (5) The fact that the doing of an act by the Authority 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.

## **Part 3 Reporting obligations**

### **332 Quarterly reports**

- (1) The Authority's board must give to the Minister a report on the operations of the Authority 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.
- (3) A quarterly report must include information about the Authority's operations under each of its functions.

### **333 Matters to be included in annual report**

- (1) Each annual report of the Authority 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 the Authority's operations; and
  - (b) include particulars of any directions and notifications given to the Authority's board by the Minister that relate to the relevant financial year; and
  - (c) include particulars of the impact on the financial position of the Authority, and any directions and notifications given to the board by the Minister, that relate to the relevant financial year.
- (2) Each annual report of the Authority must also state whether or not the Authority's directors consider there are, when the statement is made, reasonable grounds to believe that the

Authority will be able to pay its debts as and when they fall due.

### **334 Board to keep Minister informed**

- (1) The Authority's board must—
  - (a) keep the Minister reasonably informed of the operations, financial performance and financial position of the Authority; 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 the Authority's objectives—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 that the board is required, or may be required, to give to the Minister, by another Act.

## **Part 4 Board of directors**

### **Division 1 Establishment of Authority's board**

#### **335 Establishment of board**

- (1) The Authority's board of directors is established.
- (2) The board consists of not more than 7 members appointed by the Governor in Council.

**336 Appointment of chairperson and deputy chairperson**

- (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.

**337 Regard to particular ability in appointment of directors**

- (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 the Authority's performance as the regulator.
- (2) A person is not eligible for appointment as a director if—
  - (a) the person is not able to manage a corporation because of the Corporations Act, part 2D.6;<sup>192</sup> or
  - (b) the person is—
    - (i) a WorkCover director or WorkCover employee; or
    - (ii) a director, employee or agent of a self-insurer.

**338 Role of board**

The board's role includes the following—

- (a) deciding the objectives, strategies and policies to be followed by the Authority;
- (b) to monitor the performance and outcomes of medical assessment tribunals;
- (c) ensuring that the Authority performs its functions in a proper, effective and efficient way;
- (d) accounting to the Minister for the Authority's performance as required by this Act or another Act;

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<sup>192</sup> Corporations Act, part 2D.6 (Disqualification from managing corporations)

- (e) keeping the Minister informed, on its own initiative or if the Minister asks, on the board's responsibilities and functions;
- (f) performing other functions conferred on the board under this or another Act.

### **339 Delegation by board**

- (1) The board may, by resolution, delegate its powers to—
  - (a) a director; or
  - (b) a committee of the board; or
  - (c) the Authority's chief executive officer; or
  - (d) an appropriately qualified Authority 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 the Authority.

## **Division 2 Meetings and other business of board**

### **340 Meaning of *required minimum number* of directors**

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.

### **341 Conduct of meetings and other business**

Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

**342 Times and places of meetings**

- (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.

**343 Presiding at meetings**

- (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.

**344 Quorum and voting at meetings**

- (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 346.<sup>193</sup>

**345 Disclosure of interests by director**

- (1) If an Authority director has a direct or indirect interest in a matter being considered, or about to be considered, by the Authority's board, the director must disclose the nature of the

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193 Section 346 (Voting by interested director)

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.

### **346 Voting by interested director**

- (1) An Authority director who has a material personal interest in a matter that is being considered by the Authority'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).

**347 Participation in meetings**

- (1) The board may hold meetings, or allow directors to take part in its meetings, by using any technology that reasonably allows directors to hear and take part in discussions as they happen.

*Example of use of technology—*

Teleconferencing.

- (2) A director who takes part in a meeting under subsection (1) is taken to be present at the meeting.

**348 Resolutions without meetings**

- (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
  - (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.

**349 Minutes**

The board must keep minutes of its proceedings.

## **Division 3                      Other provisions about directors**

### **350      Term of appointment of directors**

A director is to be appointed by the Governor in Council for a term of not more than 5 years.

### **351      Terms of appointment not provided for under Act**

- (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.

### **352      Appointment of acting director**

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.

### **353      Resignation**

- (1) A director, or person appointed under section 336<sup>194</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.

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194 Section 336 (Appointment of chairperson and deputy chairperson)

**354 Termination of appointment as director**

- (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 a public service officer when appointed as a director ceases to be a public service officer, the person ceases to be a director.

**Part 5 The chief executive officer****355 Authority's chief executive officer**

- (1) The Authority 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 1996*.
- (4) A person appointed as the chief executive officer must enter into a contract with the Authority.
- (5) The contract must be signed for the Authority by the chairperson of the Authority's board.
- (6) The conditions of the contract are to be decided by the board in consultation with the Minister.
- (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 1999*, section 276 or chapter 3.<sup>195</sup>

### **356 Duties of chief executive officer**

The Authority's chief executive officer is, under the board, to manage the Authority.

### **357 Things done by chief executive officer**

Anything done in the name of, or for, the Authority by its chief executive officer is taken to have been done by the Authority.

### **358 Delegation by chief executive officer**

- (1) The Authority'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 Authority employee.
- (2) Subsection (1) has effect subject to any directions of the board further limiting the power to delegate.
- (3) 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 the Authority.

### **359 Additional provisions relating to chief executive officer**

- (1) The Authority's board may appoint a person to act as chief executive officer—
  - (a) during a vacancy in the office; or

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<sup>195</sup> *Industrial Relations Act 1999*, section 276 (Power to amend or void contracts) or chapter 3 (Dismissals)

- (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) 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 6                      Other employment provisions**

### **360      Basis of employment generally**

- (1) This section does not apply to the Authority's chief executive officer.
- (2) The Authority may employ persons it considers necessary or convenient for the administration of its functions or powers under any Act.
- (3) The Authority's employees are to be employed under the *Public Service Act 1996*.

### **361      EEO legislation is applicable**

The Authority is a unit of the public sector under the *Equal Opportunity in Public Employment Act 1992*.

## **Part 7                      Financial provisions**

### **362      Funding of Authority**

The Authority is funded by contributions from insurers and income received in the exercise of its functions.

**363 Application of financial legislation**

The Authority 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*.

**364 Funds and accounts**

- (1) The Authority may establish funds and accounts.
- (2) The Authority must pay into the funds and accounts all amounts received by it.
- (3) The Authority may pay out of an Authority fund—
  - (a) amounts in accordance with a direction of the Minister under section 479; or
  - (b) amounts to enhance awareness of persons' rights under this Act; or
  - (c) amounts for research and education relating to the management of workers' injuries and the rehabilitation of workers; or
  - (d) amounts for discharging particular liabilities of insurers under this Act; or
  - (e) amounts the Authority considers appropriate for the performance of its functions; or
  - (f) other amounts the Authority may, or must, pay for any purpose under this or another Act.

**365 Reserves**

The Authority may establish reserves it considers appropriate for the performance of its functions.

## **Part 8                      Authorised persons**

### **Division 1                  General**

#### **366      Function of authorised person of the Authority**

An authorised person of the Authority has the function of conducting investigations and inspections to monitor compliance with the requirements of the Authority in the discharge of its functions under this Act.

#### **367      Authorised person subject to Authority's directions**

An authorised person is subject to the Authority's directions in exercising powers of an authorised person.

#### **368      Powers of authorised persons**

An authorised person has the powers given to the person under this Act or another Act.

#### **369      Limitation on powers of authorised person**

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 the Authority to the authorised person.

### **Division 2                  Appointment of authorised persons and other matters**

#### **370      Appointment of authorised persons**

- (1) The Authority may appoint an Authority employee as an authorised person.

- (2) The Authority may appoint an Authority employee as an authorised person only if the Authority considers the employee has the necessary expertise or experience to be an authorised person.

### **371 Authorised person's appointment conditions**

- (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 the Authority; 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.

### **372 Authorised person's identity card**

- (1) The Authority 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 the Authority; and
  - (d) include an expiry date; and
  - (e) be signed by the Authority's chief executive officer.

- (3) A person who ceases to be an authorised person for the Authority must return the person's identity card to the Authority within 5 business days after the person ceases to be an authorised person for the Authority, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

### **373 Display of authorised person's identity card**

- (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.

### **374 Protection from liability**

- (1) An authorised person of the Authority 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 the Authority.

## **Part 9 Other provisions about the Authority**

### **375 Authority's seal**

- (1) The Authority'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 the Authority's seal appearing on a document.

### **376 Authentication of documents**

A document made by the Authority, 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 Authority's board; or
- (b) its chief executive officer; or
- (c) a person authorised to sign the document by—
  - (i) resolution of the board; or
  - (ii) direction of its chief executive officer.

### **377 Judicial notice of certain signatures**

Judicial notice must be taken of—

- (a) the official signature of a person who is or has been chairperson of the Authority's board, an Authority director or the Authority's chief executive officer; and
- (b) the fact that the person holds or has held the relevant office.

### **378 Giving of documents to board**

If this Act authorises or requires a document to be given to the Authority's board, it may be given to the board's chairperson.

### **379 Application of various other Acts**

- (1) The Authority is—

- (a) a unit of public administration under the *Crime and Misconduct Act 2001*; and
  - (b) a public authority under the *Ombudsman Act 2001*; and
  - (c) a public sector entity under the *Public Sector Ethics Act 1994*; and
  - (d) a public sector entity under the *Whistleblowers Protection Act 1994*.
- (2) The *Freedom of Information Act 1992* does not apply to a document received or brought into existence by the Authority in carrying out its function of monitoring the financial performance of self-insurers.

## Chapter 8 WorkCover Queensland

### Part 1 Establishment

#### 380 WorkCover is established

WorkCover Queensland is established.

#### 381 WorkCover is a body corporate etc.

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.

#### 382 Relationship with State

- (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**

#### **383      General statement of WorkCover's functions**

- (1) WorkCover's functions are as follows—
  - (a) to undertake the insurance business mentioned in section 384;
  - (b) to perform other functions conferred on it by this or another Act;
  - (c) 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) is subject to the Minister's directions under chapter 9.

#### **384      WorkCover's insurance business**

- (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.

**385 WorkCover as the exclusive provider of accident insurance**

- (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.

**386 WorkCover's offices**

WorkCover may establish offices anywhere and discontinue any WorkCover offices.

**Division 2 Powers generally****387 Objects of div 2**

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.

**388 WorkCover's general powers**

- (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.

### **389 General restriction on WorkCover's powers**

- (1) Section 388 applies to WorkCover subject to any restrictions on WorkCover's powers expressly imposed under this or another Act.
- (2) Section 388 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 a WorkCover officer 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, a WorkCover officer 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—
- restriction* includes prohibition.
- WorkCover officer* means—
- (a) a WorkCover director; or
  - (b) a WorkCover employee.

### **390 Disposal of main undertakings**

- (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.

**391 Acquiring and disposing of subsidiaries**

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.

**392 Protection of persons who deal with WorkCover**

- (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 a WorkCover 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

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- (c) that a WorkCover officer or agent of WorkCover who has authority to issue a document for WorkCover has authority to warrant that the document is genuine; and
  - (d) that a WorkCover 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 WorkCover's 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—

**WorkCover officer** means—

- (a) a WorkCover director; or
- (b) a WorkCover employee.

**393 Reserve power of Minister to direct that asset not be disposed of**

- (1) The Minister may, after consultation with WorkCover's 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 industrial gazette within 21 days after it is given.

## **Part 3 Obligations**

### **Division 1 Corporate plan**

**394 WorkCover must have corporate plan**

WorkCover must have a corporate plan.

**395 Guidelines in relation to corporate plans**

- (1) The Minister may issue guidelines about the form and content of WorkCover's corporate plan.
- (2) WorkCover must comply with the guidelines.

**396 Draft corporate plan**

- (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.

### **397 Special procedures for draft corporate plan**

- (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 the direction to be published in the industrial gazette within 21 days after it is given.

### **398 Corporate plan on agreement**

When a draft corporate plan is agreed to by the Minister, it becomes WorkCover's corporate plan for the relevant financial year.

### **399 Corporate plan pending agreement**

- (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 WorkCover's 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 398.

#### **400 Changes to corporate plan**

- (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**

#### **401 WorkCover must have statement of corporate intent**

WorkCover must have a statement of corporate intent for each financial year.

#### **402 Statement of corporate intent must be consistent with corporate plan**

WorkCover's statement of corporate intent must be consistent with its corporate plan.

#### **403 Matters to be included in statement of corporate intent**

- (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 404;

- (b) section 410;<sup>196</sup>
- (c) section 451.<sup>197</sup>

#### **404 Additional matters to be included in statement of corporate intent**

- (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 460;<sup>198</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.

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196 Section 410 (Community service obligations to be specified in statement of corporate intent)

197 Section 451 (Employment and industrial relations plan)

198 Section 460 (Payment to consolidated fund)

- (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.

#### **405 Draft statement of corporate intent**

- (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 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.

#### **406 Special procedures for draft statement of corporate intent**

- (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.

#### **407 Statement of corporate intent on agreement**

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.

#### **408 Changes to statement of corporate intent**

- (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**

#### **409 Meaning of *community service obligations***

- (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 393;<sup>199</sup>
- (b) a direction given to WorkCover's board under section 397;<sup>200</sup>
- (c) a direction given to WorkCover's board under section 400;<sup>201</sup>
- (d) a direction given to WorkCover's board under section 406;<sup>202</sup>
- (e) a direction given to WorkCover's board under section 408;<sup>203</sup>
- (f) a notification given to WorkCover's board under section 480;<sup>204</sup>
- (g) a direction given to WorkCover's board under section 476;<sup>205</sup>
- (h) a statutory duty to perform activities, including any economic development activities.

#### **410 Community service obligations to be specified in statement of corporate intent**

- (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—

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199 Section 393 (Reserve power of Minister to direct that asset not be disposed of)

200 Section 397 (Special procedures for draft corporate plan)

201 Section 400 (Changes to corporate plan)

202 Section 406 (Special procedures for draft statement of corporate intent)

203 Section 408 (Changes to statement of corporate intent)

204 Section 480 (Reserve power of Minister to notify board of public sector policies)

205 Section 476 (Reserve power of Minister to give directions in public interest)

- (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**

### **411      Quarterly reports**

- (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.
- (3) A quarterly report must include the information required to be given in the report by WorkCover's statement of corporate intent.

### **412      Matters to be included in annual report**

- (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 460;<sup>206</sup> and

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206 Section 460 (Payment to consolidated fund)

- (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.

**413 Deletion of commercially sensitive matters from annual report etc.**

- (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 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 412<sup>207</sup> or another Act.
- (4) Subsection (1) has effect despite subsection (2).

#### **414 Board to keep Minister informed**

- (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 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 of WorkCover**

#### **415 Disclosure of interests by director**

- (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.

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207 Section 412 (Matters to be included in annual report)

Maximum penalty—100 penalty units.

- (2) The disclosure must be recorded in the board's minutes.

#### **416 Voting by interested director**

- (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).

#### **417 Duty and liability of certain officers of WorkCover**

- (1) A WorkCover officer must act honestly in the exercise of powers, and discharge of functions, as a WorkCover officer.

Maximum penalty—

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- (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) A WorkCover officer 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.

- (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 *Criminal Proceeds Confiscation Act 2002*.
- (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—
- WorkCover officer*** means—
- (a) a WorkCover director; or
  - (b) WorkCover's chief executive officer; or
  - (c) another person who is concerned, or takes part, in WorkCover's management.

#### **418 Prohibition on loans to directors**

- (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 WorkCover 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.

#### **419 WorkCover not to indemnify WorkCover officers**

- (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.

*WorkCover officer* means—

- (a) a WorkCover director; or
- (b) WorkCover's chief executive officer; or
- (c) another person who is concerned, or takes part, in WorkCover's management.

#### **420 WorkCover not to pay premiums for certain liabilities of WorkCover officers**

(1) WorkCover must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been a WorkCover officer 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 417(3) or (4).<sup>208</sup>

(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—

*pay* includes pay indirectly through 1 or more interposed entities.

*WorkCover officer* means—

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208 Section 417 (Duty and liability of certain officers of WorkCover)

- (a) a WorkCover director; or
- (b) WorkCover's chief executive officer; or
- (c) another person who is concerned, or takes part, in WorkCover's management.

#### **421 Examination of persons concerned with WorkCover**

- (1) This section applies 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.
- (2) The Attorney-General may apply to the Supreme Court or a District Court for an order under this section about the person.
- (3) 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.
- (4) 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.
- (5) The court may give directions about—
  - (a) the matters to be inquired into at the examination; and
  - (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.
- (6) 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.

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Maximum penalty—200 penalty units or 2 years imprisonment.

- (7) 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.

- (8) 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.

- (9) 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.

- (10) The person must not, without reasonable excuse, contravene a direction under subsection (9).

Maximum penalty—200 penalty units or 2 years imprisonment.

- (11) 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.

- (12) 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.

- (13) 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.

- (14) 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.
- (15) 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.
- (16) Subject to subsection (14), 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.
- (17) 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.
- (18) The court may adjourn the examination from time to time.
- (19) 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.

#### **422 Power to grant relief**

- (1) If, in a proceeding against a WorkCover officer for negligence, default, breach of trust or breach of duty as an officer, it appears to the court that—
  - (a) the officer is or may be liable for the negligence, default or breach; and
  - (b) the officer has acted honestly; and

- (c) having regard to all the circumstances of the case, including circumstances connected with the officer's appointment, the officer ought fairly to be excused for the negligence, default or breach;

the court may relieve the officer, completely or partly, from liability on terms that the court considers appropriate.

- (2) If a WorkCover officer believes that a claim will or might be made against the officer for negligence, default, breach of trust or breach of duty as an officer, the officer may apply to the Supreme Court or a District Court for relief.
- (3) The court has the same power to relieve the officer as it would have if a proceeding had been brought against the officer in the court for the negligence, default or breach.
- (4) If—
  - (a) a proceeding mentioned in subsection (1) 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.

- (5) In this section—

***WorkCover officer*** means—

- (a) a WorkCover director; or
- (b) a WorkCover employee.

#### **423 False or misleading information or documents**

- (1) A WorkCover officer must not make a statement concerning the affairs of WorkCover to another WorkCover 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) A WorkCover officer must not give to another WorkCover 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—

*WorkCover officer* means—

- (a) a WorkCover director; or
- (b) a WorkCover employee.

## **Part 4                      Board of directors**

### **Division 1                Establishment of WorkCover's board**

#### **424      Establishment of board**

- (1) WorkCover's board of directors is established.

- (2) The board consists of not more than 7 members appointed by the Governor in Council.

#### **425 Appointment of chairperson and deputy chairperson**

- (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.

#### **426 Regard to particular ability in appointment of directors**

- (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.
- (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 Act, part 2D.6.<sup>209</sup>

#### **427 Role of board**

The board's role includes the following—

- (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;

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<sup>209</sup> Corporations Act, part 2D.6 (Disqualification from managing corporations)

- (c) responsibility for WorkCover's commercial policy and management;
- (d) notifying the Minister and the Authority of the methods and rates it proposes to use to assess premiums;
- (e) giving timely advice to the Authority on information impacting on the workers' compensation scheme;
- (f) performing other functions conferred on the board under this or another Act;
- (g) ensuring WorkCover otherwise performs its functions in a proper, effective and efficient way.

#### **428 Delegation by board**

- (1) The board may, by resolution, delegate its powers to—
  - (a) a WorkCover director; or
  - (b) a committee of the board; or
  - (c) WorkCover's 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**

#### **429 Meaning of *required minimum number* of directors**

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.

**430 Conduct of meetings and other business**

Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

**431 Times and places of meetings**

- (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.

**432 Presiding at meetings**

- (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.

**433 Quorum and voting at meetings**

- (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 416.<sup>210</sup>

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<sup>210</sup> Section 416 (Voting by interested director)

**434 Participation in meetings**

- (1) The board may hold meetings, or allow directors to take part in its meetings, by using any technology that reasonably allows directors to hear and take part in discussions as they happen.

*Example of use of technology—*

Teleconferencing.

- (2) A director who takes part in a meeting under subsection (1) is taken to be present at the meeting.

**435 Resolutions without meetings**

- (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
  - (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.

**436 Minutes**

The board must keep minutes of its proceedings.

### **Division 3                      Other provisions about directors**

#### **437      Term of appointment of directors**

A director is to be appointed by the Governor in Council for a term of not more than 5 years.

#### **438      Terms of appointment not provided for under Act**

- (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.

#### **439      Appointment of acting director**

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.

#### **440      Resignation**

- (1) A director, or person appointed under section 425<sup>211</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.

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211 Section 425 (Appointment of chairperson and deputy chairperson)

**441 Termination of appointment as director**

- (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 a public service officer when appointed as a director ceases to be a public service officer, the person ceases to be a director.

**Part 5 The chief executive officer****442 WorkCover's chief executive officer**

- (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 1996*.
- (4) A person appointed as the chief executive officer must enter into a contract with WorkCover.
- (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 1999*, section 276 or chapter 3.<sup>212</sup>

#### **443 Duties of chief executive officer**

WorkCover's chief executive officer is, under the board, to manage WorkCover.

#### **444 Things done by chief executive officer**

Anything done in the name of, or for, WorkCover by its chief executive officer is taken to have been done by WorkCover.

#### **445 Delegation by chief executive officer**

- (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)—

*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.

#### **446 Additional provisions relating to chief executive officer**

- (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.

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212 *Industrial Relations Act 1999*, section 276 (Power to amend or void contracts) or chapter 3 (Dismissals)

- (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 6                      Other employment provisions**

### **447      Appointment of senior executives**

- (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 1996*.
- (3) Subsection (2) does not affect the *Public Service Act 1996*, section 22.<sup>213</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.

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213 *Public Service Act 1996*, section 22 (Application of Act to certain public sector units etc.)

- (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 1999*, section 276 or chapter 3.<sup>214</sup>

#### **448 Basis of employment generally**

- (1) This section does not apply to WorkCover's chief executive officer or a senior executive.
- (2) WorkCover may employ persons it considers necessary or convenient for the administration of its functions or powers under this or any Act.
- (3) The employment conditions of WorkCover's employees are to be decided by WorkCover, subject to any applicable industrial instrument.
- (4) WorkCover's employees are to be employed under this Act, and not the *Public Service Act 1996*.
- (5) Subsection (4) does not affect the *Public Service Act 1996*, section 22.<sup>215</sup>

#### **449 Superannuation schemes**

- (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.

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214 *Industrial Relations Act 1999*, section 276 (Power to amend or void contracts) or chapter 3 (Dismissals)

215 *Public Service Act 1996*, section 22 (Application of Act to certain public sector units etc.)

- (3) Subsection (2) is subject to the *Financial Administration and Audit Act 1977*, part 6.<sup>216</sup>

#### **450 Arrangements relating to staff**

- (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 a WorkCover employee to be made available to—
- (a) the Commonwealth or another State; or
  - (b) an authority of the Commonwealth or another State.

#### **451 Employment and industrial relations plan**

- (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.

#### **452 EEO legislation is applicable**

WorkCover is a unit of public sector under the *Equal Opportunity in Public Employment Act 1992*.

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<sup>216</sup> *Financial Administration and Audit Act 1977*, part 6 (Audit of consolidated fund and public sector entities)

## **Part 7                      Financial provisions**

### **453      WorkCover's solvency**

- (1) WorkCover is taken to be fully funded if WorkCover—
  - (a) is able to meet its liabilities for compensation and damages payable from its funds and accounts; and
  - (b) maintains minimum solvency of at least 15%; and
  - (c) complies with any extra solvency requirements prescribed under a regulation.
- (2) A reference in this section to WorkCover's solvency is a reference to the amount by which WorkCover's assets exceed the amount of its liabilities for outstanding claims.

### **454      Application of financial legislation**

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*.

### **455      Liability for State taxes**

- (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, other than a duty under the *Duties Act 2001*, 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 15.<sup>217</sup>
- (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.

#### **456 Liability for Commonwealth tax equivalents**

- (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>218</sup>

#### **457 Funds and accounts**

- (1) WorkCover may establish funds and accounts.
- (2) WorkCover must pay into the funds and accounts all amounts received by it.
- (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.

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<sup>218</sup> *Government Owned Corporations Act 1993*, section 155 (Liability for Commonwealth tax equivalents)

**458 Reserves**

- (1) WorkCover may establish reserves it considers appropriate for the performance of its functions.
- (2) The reserves are not to be taken into account in determining solvency under section 453.

**459 Procedures for borrowing**

- (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.

**460 Payment to consolidated fund**

- (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 WorkCover is fully funded, and the payment does not stop WorkCover 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.

#### **461 Additional financial reporting requirements**

- (1) As soon as practicable after the end of each financial year, WorkCover must give the Minister a report stating the extent to which WorkCover is fully funded.
- (2) WorkCover must seek the advice of an appropriately qualified actuary in preparing the report.

## **Part 8 Authorised persons**

### **Division 1 General**

#### **462 Function of authorised person**

An authorised person of WorkCover has the function of conducting investigations and inspections to monitor compliance with the requirements of WorkCover in the discharge of its functions under this Act.

#### **463 Authorised person subject to WorkCover's directions**

An authorised person is subject to WorkCover's directions in exercising powers of an authorised person.

**464 Powers of authorised persons**

An authorised person has the powers given to the person under this Act or another Act.

**465 Limitation on powers of authorised person**

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****466 Appointment of authorised persons**

- (1) WorkCover may appoint a WorkCover employee as an authorised person.
- (2) WorkCover may appoint a WorkCover employee as an authorised person only if WorkCover considers the employee has the necessary expertise or experience to be an authorised person.

**467 Authorised person's appointment conditions**

- (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.

#### **468 Authorised person's identity card**

- (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 WorkCover's chief executive officer.
- (3) A person who ceases to be an authorised person must return the person's identity card to WorkCover within 5 business days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

#### **469 Display of authorised person's identity card**

- (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.

#### **470 Protection from liability**

- (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.

## **Part 9 Other provisions about WorkCover**

#### **471 WorkCover's seal**

- (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.

#### **472 Authentication of documents**

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) its chief executive officer; or
- (c) a person authorised to sign the document by—

- (i) resolution of the board; or
- (ii) direction of its chief executive officer.

#### **473 Judicial notice of certain signatures**

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 WorkCover's chief executive officer; and
- (b) the fact that the person holds or has held the relevant office.

#### **474 Giving of documents to board**

If this Act authorises or requires a document to be given to WorkCover's board, it may be given to the board's chairperson.

#### **475 Application of various other Acts**

- (1) WorkCover is—
  - (a) a unit of public administration under the *Crime and Misconduct Act 2001*; and
  - (b) a public authority under the *Ombudsman Act 2001*.
- (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 409.<sup>219</sup>

*excluded activities* means—

- (a) commercial activities other than activities about policies, applications for compensation, proceedings for damages; or

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219 Section 409 (Meaning of *community service obligations*)

- (b) community service obligations prescribed under a regulation.

## **Chapter 9      The Minister**

### **Part 1              The Minister and the Authority**

#### **476      Reserve power of Minister to give directions in public interest**

- (1) The Minister may give the Authority's board a written direction in relation to the Authority if the Minister is satisfied that it is necessary to give the direction in the public interest.
- (2) The board must ensure the direction is complied with in relation to the Authority.
- (3) Before giving the direction, the Minister must consult with the board.
- (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.

#### **477      Additional power to direct Authority**

- (1) The Minister may give the Authority a written direction for the administration of this Act.
- (2) 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.

- (3) Subsection (2) 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.
- (4) The board must comply with the direction.
- (5) 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.

#### **478 Monitoring and assessment of Authority**

- (1) The Minister may delegate the Minister's powers under section 334<sup>220</sup> to—
  - (a) for any provision of section 334—the chief executive of the department (the *department chief executive*) or an appropriately qualified public service officer of the department; or
  - (b) for section 334(1)(a) or (b)—a person appropriately qualified to assess the matters mentioned in section 334(1)(a).
- (2) The Minister may ask the department chief executive to investigate, and report to the Minister on, any matter relating to the Authority.
- (3) For an investigation under this section of a matter relating to the Authority, the department chief executive may give the Authority written directions.
- (4) Without limiting subsection (3), the department chief executive may direct the Authority—
  - (a) to give to the department chief executive any information about the Authority that the department chief executive considers necessary or desirable in connection with the investigation; and

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220 Section 334 (Board to keep Minister informed)

- (b) to permit persons authorised by the department chief executive to have access to specified documents about the Authority 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) The Authority 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).

#### **479 Amounts payable by Authority on Minister's instruction**

- (1) The Authority 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; or
  - (c) making employers and workers aware of their rights, and procedures they need to follow, under the Act.
- (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.



- (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.

#### **482 Additional power to direct WorkCover**

- (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 WorkCover's 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.

#### **483 Notice of suspected threat to full funding because of direction or notification**

- (1) This section applies if—
  - (a) the 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.
- (2) The board must immediately give written notice to the Minister and the auditor-general of the suspicion and its reasons for its opinion.
- (3) The notice must state that it is given under this section.
- (4) 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.
- (5) The board must ensure the direction under subsection (4) is complied with, subject to subsection (7).
- (6) 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 (4) 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.
- (7) This section applies to an alternative direction mentioned in subsection (4)(a)(i) in the way it applies to any other direction.

**484 WorkCover and WorkCover's board not otherwise subject to government direction**

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.

**485 Minister not director etc.**

- (1) The Minister is not to be treated as a WorkCover director.
- (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 Act.

**486 Monitoring and assessment of WorkCover**

- (1) The Minister may delegate the Minister's powers under section 414<sup>221</sup> to—
  - (a) for any provision of section 414—the chief executive of the department (the *department chief executive*) or an appropriately qualified public service officer of the department; or
  - (b) for section 414(1)(a) or (b)—a person appropriately qualified to assess the matters mentioned in section 414(1)(a).
- (2) The Minister may ask 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

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221 Section 414 (Board to keep Minister informed)

- 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).

## **Part 3                      The Minister and codes of practice**

### **486A Code of practice**

- (1) The Minister may make a code of practice that states—
  - (a) ways an insurer may perform its functions under this Act in relation to the management of its claims; and
  - (b) ways an insurer may exercise its powers under this Act in relation to the management of its claims; and
  - (c) ways an insurer may meet its obligations under this Act in relation to the management of its claims.
- (2) To remove any doubt, a code of practice can not include a requirement that an insurer acts in a way that is inconsistent with this Act.
- (3) The Authority must recommend the making of a code of practice to the Minister.
- (4) The Authority must consult with the Minister before giving the recommendation.
- (5) The Minister must notify the making of a code of practice.
- (6) A code of practice expires 10 years after its commencement.

- (7) The Authority must ensure that a copy of each code of practice, and any document applied, adopted or incorporated by the code of practice, is made available for inspection without charge during normal business hours at each of the Authority's offices.
- (8) If a code of practice is inconsistent with a regulation, the regulation prevails to the extent of the inconsistency.
- (9) A notice mentioned in subsection (5) is subordinate legislation.

#### **486B Effect of code of practice**

- (1) Unless otherwise stated in a code of practice, the code of practice does not state all that an insurer must do, or must not do, to perform its functions, exercise its powers and meets its obligations under this Act.
- (2) An insurer, including WorkCover, commits an offence if the insurer—
  - (a) contravenes, or otherwise acts inconsistently with, the code of practice; and
  - (b) does not follow a way that is as effective as, or more effective than, the code of practice for complying with a requirement of this Act.

Maximum penalty—1 000 penalty units.

## **Chapter 10 Workers' compensation advisory committees**

### **487 Establishment of committees**

The Minister may establish 1 or more workers' compensation advisory committees.

**488 Membership of committee**

- (1) A committee consists of the number of members appointed by the Minister.
- (2) The members of a committee must include the following—
  - (a) a person who represents workers;
  - (b) a person who represents employers;
  - (c) a person who represents the Government;
  - (d) a person who represents self-insurers;
  - (e) a person who represents the Authority;
  - (f) a person who represents WorkCover;
  - (g) a person who has other experience the Minister considers appropriate.

**489 Role of committee**

- (1) The role of a committee is to consider any matter referred to it by the Minister.
- (2) The committee may make the recommendations to the Minister it considers appropriate about a matter within the scope of the matter referred.

## **Chapter 11 Medical assessment tribunals**

### **Part 1 Object**

**490 Object of ch 11**

The object of this chapter is to provide for an independent system of medical review and assessment of injury and impairment sustained by workers.



- (v) gynaecologist;
- (vi) thoracic physician;
- (vii) rheumatologist.

**493 Chairperson and deputy chairperson of General Medical Assessment Tribunal**

- (1) The Governor in Council, by gazette notice, may appoint 1 physician appointed to the panel to be chairperson, and 2 or more other 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) A deputy chairperson is presumed to have acted with proper authority each time the deputy chairperson has acted as chairperson of the tribunal, unless the contrary is proved.
- (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.

**494 Constitution of General Medical Assessment Tribunal for reference**

- (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 Practitioners Registration Act 2001* that is relevant to the matters referred to the tribunal for decision.
- (3) The chairperson must preside over meetings of the General Medical Assessment Tribunal.

**495 Panel for specialty medical assessment tribunal**

- (1) For each specialty medical assessment tribunal, the Governor in Council, by gazette notice, may appoint, for a stated period

of not more than 3 years, a panel of doctors for designation to the tribunal.

- (2) Each appointee to the panel for the Disfigurement Assessment Tribunal must be a specialist in plastic and reconstructive surgery.
- (3) Each appointee to the panel for any other specialty medical assessment tribunal must be a specialist in the specialty with which the tribunal is concerned.

#### **496 Chairperson and deputy chairperson of specialty medical assessment tribunal**

- (1) The Governor in Council, by gazette notice, may appoint—
  - (a) 1 of the specialists appointed to the panel for a specialty medical assessment tribunal as chairperson of the tribunal; and
  - (b) at least 1 other specialist appointed to the panel as a deputy chairperson of the tribunal.
- (2) If the chairperson is not available to attend to the business of the tribunal—
  - (a) if there is only 1 deputy chairperson of the tribunal—the deputy chairperson must act as its chairperson; or
  - (b) if there is more than 1 deputy chairperson of the tribunal—a deputy chairperson designated by the chairperson must act as its chairperson.
- (3) A deputy chairperson is presumed to have acted with proper authority each time the deputy chairperson has acted as chairperson of the tribunal, unless the contrary is proved.

#### **497 Specialty medical assessment tribunal**

- (1) For deciding a matter referred to it, a specialty medical assessment tribunal is formed by—
  - (a) its chairperson; and
  - (b) 2 appointees to the panel for the tribunal, including persons appointed to the panel as deputy chairpersons, designated by the chairperson.

- (2) The chairperson must preside over meetings of a specialty medical assessment tribunal.

#### **498 Conditions of appointment to tribunal**

- (1) An appointee to a panel for a tribunal is to be paid the remuneration and allowances decided by the Governor in Council.
- (2) The appointee holds office for the period stated in the gazette notice on the conditions, not otherwise provided for by this Act, decided by the Governor in Council.
- (3) The office of an appointee to a panel becomes vacant if the appointee—
  - (a) resigns by signed notice given to the Minister; or
  - (b) becomes incapable of discharging the appointee's duties; or
  - (c) is removed from office by signed notice from the Minister given in accordance with the conditions of the appointee's appointment; or
  - (d) becomes an employee of the Authority or an insurer.

#### **499 Proceedings of tribunals**

For each tribunal—

- (a) the Authority 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.



*Workers' Compensation and Rehabilitation Act 2003*

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- (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 the insurer asks—the nature and degree of the impairment.
- (3) For section 130,<sup>227</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 131(4),<sup>228</sup> the tribunal must decide—
- (a) whether special circumstances of a medical nature exist; and
  - (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 the insurer 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.

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227 Section 130 (Injuries caused by misconduct)

228 Section 131 (Time for applying)

**502 Reference about worker's capacity for work**

- (1) This section applies on a reference to a tribunal under section 500(b).<sup>229</sup>
- (2) A reference under section 500(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—
    - (i) is total or partial; and
    - (ii) is permanent or temporary; and
  - (c) if the worker has sustained an injury under the table of injuries resulting in permanent impairment and the insurer 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.

**503 Reference about worker's injury**

- (1) This section applies on a reference to a tribunal under section 500(c).<sup>230</sup>
- (2) If the insurer 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.
- (3) Also, if the reference relates to a worker's injury under section 262(1)(b)(iii) or (iv),<sup>231</sup> the tribunal must decide whether—

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229 Section 500 (Reference to tribunals)

230 Section 500 (Reference to tribunals)

231 Section 262 (Claimant may seek damages only in particular cases)

- (a) the deceased worker sustained an injury in the event; and
- (b) the injury caused the worker's death.

**504 Reference about worker's impairment**

- (1) This section applies on a reference to a tribunal under section 500(d).
- (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.

**505 Reference about worker's permanent impairment**

- (1) This section applies on a reference to a tribunal under section 500(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.
- (3) The tribunal must assess the nature and degree of permanent impairment in the way prescribed under a regulation.

**506 Reference about worker's level of dependency**

- (1) On a reference to a tribunal under section 500(f),<sup>232</sup> the tribunal must decide the worker's level of dependency.

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232 Section 500 (Reference to tribunals)

- (2) The tribunal must decide the worker's level of dependency in the way prescribed under a regulation.

**507 Reference about review of worker's permanent impairment**

- (1) This section applies on a reference to a tribunal under section 500(g).
- (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.

**508 Assessment of additional compensation for prescribed disfigurement**

- (1) This section applies on a reference to the Disfigurement Assessment Tribunal under section 500(h).
- (2) The tribunal must assess, by personal examination of the worker—
  - (a) whether the disfigurement is prescribed disfigurement; and
  - (b) if it assesses the disfigurement to be prescribed disfigurement, the degree of permanent impairment resulting from the disfigurement.
- (3) The tribunal must assess the degree of permanent impairment in the way prescribed under a regulation.

**509 Limitation of tribunals' jurisdiction**

- (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 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.

### **510 Power of tribunal to examine worker**

- (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, without reasonable excuse, to attend at the time and place of which the worker has been given at least 5 business 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.



the worker of less than 20%, the worker's entitlement does not extend to a further election under section 189<sup>234</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.

### **513 Deferral of decisions**

- (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.

### **514 Tribunal may refer non-medical matters back to insurer**

- (1) If the tribunal considers that the terms of a reference to it involve—
  - (a) both medical and non-medical matters; or
  - (b) entirely non-medical matters;the tribunal may refer the non-medical matters back to the insurer for a decision.
- (2) To remove any doubt, it is declared that if the tribunal decides a medical matter mentioned in subsection (1)(a), section 515 applies to that decision.
- (3) Section 513 applies to a reference back to the insurer under subsection (1).

### **515 Finality of tribunal's decision**

- (1) Either of the following decisions of the tribunal is final and can not be questioned in a proceeding before a tribunal or a court, except under section 512—

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234 Section 189 (Worker's decision about lump sum compensation—WRI less than 20% or no WRI)

- (a) a decision on a medical matter referred to the tribunal under section 500;
  - (b) a decision under section 514(1).
- (2) Subsection (1) has no effect on the *Judicial Review Act 1991*.

### **516 Decisions of tribunal**

- (1) A tribunal must give a written decision for any matter referred to it with reasons for the decision.
- (2) A tribunal must give a copy of its decision to the insurer and to—
  - (a) the worker; or
  - (b) the worker's representative or agent.

### **517 Protection from liability**

- (1) A member of a tribunal 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 a member of the tribunal, the liability attaches instead to the Authority.

## **Chapter 12      Enforcement**

### **Part 1              Authorised officers and enforcement**

#### **Division 1          Powers of authorised persons**

##### **518      Entry to workplaces**

An authorised person may, at any reasonable time, enter a workplace to monitor or enforce compliance with this Act.

##### **519      Power to require information from certain persons**

- (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 remove any 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.  
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).

## **520 Keeping and inspection of documents**

- (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.

## **521 Warrants for entry**

- (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.

**522 Warrants—applications made other than in person**

- (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.

### **523 General powers after entering places**

- (1) This section applies to an authorised person who enters a place under this Act.
- (2) If the authorised person enters a place under a warrant, this section applies subject to the warrant.
- (3) For monitoring or enforcing compliance with this Act, the authorised person may—
  - (a) search any part of the place; or
  - (b) examine, inspect, photograph or film anything in or on the place; or
  - (c) take extracts from, or copy, a document in or on the place; or
  - (d) take into or onto the place any persons, equipment and materials the authorised person reasonably requires for exercising a power under this Act; or
  - (e) require the occupier of the place, or a person at the place, to give the authorised person reasonable help to exercise the authorised person's powers under paragraphs (a) to (d).
- (4) When making a requirement mentioned in subsection (3)(e), the authorised person must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.

- (5) A person required to give reasonable help under subsection (3)(e) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (6) If the help required to be given is answering a question or producing a document, it is a reasonable excuse for the person to fail to comply with the requirement if complying with it might tend to incriminate the person.

#### **524 Power to seize evidence**

- (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.

#### **525 Receipt for seized things**

- (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.

#### **526 Access to seized things**

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.

**527 Return of seized things**

- (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 2 Other enforcement matters****528 Authorised person to give notice of damage**

- (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.

**529 Restitution**

- (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—
  - (a) if the exercise or purported exercise of the power was by an authorised person of the Authority—from the Authority; or
  - (b) if the exercise or purported exercise of the power was by an authorised person of WorkCover—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.

**530 Costs of investigation**

- (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 to the Authority or WorkCover the 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 3                      Obstructing or impersonating authorised persons**

### **531      Obstruction of authorised persons**

- (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.

### **532      Impersonation of authorised persons**

A person must not pretend to be an authorised person.

Maximum penalty—50 penalty units.

## **Part 2                              Fraud and false and misleading statements**

### **533      Offences involving fraud**

- (1) A person must not in any way defraud or attempt to defraud an 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.

**534 False or misleading information or documents**

- (1) This section applies to a statement made or document given—
  - (a) to the Authority or WorkCover for the purpose of its functions under this Act; or
  - (b) to an entity or person as a self-insurer; 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 the Authority, WorkCover, a self-insurer 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 the Authority, WorkCover, a self-insurer 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 the Authority, WorkCover, the self-insurer 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 the Authority, WorkCover, the self-insurer 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.

**535 Particular acts taken to be fraud**

- (1) This section applies if a person—

- (a) lodges an application for compensation with an insurer; and
  - (b) engages in a calling; and
  - (c) without reasonable excuse, does not inform the insurer, in the way stated under section 136,<sup>235</sup> of the person's engagement in the calling.
- (2) If compensation is paid by the insurer under the application to the person or anyone else—
- (a) after the start of the engagement in the calling; and
  - (b) before the insurer is informed in the way stated under section 136 of the engagement in the calling;
- the person is taken to have defrauded the insurer of the payments under section 533.<sup>236</sup>
- (3) If payments to which subsection (2) applies are not made, the person is taken to have attempted to defraud the insurer under section 533.

### **536 Duty to report fraud or false or misleading information or documents**

- (1) This section applies if—
- (a) an employer who is not a self-insurer believes on reasonable grounds that a person is defrauding, or attempting to defraud, WorkCover; or
  - (b) an employer who is a self-insurer believes on reasonable grounds that a person is defrauding, or attempting to defraud, the self-insurer.
- (2) Without limiting subsection (1), this section also applies if—
- (a) an employer who is not a self-insurer believes on reasonable grounds that a person has stated anything, or given a document containing information, to WorkCover or a registered person that the person knows is false or misleading in a material particular; or

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235 Section 136 (Worker must notify return to work or engagement in a calling)

236 Section 533 (Offences involving fraud)

- (b) an employer who is a self-insurer believes on reasonable grounds that a person has stated anything, or given a document containing information, to the self-insurer or a registered person that the person knows is false or misleading in a material particular.
- (3) The employer who is not a self-insurer must give WorkCover the information the employer has in relation to the defrauding, attempting to defraud, stating of the thing or giving of the document.

Maximum penalty—50 penalty units.

- (4) The employer who is a self-insurer must give the Authority the information the employer has in relation to the defrauding, attempting to defraud, stating of the thing or giving of the document.

Maximum penalty—50 penalty units.

### **537 Fraud and related offences end entitlement to compensation and damages**

- (1) This section applies if a person is convicted of any of the following offences committed against an insurer in relation to an application for compensation or a claim for damages—
  - (a) an offence under section 533;<sup>237</sup>
  - (b) an offence or an attempt to commit an offence under the Criminal Code, section 123, 408C, 430, 488 or 494.<sup>238</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 the insurer, by conduct that is the offence, then, whether or not a penalty is imposed, the court must, on application by the insurer, order the person to repay the insurer all amounts of

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<sup>237</sup> Section 533 (Offences involving fraud)

<sup>238</sup> Criminal Code, section 123 (Perjury), 408C (Fraud), 430 (Conspiracy to defraud), 488 (Forgery and uttering) or 494 (Making documents without authority)

compensation or damages paid to or on account of the person as a result of the commission of the offence.

- (4) The Authority may represent the self-insurer for subsection (3).
- (5) 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.
- (6) Any costs incurred by an 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 533.
- (7) Subsection (2) does not apply to a person only because the person is taken under section 535<sup>239</sup> to have—
  - (a) attempted to defraud an insurer; or
  - (b) defrauded an insurer of an amount not more than the equivalent of 1 week of the person's normal weekly earnings.

## **Chapter 13      Reviews and appeals**

### **Part 1              Internal review of proposed decisions**

#### **538      Internal review by insurer**

- (1) Before an insurer makes a decision to reject an application for compensation or to terminate compensation, the insurer must undertake an internal review of the proposed decision.
- (2) The review must be made by a person who is in a more senior position than the person who proposes to make the decision.

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239 Section 535 (Particular acts taken to be fraud)

## **Part 2 Authority's review of decisions**

### **539 Object of pt 2**

The object of this part is to provide a non-adversarial system for prompt resolution of disputes.

### **540 Application of pt 2**

- (1) This part applies to the following—
- (a) a decision by WorkCover—
    - (i) not to give an exemption from insuring under this Act under section 49;<sup>240</sup> or
    - (ii) to set the premium payable under a policy under section 54;<sup>241</sup> or
    - (iii) to issue a reassessment premium notice under section 56;<sup>242</sup> or
    - (iv) to refuse to waive or reduce a penalty under section 57, 66, 109A or 229;<sup>243</sup> or
    - (v) to refuse to reassess a default assessment under section 58;<sup>244</sup> or
    - (vi) to refuse to waive or reduce additional premium under section 64;<sup>245</sup> or
    - (vii) to waive or not to waive section 131(1) or (2);<sup>246</sup> or
    - (viii) to allow or reject an application for compensation; or

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240 Section 49 (Exemption if employer has other insurance)

241 Section 54 (Setting of premium)

242 Section 56 (Reassessment of premium for policy)

243 Section 57 (Recovery of compensation and unpaid premium), 66 (Employer's liability for excess period), 109A (When an employer contravenes obligation not to pay compensation payable by WorkCover) or 229 (Employer's failure in relation to rehabilitation)

244 Section 58 (Default assessment on reasonable suspicion)

245 Section 64 (WorkCover may waive or reduce additional premium)

246 Section 131 (Time for applying)

*Workers' Compensation and Rehabilitation Act 2003*

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- (ix) to terminate or suspend payment of compensation; or
  - (ixa) to increase or decrease a weekly payment of compensation under chapter 3; or
  - (x) to refuse to vary an entitlement under section 171, 172 or 173;<sup>247</sup> or
  - (xi) to apportion compensation under chapter 3, part 11;<sup>248</sup> or
  - (xii) to allow or refuse an entitlement under section 212, 216 or 219;<sup>249</sup> or
  - (xiii) under section 245(3)(a) or (b), 258(1)(a)(i) or (ii), or 262(1)(b)(i), (ii), (iii) or (iv);
- (b) a decision by a self-insurer—
- (i) to waive or not to waive section 131(1) or (2); or
  - (ii) to allow or reject an application for compensation; or
  - (iii) to terminate or suspend payment of compensation; or
  - (iiia) to increase or decrease a weekly payment of compensation under chapter 3; or
  - (iv) to refuse to vary an entitlement under section 171, 172 or 173; or
  - (v) to apportion compensation under chapter 3, part 11; or
  - (vi) to allow or refuse an entitlement under section 212, 216 or 219; or
  - (vii) under section 245(3)(a) or (b), 258(1)(a)(i) or (ii), or 262(1)(b)(i), (ii), (iii) or (iv);

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247 Section 171 (Redemption—worker receiving weekly payments for at least 2 years), 172 (Redemption—worker moves interstate) or 173 (Redemption—worker moves abroad)

248 Chapter 3 (Compensation), part 11 (Compensation on worker's death)

249 Section 212 (Extent of liability for prosthetic expenses), 216 (Extent of liability for period of hospitalisation) or 219 (Extent of liability for travelling expenses)

- (c) a failure by WorkCover or a self-insurer to make a decision—
  - (i) on an application for compensation within the time stated in section 134; or
  - (ii) for the purpose of section 245(3)(a) or (b) within the time stated in section 245(4); or
  - (iii) for the purpose of section 258(1)(a)(i) or (ii) within the time stated in section 258(5); or
  - (iv) for the purpose of section 262(1)(b)(i), (ii), (iii) or (iv) within the time stated in section 262(2).
- (2) WorkCover or the self-insurer (the *decision-maker*) must give written reasons for the decision or for the failure to make a decision.
- (3) The decision-maker need not give reasons for a decision mentioned in subsection (1)(a)(ii) or (iii).
- (4) The reasons for the decision must address the matters prescribed under a regulation.
- (5) The decision or the failure to make a decision may be reviewed only by the Authority.

### **541 Who may apply for review**

A claimant, worker or an employer aggrieved by a decision or the failure to make a decision may apply for review.

### **542 Applying for review**

- (1) An application for review must be made within 3 months after the person applying for review (the *applicant*) receives written notice of the decision or the failure to make a decision and the reasons for the decision or failure.
- (2) For subsection (1), the applicant may, within the 3 months mentioned in the subsection, ask the Authority to allow further time to apply for review.
- (3) The Authority may grant the extension if it is satisfied that special circumstances exist.

- (4) If the notice did not state the reasons for the decision or the failure to make a decision—
  - (a) the applicant must ask the decision-maker for the reasons within 20 business days after receiving the notice; and
  - (b) the decision-maker must give written reasons within 5 business days after the applicant asks for the reasons; and
  - (c) the application for review must be made within 3 months after the applicant receives the reasons.
- (5) The application for review—
  - (a) must be made in the approved form and given to the Authority; and
  - (b) must state the grounds on which the applicant seeks review; and
  - (c) may be accompanied by any relevant document the applicant wants considered in the review.
- (6) The Authority must, within 10 business days after receiving the application, give the applicant and the decision-maker written notice that the application has been received.

### **543 Right of appearance**

- (1) The applicant may appear before the Authority in person or be represented by another person at the applicant's expense with a view to achieving a resolution of the matter.
- (2) The applicant may also make representations to the Authority by telephone or another form of communication.

### **544 Decision-maker must give information to Authority**

- (1) The Authority may, by written notice, require the decision-maker to give the Authority—
  - (a) within 5 business days after receiving the notice—
    - (i) all relevant information and documents in relation to the application that is in the decision-maker's possession; or

- (ii) the information asked for by the Authority; or
  - (b) within the period stated in the notice, any further information the Authority needs to decide the matter.
- (2) The decision-maker must comply with the notice.
  - (3) The decision-maker must pay the cost of obtaining the further information.

### **545 Review of decision or failure to make a decision**

- (1) The Authority must, within 25 business 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; or
  - (d) set aside the decision and return the matter to the decision-maker with the directions the Authority considers appropriate.
- (1A) The Authority may act under subsection (1)(d) only if the Authority—
  - (a) has considered information that was not available to, or known by, the decision-maker when the decision-maker made its decision; or
  - (b) believes on reasonable grounds that the decision-maker did not have satisfactory evidence or information to make its decision; or
  - (c) believes on reasonable grounds that the decision-maker has not observed natural justice in making its decision.
- (2) If an application is about the failure to make a decision, the Authority may—
  - (a) make the decision (also a *review decision*) after considering the information before it; or
  - (b) return the matter to the decision-maker with the directions the Authority considers appropriate.

- (3) The decision-maker to whom the directions are given must comply with the directions.
- (4) The Authority may extend the time in subsection (1)—
  - (a) with the applicant's consent, to allow the applicant a right of appearance or to make representations under section 543; or
  - (b) with the applicant's consent, to obtain information under section 544; or
  - (c) if the applicant applies to the Authority in writing for time to give the Authority further information.
- (5) If the Authority acts under subsection (1)(b) or (c) or (2)(a), the decision is taken for this Act, other than this part, to be the decision of the decision-maker.

#### **546 Notice of review decision**

- (1) Within 10 business days after making a review decision, the Authority must give the applicant and the decision-maker written notice of the review decision.
- (2) However, if the decision relates to a matter mentioned in section 540(1)(a)(vii) to (xiii) or (1)(b) or (c), the Authority must also give a copy of the review decision to the claimant or worker and to the employer.
- (3) The notice must state—
  - (a) the reasons for the review decision; and
  - (b) that the applicant may appeal against the decision to an industrial magistrate within 28 days after the applicant receives notice of the decision, unless the Authority has acted under section 545(1)(d).
- (3A) A decision of the Authority under section 545 to return a matter to the decision-maker can not be appealed.
- (4) If the Authority does not make a review decision within the time allowed under section 545(1) or (4), the applicant may appeal to an industrial magistrate against the Authority's failure to make the decision.

**546A Matter returned to decision-maker**

- (1) This section applies if the Authority returns a matter under section 545 to a decision-maker.
- (2) The decision-maker must, within the time specified by the Authority—
  - (a) make a decision; and
  - (b) give the applicant and the Authority written notice of the fresh decision including—
    - (i) the reasons for the decision; and
    - (ii) the applicant's rights of review and appeal; and
  - (c) if the decision relates to a matter mentioned in section 540(1)(a)(vii) to (xiii) or (1)(b) or (c),<sup>250</sup> give a copy of the fresh decision to the claimant or worker and to the employer.

**547 Reimbursement of costs of examination and report**

- (1) This section applies if the Authority sets aside or varies a decision by the decision-maker to reject an application for compensation by a claimant or worker under chapter 3.
- (2) The decision-maker must reimburse the claimant or worker for the cost of an examination by, and report from, a registered person obtained by the claimant or worker if the Authority considers the examination and report substantially contributed to the setting aside or variation of the decision.

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250 Section 540 (Application of pt 2)

## Part 3 Appeals

### Division 1 Appeal to industrial magistrate or Industrial Court

#### 548 Application of div 1

This division applies to the following decisions—

- (a) a review decision, other than a decision to return a matter to a decision-maker under section 545;
- (b) a decision by an insurer under chapter 3 or 4<sup>251</sup> that is not a decision mentioned in section 540(1)<sup>252</sup> (a *non-reviewable decision*).

#### 549 Who may appeal

- (1) A claimant, worker or employer aggrieved by the decision (the *appellant*) may appeal to an industrial magistrate against the decision of the Authority or the insurer (the *respondent*).
- (2) An insurer aggrieved by a decision of the Authority to confirm, vary or set aside a decision of the insurer mentioned in section 540(1)(a)(i) to (vi) may appeal to an industrial magistrate against the decision of the Authority.
- (3) If the appellant is an employer—
  - (a) the claimant or worker may, if the claimant or worker wishes, be a party to the appeal; and
  - (b) an insurer may, if the insurer wishes, be a party to the appeal if the appeal is against a decision of the Authority to confirm, vary or set aside a decision of the insurer mentioned in section 540(1)(a)(i) to (vi).
- (4) If the appellant is WorkCover, an employer may, if the employer wishes, be a party to the appeal.

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251 Chapter 3 (Compensation) or 4 (Injury management)

252 Section 540 (Application of pt 2)

**550 Procedure for appeal**

- (1) The appeal must be made—
  - (a) if the appeal is about a review decision—within 20 business days after the appellant receives the review decision; or
  - (b) if the appeal is about a non-reviewable decision—within 20 business days after the appellant 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 appellant must ask the respondent for the reasons for the decision within 20 business days after receiving the notice.
- (3) For subsections (1) and (2), the appellant may, within the periods mentioned in the subsections, ask the respondent to allow further time to appeal.
- (4) The appeal may be started only by giving a written notice of appeal to an industrial magistrate.
- (5) The notice of appeal must be filed at—
  - (a) the Magistrates Court nearest to the place where the appellant resides or, if the appellant is an employer, carries on business; or
  - (b) a Magistrates Court agreed to between the respondent and the appellant.
- (6) The appellant must, within 10 business days after filing the notice of appeal, serve a copy of the notice on—
  - (a) if the appeal is about a review decision—the Authority; or
  - (b) if the appeal is about a non-reviewable decision—the insurer.
- (7) If the appellant is an employer, the appellant must also serve a copy of the notice on the claimant or worker.
- (8) If a notice of appeal required to be filed in a Magistrates Court mentioned in subsection (5)(a) is filed in another Magistrates Court, the registrar of the other Magistrates Court may send any relevant documents to the registrar of the appropriate Magistrates Court.

**551 Appeal about amount of premium**

- (1) This section applies if an appeal is about an amount of premium specified in a premium notice.
- (2) The notice of appeal must state fully the grounds of appeal and the facts relied on.
- (3) The appellant is limited to the grounds of appeal stated in the notice.
- (4) The appellant must pay the premium specified in the notice before the appellant files the notice of appeal.

**552 Notice of time and place for hearing**

- (1) The registrar of the Magistrates Court at which the notice of appeal is filed must give the appellant and the respondent (the *parties*) written notice of the time and place fixed for the hearing of the matter.
- (2) The respondent must, within 20 business days after receiving notice of the time and place fixed for the hearing, give the registrar—
  - (a) all approved forms and statements lodged with the respondent by the appellant; and
  - (b) a statement of facts known to the respondent 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 admissible as evidence at the hearing only if they are admissible under the rules of evidence for the hearing.

**553 Application of Uniform Civil Procedure Rules and Industrial Relations (Tribunals) Rules**

- (1) The *Uniform Civil Procedure Rules 1999*, chapter 7, part 2 and chapter 9, part 4 and the *Industrial Relations (Tribunals) Rules 2000*, rules 96 to 98 apply to an appeal under this division with necessary changes.

- (2) However, if there is an inconsistency between a provision of the rules mentioned in subsection (1) and a provision of this division, the provision of this division prevails to the extent of the inconsistency.

#### **554 Exchanging evidence before hearing**

- (1) At least 10 business days before the hearing, each party must give each 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.

#### **555 Adjourning hearing**

- (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 for another appropriate reason; or
  - (b) at a future time.
- (2) If the magistrate adjourns the 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 industrial magistrate has jurisdiction to decide the matter as if it had been brought before that magistrate.

#### **556 Additional medical evidence**

- (1) This section applies if—
  - (a) the condition of a claimant or worker who has, or is said to have, sustained an injury is relevant to the appeal; or
  - (b) the cause, nature or extent of the injury or incapacity arising from the injury is relevant to the appeal.

- (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 the respondent and the respondent must make the opinion available to the appellant.
- (5) Subsection (6) applies if the claimant or worker—
  - (a) fails, without reasonable excuse, to attend for the examination at the time and place ordered by the magistrate; or
  - (b) having attended, refuses to be examined by a registered person; or
  - (c) obstructs, or attempts to obstruct, the examination.
- (6) Any entitlement the claimant or worker may have to compensation is suspended until the claimant or worker undergoes the examination.

### **557 Correcting defects in proceedings**

- (1) For the proper hearing of an appeal, 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.

**558 Powers of industrial magistrate**

- (1) In deciding an appeal, 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 the respondent 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 the decision of the insurer.
- (3) Costs of the hearing are in the magistrate's discretion, except to the extent provided under a regulation.

**559 Decision of industrial magistrate**

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.

**560 Recovery of costs**

- (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 having jurisdiction for the recovery of a debt of the amount.
- (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.

**561 Appeal from industrial magistrate to Industrial Court**

- (1) A party aggrieved by the industrial magistrate's decision may appeal to the Industrial Court.

- (2) The appeal must be lodged as required under the *Industrial Relations (Tribunals) Rules 2000*.
- (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.

### **562 Powers of Industrial Court**

- (1) In deciding an appeal, the 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 court acts under subsection (1)(b) or (c), the decision is taken for this Act, other than this part, to be the decision of the insurer.

### **563 Costs of appeal to Industrial Court**

- (1) On an appeal, the Industrial Court may order a party to pay costs incurred by another party only if satisfied the party made the application vexatiously or without reasonable cause.
- (2) Costs of the order are to be in accordance with the *Industrial Relations (Tribunals) Rules 2000*, rule 66.

### **564 Recovery of costs**

- (1) If the industrial court 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 having jurisdiction for the recovery of a debt of the amount.
- (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.

**565 Decision about amount of premium**

- (1) If the decision appealed against is about an amount of premium, the premium assessed by an industrial magistrate or the Industrial Court is the premium payable by the employer.
- (2) If the premium paid by the employer as a condition of the appeal to an industrial magistrate is more than the premium assessed by the industrial magistrate or Industrial Court, WorkCover must refund the difference to the employer.

**566 Decision about payment of compensation**

- (1) This section applies if an industrial magistrate or the Industrial Court decides that an insurer is not liable to make payments of compensation to a person.
- (2) The person who received compensation is not required to refund payment to the insurer.
- (3) Subsection (2) is subject to section 537.<sup>253</sup>

## **Division 2                      Appeal to court of competent jurisdiction**

**567 Application of div 2**

This division applies to the following decisions made by the Authority—

- (a) a decision under section 77<sup>254</sup> relating to the issue of a self-insurer's licence;
- (b) a decision under section 80<sup>255</sup> relating to the renewal of a self-insurer's licence;
- (c) a decision under section 81<sup>256</sup> relating to the amount of levy payable by a self-insurer;

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253 Section 537 (Fraud and related offences end entitlement to compensation and damages)

254 Section 77 (Decision on application for the issue of a licence)

255 Section 80 (Refusal of application for renewal of a licence)

256 Section 81 (Annual levy payable)

- (d) a decision under section 87(2)<sup>257</sup> relating to the procedures followed in calculating a self-insurer's outstanding liability;
- (e) a decision under section 96<sup>258</sup> relating to the cancellation of a self-insurer's licence;
- (f) a decision under section 103<sup>259</sup> to refuse to return all or part of a former self-insurer's bank guarantee or cash deposit.

### **568 Who may appeal**

An employer or self-insurer aggrieved by the decision may appeal against the decision.

### **569 Starting appeals**

- (1) The appeal may be made to a court with jurisdiction in Brisbane.
- (2) The court that has jurisdiction must be decided according to the amount of—
  - (a) for an appeal against a decision mentioned in section 567(a), (b), (c), (d) or (e)—the employer's premium or self-insurer's deemed levy; or
  - (b) for an appeal against a decision mentioned in section 567(f)—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 20 business days after notice of the decision is given to the employer or self-insurer.
- (5) The appeal may only be started by—

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257 Section 87 (Self-insurer replaces WorkCover in liability for injury)

258 Section 96 (Procedure for cancellation)

259 Section 103 (Return of bank guarantee or cash deposit after cancellation)

- (a) filing a written notice of appeal with the court stating fully the grounds of the appeal and the facts relied on; and
- (b) serving a copy of the notice on the Authority.

**570 Powers of court on appeal**

- (1) In deciding an appeal, the court—
  - (a) has the same powers as the decision-maker; and
  - (b) is not bound by the rules of evidence.
- (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 the court considers appropriate; or
  - (c) set aside the decision and return the matter to the Authority with the directions the court considers appropriate.

**571 Effect of decision of court on appeal**

If a court substitutes another decision, the substituted decision is taken for this Act, other than this part, to be the Authority's decision.

## Chapter 14      Miscellaneous

### Part 1                      Access to documents and information

#### 572      Claimant or worker entitled to obtain certain documents

- (1) A person who is a claimant or worker for any provision of this Act may, by written notice, ask the Authority or the insurer (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 claimant or worker a copy of the documents requested within 20 business days after the claimant or worker 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>260</sup> or
  - (d) the document holder suspects on reasonable grounds that the claimant or worker requires the document for a purpose prohibited by section 572A.

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260 *Freedom of Information Act 1992*, part 3 (Access to documents), division 2 (Exempt matter)

**572A Access to particular documents for employment purposes prohibited**

- (1) A person must not, for a purpose relating to the employment of a worker by the person or another person—
  - (a) obtain or attempt to obtain a workers' compensation document about the worker; or
  - (b) use or attempt to use a workers' compensation document about the worker.

Maximum penalty—100 penalty units.

- (2) However, subsection (1) does not apply to a workers' compensation document relating to the worker's capacity to work if the document is necessary to secure the worker's rehabilitation or early return to work under chapter 4.<sup>261</sup>
- (3) In this section—

***employment*** means any process for selecting a person for employment or for deciding whether the employment of a person is to continue.

***worker*** means a person who is or was a claimant or worker for any provision of this Act or a former Act.

***workers' compensation document***, about a worker, means any document relating to the worker's application for compensation or claim for damages under this Act or a former Act.

**573 Permissible disclosure of information**

- (1) A person who is—
  - (a) the commissioner of pay-roll tax appointed under the *Pay-roll Tax Act 1971*; or
  - (b) the chief executive of the department within which the *Workplace Health and Safety Act 1995* is administered;may disclose to the Authority or WorkCover any information the person has relating to any matter under this Act or touching the administration of this Act.

- (2) The Authority or 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) The Authority or WorkCover may disclose, to the chief executive of the department within which the *Workplace Health and Safety Act 1995* is administered, statistical or other information that would help in the performance of its administrative functions.
- (3A) The Authority may, if asked by an insurer, disclose to the insurer any information it has that is relevant to a claim against the insurer.
- (4) An insurer may, if asked by another insurer (the *other insurer*), disclose to the other insurer any information it has that is relevant to a claim against the other insurer.
- (5) An insurer must, if asked by the Authority, disclose to the Authority statistical or other information in the way required by the Authority, but only to discharge the Authority's functions under this Act.
- (6) Subsections (1) to (5) apply despite a provision of this or another Act.
- (7) If a person has information because the person is, or was, a director or employee of the Authority or WorkCover, the person must not disclose the information, unless the disclosure—
  - (a) is for the Authority, 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.
- (8) In this section—

*chief executive officer* means the chief executive officer of the Authority or WorkCover.

## **574 Information from commissioner of police service**

- (1) The commissioner of the police service may, on the chief executive officer's written request, give to the Authority or

WorkCover information in the possession of the Queensland Police Service that is mentioned in subsection (2) about a person the Authority or 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, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply.
- (4) Information given to the Authority or 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.
- (5) In this section—

*chief executive officer* means the chief executive officer of the Authority or WorkCover.

### **575 Information use immunity**

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.

### **576 Information not actionable**

- (1) This section applies to an action for defamation, or a proceeding for other redress, about the disclosure of information in the possession of the Authority or an insurer, or traceable to that possession.
- (2) Action can not be brought against the Authority or the insurer, or a person acting for any of them, by a person claiming to be aggrieved about the disclosure in relation to—

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- (a) a claimant's physical or mental condition; or
  - (b) a claimant's capacity or incapacity for work; or
  - (c) the credibility of any of the following—
    - (i) an employer;
    - (ii) an insurer;
    - (iii) a claimant;
    - (iv) a contributor;
    - (v) another person involved in the claim, if the disclosure is relevant to the claim.
- (3) Subsections (1) and (2) apply to—
- (a) information in the possession of WorkCover only to the extent the information came into WorkCover's possession—
    - (i) under its powers and functions under the Act; or
    - (ii) because of a disclosure by the Authority under section 573(3A) or an insurer under section 573(4);<sup>262</sup> and
  - (b) information in the possession of a self-insurer only to the extent the information came into the self-insurer's possession—
    - (i) under its powers and functions under section 92 or 92A;<sup>263</sup> or
    - (ii) because of a disclosure by the Authority under section 573(3A) or an insurer under section 573(4).
- (4) 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.

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262 Section 573 (Disclosure of information)

263 Section 92 (Powers of self-insurers) or 92A (Powers of local government self-insurers)

## Part 2                      Audits

### 577    **Audit of wages and contracts**

- (1) The Authority may engage the services of a person (an *authorised auditor*) who, in the Authority's opinion, has appropriate qualifications and experience to carry out an audit of—
  - (a) wages paid by or on behalf of a self-insurer to, or on account of, workers employed by the self-insurer; and
  - (b) contracts let by or on behalf of a self-insurer for performance of work.
- (2) WorkCover may engage the services of a person (also an *authorised auditor*) 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.
- (3) For conducting an audit, an authorised auditor is entitled, at all reasonable times, to full and free access to the documents prescribed under a regulation for section 520(1)<sup>264</sup> that—
  - (a) are relevant to the audit; and
  - (b) belong to, are in the custody of, or are under the control of, the employer.

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264 Section 520 (Keeping and inspection of documents)

## Part 3 Proceedings

### 578 Proceedings for offences against ch 8

- (1) This section applies to a proceeding for an offence against chapter 8.
- (2) A proceeding for a prescribed offence may, at the election of the prosecution, be taken—
  - (a) in a summary way under the *Justices Act 1886*; or
  - (b) on indictment.
- (3) 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.
- (4) 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*.
- (5) A proceeding for an offence in a summary way 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 complainant's knowledge;whichever is the later.
- (6) 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.
- (7) If a magistrate acts under subsection (6)—
- (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 (8) 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>265</sup>
- (8) The maximum penalty that may be imposed on a summary conviction of a prescribed offence is 100 penalty units or 1 year's imprisonment.
- (9) A prescribed offence is—
- (a) for a prescribed offence for which the maximum penalty of imprisonment is less than 5 years—a misdemeanour;
  - (b) otherwise—a crime.
- (10) In this section—
- prescribed offence*** means an offence against this Act for which the maximum penalty of imprisonment is 2 years imprisonment or more.

## 579 Summary proceedings for offences other than against ch 8

- (1) This section applies to a proceeding for an offence against this Act other than chapter 8.<sup>266</sup>

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<sup>265</sup> *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

<sup>266</sup> Chapter 8 (WorkCover Queensland)

- (1A) A proceeding for an offence committed by WorkCover against section 486B(2)<sup>267</sup> is 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 of the Authority; or
  - (b) a person authorised for the purpose by the chief executive officer of the Authority; or
  - (c) the Attorney-General.
- (2) A proceeding for an offence other than an offence against section 486B(2) is 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 of the Authority or WorkCover; or
  - (b) a person authorised for the purpose by the chief executive officer of the Authority or WorkCover; or
  - (c) the Attorney-General.
- (3) A 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—
    - (i) for a proceeding mentioned in subsection (1A)—the chief executive officer of the Authority; or
    - (ii) for a proceeding mentioned in subsection (2)—the chief executive officer of the Authority or WorkCover;
- whichever is the later.
- (4) All penalties recovered under a proceeding are to be paid—
- (a) if a proceeding was brought by the Authority—to the Authority; or

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267 Section 486B (Effect of code of practice)

- (b) if a proceeding was brought by WorkCover—to WorkCover.
- (5) A person aggrieved by a decision of the industrial magistrate in the proceeding may appeal against the decision to a District Court judge under the *Justices Act 1886*.

## **580 Recovery of debts under this Act**

- (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) An amount payable to the Authority as a levy or additional amount or recoverable by the Authority on any account whatever, is a debt owed to the Authority by the person liable to pay the levy or additional amount, or from whom the amount is recoverable.
- (3) The Authority or WorkCover may recover a debt owed to it—
  - (a) on the complaint of its chief executive officer under the *Justices Act 1886*, before an industrial magistrate; or
  - (b) by action for debt.
- (4) 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.
- (5) 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.

**581 Self-insurer recovery of debts**

A self-insurer may recover a debt owed to the self-insurer because of payments made by the self-insurer under section 92 or 92A<sup>268</sup>—

- (a) on the complaint of the self-insurer under the *Justices Act 1886*, before an industrial magistrate; or
- (b) by action for debt.

**582 Powers of industrial magistrate**

- (1) For this Act, an industrial magistrate has all the powers conferred on an industrial magistrate by the *Industrial Relations Act 1999* 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.
- (3) A regulation under subsection (2) prevails over any inconsistent rule of court or regulation mentioned in subsection (1).

**583 Evidence**

- (1) The Authority's 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 commission of an offence against this Act came to the knowledge of the Authority's chief executive officer or delegate issuing the certificate on a specified date;

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<sup>268</sup> Section 92 (Powers of self-insurers) or 92A (Powers of local government self-insurers)

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- (b) 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 the Authority or self-insurer;
  - (c) that a worker has a specified WRI;
  - (d) that a worker has a specified WRI establishing the worker's access to damages;
  - (e) that a specified amount is due and payable to a self-insurer and unpaid by a specified person for an overpayment of compensation;
  - (f) that a specified amount is due and payable on account of an amount paid by a self-insurer to, or on account of, a specified person;
  - (g) that a specified amount was paid by a self-insurer to or on account of a specified person for a specified matter, date or purpose.
- (3) WorkCover's chief executive officer may issue certificates for subsection (4).
- (4) 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

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- (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 WorkCover's 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;
- (e) that a worker has a specified WRI;
- (f) that a worker has a specified WRI establishing the worker's access to damages;
- (g) that no objection has been received from a specified person against a default assessment within 15 business 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 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 48,<sup>269</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 48 in relation to a specified person;
- (l) that a specified amount is due and payable on account of an amount paid by WorkCover to, or on account of, a specified person;

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269 Section 48 (Employer's obligation to insure)



## Part 5 Other provisions

### 585 Entitlements to compensation under contract of employment prohibited and void

- (1) A contract of employment can not include a provision for accident pay, or other payment, on account of a worker sustaining an injury.
- (2) A provision of a contract of employment is of no force or effect to the extent it provides for payment of accident pay, or other payment, on account of a worker sustaining an injury.
- (3) In this section—

*contract of employment* means a contract of service or a contract with an individual in the circumstances mentioned in schedule 2, part 1<sup>270</sup> but does not include an industrial instrument.<sup>271</sup>

### 586 Approval of forms

- (1) WorkCover's chief executive officer may approve forms for chapter 2, parts 2 and 3<sup>272</sup> for use under this Act.
- (2) The Authority's chief executive officer may approve other forms for use under this Act.

### 587 Service of documents

For the *Acts Interpretation Act 1954*, section 39,<sup>273</sup> the address of a person's place of residence or business includes the person's postal address.

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270 Schedule 2 (Who is a worker in particular circumstances), part 1 (Persons who are workers)

271 For industrial instruments, see section 107D (Entitlements to compensation under industrial instrument generally prohibited and void).

272 Chapter 2 (Employer's obligations), parts 2 (Employer's insurance requirements) and 3 (Insurance under WorkCover policies generally)

273 *Acts Interpretation Act 1954*, section 39 (Service of documents)

**588 Repeal**

The *WorkCover Queensland Act 1996* is repealed.

## **Chapter 15 Transitional provisions for Act No. 27 of 2003**

### **Part 1 Interpretation**

**589 Definitions for ch 15**

In this chapter—

*Q-COMP* means the former division of WorkCover called Q-COMP that was responsible for the regulatory functions of the scheme.

*repealed Act* means the *WorkCover Queensland Act 1996*.

*transferred person* means a person to whom section 594 applies.

**590 Other savings preserved**

This chapter does not limit the *Acts Interpretation Act 1954*, section 20.<sup>274</sup>

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<sup>274</sup> *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

## **Part 2                      Legal succession**

### **591      Continuation of WorkCover Queensland**

WorkCover Queensland mentioned as being established under section 380<sup>275</sup> is a continuation of WorkCover Queensland established under section 330<sup>276</sup> of the repealed Act.

### **592      Authority is legal successor of Q-COMP**

- (1) On the commencement of this section, the Authority is the successor in law of Q-COMP with the intent that—
  - (a) the assets and liabilities of WorkCover that, before the commencement, were managed by Q-COMP become the assets and liabilities of the Authority; and
  - (b) anything that, before the commencement, was under the control of Q-COMP becomes under the control of the Authority; and
  - (c) a proceeding relating to a decision or action of Q-COMP or an officer of Q-COMP that has not ended before the commencement may, after the commencement, be continued by or against the Authority; and
  - (d) if a proceeding could have been taken relating to a decision or action of Q-COMP or an officer of Q-COMP before the commencement, the proceeding may be taken by or against the Authority after the commencement; and
  - (e) any application received by Q-COMP before the commencement is, from the commencement, taken to be an application received by the Authority; and
  - (f) the Authority otherwise stands in the place of Q-COMP.
- (2) From the commencement of this section, in an Act, instrument or document, a reference to WorkCover in its regulatory

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275 Section 380 (WorkCover is established)

276 *WorkCover Queensland Act 1996*, section 330 (WorkCover is established)

capacity under the repealed Act may, if the context permits, be taken as a reference to the Authority.

## **Part 3                      Transfer to the Authority**

### **593      Transfer of general manager of Q-COMP**

On the commencement of this section, the person who immediately before the commencement was Q-COMP's general manager becomes the Authority's chief executive officer on the same conditions of appointment, including salary, as applied to the person immediately before the commencement.

### **594      Transfer of staff of Q-COMP to Authority**

- (1) On the commencement of this section, a person who immediately before the commencement was employed in Q-COMP—
  - (a) becomes an employee of the Authority; and
  - (b) stops being an employee of WorkCover and becomes a public service officer.
- (2) A transferred person may claim against the Authority all entitlements owing to the person as an employee of WorkCover.
- (3) A transferred person's long service leave entitlements are to be calculated as if service with WorkCover and as a public service officer were continuous service as a public service officer.

### **595      Preserved employment conditions**

- (1) A transferred person is taken to be employed by the Authority on the same conditions of employment, including salary, as applied to the person immediately before the transfer.

- (2) A person employed by the Authority who is not a transferred person is to be employed on the same conditions of employment, including salary, as a transferred person.

#### **596 Transferred persons' superannuation on becoming public service officers**

A transferred person may continue as a contributor to or member of the superannuation scheme to which the person contributed or was the member of before the commencement of this section.

## **Part 4 Insurance**

#### **597 Merit bonuses and demerit charges**

- (1) Merit bonuses and demerit charges are applicable to policies entered into before the repeal of the *Workers' Compensation Act 1990* as if it had not been repealed.
- (2) In this section—

**demerit charges** means demerit charges under the repealed *Workers' Compensation Regulation 1992*, section 13A.<sup>277</sup>

**merit bonuses** means merit bonuses under the repealed *Workers' Compensation Act 1990*, section 52.<sup>278</sup>

#### **598 Other contracts of insurance**

From the commencement of this section, a contract of insurance, other than a policy, issued under a former Act is taken to be a contract of insurance issued by WorkCover.

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<sup>277</sup> *Workers' Compensation Regulation 1992*, section 13A (Demerit charges)

<sup>278</sup> *Workers' Compensation Act 1990*, section 52 (Discounting of premiums)

**599 Previous non-policy compensation arrangement with State**

- (1) This section applies to amounts that would have been payable by a government entity to the workers' compensation board under the repealed *Workers' Compensation Act 1990*, section 198,<sup>279</sup> if the Act had not been repealed.
- (2) The government entity must pay the amounts to WorkCover.

**Part 5 Self-insurance****600 Licences**

- (1) A licence issued to a self-insurer by WorkCover under the repealed Act is taken to be a licence issued to a self-insurer by the Authority under this Act.
- (2) Without limiting section 592(1), any application under chapter 2, part 5 of the repealed Act is taken to be an application to the Authority under a corresponding provision of this Act.

**601 Number of full-time workers**

- (1) Section 101(a) or 102(b)<sup>280</sup> of the repealed Act as in force immediately before 3 March 1999, continues to apply to the renewal of a self-insurer's licence if the self-insurer—
  - (a) was licensed as a self-insurer immediately before 3 March 1999; or
  - (b) lodged an application to be licensed as a self-insurer on or before 3 March 1999.
- (2) Subsection (1) stops applying to a self-insurer if the self-insurer's licence is subsequently cancelled.

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279 *Workers' Compensation Act 1990*, section 198 (Recovery of amounts from State)

280 *WorkCover Queensland Act 1996*, section 101 (Issue or renewal of licence to a single employer) or 102 (Issue or renewal of licence to a group employer)

**602 Self-insurer's bank guarantee**

- (1) This section applies if a self-insurer made an election under the repealed *WorkCover Queensland Regulation 1997*, section 93<sup>281</sup> to accept an interim payment of an amount on account of the self-insurer's outstanding liability.
- (2) This section applies only until the end of 5 years after the self-insurer became liable for compensation and damages for the outstanding liability.
- (3) From the commencement of this section, the unconditional bank guarantee or cash deposit required to be lodged by the self-insurer under section 84(2)<sup>282</sup> before the renewal of the self-insurer's licence is the greater of—
  - (a) \$5m; or
  - (b) the total of—
    - (i) 100% of the part of the self-insurer's estimated claims liability, as defined under section 84(6), that is outstanding liability; and
    - (ii) 150% of the part of the self-insurer's estimated claims liability, as defined under section 84(6), that is residual liability.
- (4) This section expires on 30 September 2006.

**Part 6 Injuries****603 Injury under former Act**

- (1) This section applies if a worker sustained an injury before the commencement of this section.
- (2) A former Act, as is force when the injury was sustained, applies in relation to the injury.

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281 *WorkCover Queensland Regulation 1997*, section 93 (Election by current self-insurer or current applicant about payment for outstanding liability)

282 Section 84 (Bank guarantee or cash deposit)

- (3) Section 558 of the repealed Act continues to apply in relation to a former Act mentioned in the section.
- (4) 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 QOTE.
- (5) In this section—  
*injury* means injury as defined in the former Act.

#### **604 Ex gratia payments**

- (1) WorkCover may make an ex gratia lump sum payment in relation to a person who sustained an injury, on or after 1 July 1999 but before 1 July 2000, that resulted in death or could result in a WRI of 20% or more.
- (2) The payment may be made only if the person is not a worker within the meaning of the repealed Act as in force immediately before 1 July 2000 but would be a worker within the meaning of—
  - (a) the repealed Act as in force on 1 July 2000; or
  - (b) this Act.
- (3) A payment under this section must be in the amount decided by WorkCover, but may not be more than the amount that would be payable if the person were a worker.

## **Part 7 Injury management**

#### **605 Rehabilitation coordinators**

A person who was a rehabilitation coordinator under the repealed Act immediately before the commencement of this section is, on the commencement, taken to be a rehabilitation coordinator under this Act.

**606 Workplace rehabilitation policy and procedures**

Workplace rehabilitation policy and procedures applying under the repealed Act immediately before the commencement of this section are, on the commencement, taken to be workplace rehabilitation policy and procedures under this Act.

**Part 8 Medical assessment tribunals****607 Continuation of tribunals**

Each medical assessment tribunal in existence under the repealed Act immediately before the commencement of this section continues in existence as the corresponding tribunal under this Act.

**Part 9 Offences****608 Offences**

- (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 579<sup>283</sup> applies as if the proceeding were for an offence under this Act.

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283 Section 579 (Summary proceedings for offences other than against ch 8)

## **Part 10                      Reviews and appeals**

### **609      Decisions by WorkCover or self-insurer**

Chapter 9 of the repealed Act, as in force immediately before 1 July 1999, continues to apply to a decision made by WorkCover or a self-insurer before 1 July 1999 as if the *WorkCover Queensland Amendment Act 1999*, section 45,<sup>284</sup> had not been enacted.

## **Part 11                      Miscellaneous**

### **610      Claim for loss of consortium**

To remove any doubt, the repeal of section 613 of the repealed Act does not affect the preservation of the entitlement to seek damages for loss of consortium in relation to an injury.

### **611      Spouse of worker dying before 1 April 2004**

- (1) This section applies in relation to a death of a worker that happens after the commencement of this section but before 1 April 2004.
- (2) For this Act, the spouse of the deceased worker includes a person who, although not legally married to the deceased worker—
  - (a) lived with the worker as the worker's husband or wife for a continuous period of at least 1 year immediately before the commencement of this section; and
  - (b) continued to live with the worker as the worker's husband or wife until the worker died.

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284 *WorkCover Queensland Amendment Act 1999*, section 45 (Replacement of ch 9)

## **Chapter 16 Transitional provisions for Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004**

### **612 Definitions for ch 16**

In this chapter—

*amending Act* means the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004*.

### **613 Workers, employers and injuries**

Sections 11, 30 and 32,<sup>285</sup> as in force immediately before the commencement of this section, continue to apply in relation to an injury sustained by a worker before the commencement as if the amending Act had not been enacted.

### **615 Employers who pay own claims**

The amendments of this Act made by sections 15 to 17 of the amending Act apply only in relation to an injury sustained by a worker on or after 1 January 2005.

### **616 Entitlement to compensation**

The following provisions, as in force immediately before 1 January 2005, continue to apply in relation to an injury sustained by a worker before 1 January 2005 as if the amending Act had not been enacted—

- section 105

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285 Sections 11 (Who is a *worker*), 30 (Who is an *employer*) and 32 (Meaning of *injury*)

- chapter 3, part 6, part 10, division 4 and part 11
- section 585.<sup>286</sup>

### **617 Decision about application for compensation**

Section 134,<sup>287</sup> as in force immediately before the commencement of this section, continues to apply to an application for compensation made before the commencement.

### **618 When entitlement to compensation stops**

Section 144B<sup>288</sup> applies only in relation to an injury sustained by a worker on or after the commencement of the section.

### **619 Weekly payment for total incapacity**

The provisions of chapter 3, part 9, division 4,<sup>289</sup> as in force immediately before the commencement of this section, continue to apply in relation to an injury sustained by a worker before the commencement as if the amending Act had not been enacted.

### **621 Public hospitalisation**

The provisions of chapter 4, part 2, division 3, subdivision 2<sup>290</sup> apply only to the hospitalisation of a worker as an in-patient at

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286 Section 105 (Meaning of *amount payable under an industrial instrument*), chapter 3 (Compensation), part 6 (Maximum statutory compensation), part 10 (Entitlement to compensation for permanent impairment), division 4 (Additional lump sum compensation), part 11 (Compensation on worker's death) and section 585 (Entitlements to compensation under contract of employment prohibited and void)

287 Section 134 (Decision about application for compensation)

288 Section 144B (When payment of medical treatment, hospitalisation and expenses stops)

289 Chapter 3 (Compensation), part 9 (Weekly payment of compensation), division 4 (Entitlement for total incapacity)

290 Chapter 4 (Injury management), part 2 (Liability for medical treatment, hospitalisation and expenses), division 3 (Hospitalisation), subdivision 2 (Private hospitalisation)

a public hospital on or after the commencement of this section.

## **622 Damages for particular services**

Chapter 5, part 10,<sup>291</sup> as in force immediately before the commencement of this section, continues to apply to a proceeding for damages only if the trial in the proceeding was started before the commencement.

## **623 Review of decisions of insurer**

- (1) The provisions of chapter 13, parts 1 and 2,<sup>292</sup> as in force immediately before the commencement of this section, continue to apply to a decision of WorkCover or a self-insurer made before the commencement as if the amending Act had not been enacted.
- (2) In this section—  
*decision* includes failure to make a decision.

## **624 Appeal of review decision**

Sections 548, 549 and 554,<sup>293</sup> as in force immediately before the commencement of this section, continue to apply to a review decision of the Authority made before the commencement as if the amending Act had not been enacted.

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291 Chapter 5 (Access to damages), part 10 (No right to damages for particular damages)

292 Chapter 13 (Reviews and appeals), parts 1 (Internal review of proposed decisions) and 2 (Authority's review of decisions)

293 Sections 548 (Application of div 1), 549 (Who may appeal) and 554 (Exchanging evidence before hearing)

## **Chapter 17      Transitional provision for Industrial Relations and Other Acts Amendment Act 2005**

### **626      Compensation under contracts of employment**

- (1) Section 585, as inserted by the *Industrial Relations and Other Acts Amendment Act 2005*, applies only to—
  - (a) a contract of employment entered into on or after the commencement of this section; or
  - (b) for a contract of employment entered into before the commencement of this section—an amendment to the contract of employment made on or after the commencement that inserts into the contract a provision about accident pay, or other payment, on account of a worker sustaining an injury.
- (2) In this section—

*contract of employment* see section 585.

## **Schedule 1      Regulations**

section 584

- 1 Fixing and varying premiums, rates of premium, 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—
  - (a) the persons who must give the returns, whether employers or other persons; and

## Schedule 1 (continued)

- (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 14.
- 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 14.
- 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 2      Who is a worker in particular circumstances

section 11

### Part 1              Persons who are workers

- 1 A person who works under a contract, or at piecework rates, for labour only or substantially for labour only is a worker.
- 2 A person who works for another person under a contract (regardless of whether the contract is a contract of service) is a worker unless—
  - (a) the person performing the work—
    - (i) is paid to achieve a specified result or outcome; and
    - (ii) has to supply the plant and equipment or tools of trade needed to perform the work; and
    - (iii) is, or would be, liable for the cost of rectifying any defect in the work performed; or
  - (b) a personal services business determination is in effect for the person performing the work under the *Income Tax Assessment Act 1997* (Cwlth), section 87-60.<sup>294</sup>
- 3 A person who works a farm as a sharefarmer is a worker if—
  - (a) the sharefarmer does not provide and use in the sharefarming operations farm machinery driven or drawn by mechanical power; and
  - (b) the sharefarmer is entitled to not more than 1/3 of the proceeds of the sharefarming operations under the sharefarming agreement with the owner of the farm.
- 4 A salesperson, canvasser, collector or other person (*salesperson*) paid entirely or partly by commission is a

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294 *Income Tax Assessment Act 1997* (Cwlth), section 87-60 (Personal services business determinations for individuals)

**Schedule 2 (continued)**

worker, if the commission is not received for or in connection with work incident to a trade or business regularly carried on by the salesperson, individually or by way of a partnership.

- 5 A contractor, other than a contractor mentioned in part 2, section 4 of this schedule, is a worker if—
  - (a) the contractor makes a contract with some one else for the performance of work that is not incident to a trade or business regularly carried on by the contractor, individually or by way of a partnership; and
  - (b) the contractor—
    - (i) does not sublet the contract; or
    - (ii) does not employ a worker; or
    - (iii) if the contractor employs a worker, performs part of the work personally.
- 6 A person who is party to a contract of service with another person who lends or lets on hire the person's services to someone else is a worker.
- 7 A person who is party to a contract of service with a labour hire agency or a group training organisation that arranges for the person to do work for someone else under an arrangement made between the agency or organisation and the other person is a worker.
- 8 A person who is party to a contract of service with a holding company whose services are let on hire by the holding company to another person is a worker.

**Part 2****Persons who are not workers**

- 1 A person is not a worker if the person performs work under a contract of service with—
  - (a) a corporation of which the person is a director; or
  - (b) a trust of which the person is a trustee; or

## Schedule 2 (continued)

- (c) a partnership of which the person is a member; or
  - (d) the Commonwealth, a Commonwealth authority or a licensed corporation under the *Safety Rehabilitation and Compensation Act 1988* (Cwlth).
- 2 A person who performs work under a contract of service as a professional sportsperson is not a worker while the person is—
- (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, preparation or performance.
- 3 A member of the crew of a fishing ship is not a worker if—
- (a) the member's entitlement to remuneration is contingent upon the working of the ship producing gross earnings or profits; and
  - (b) the remuneration is wholly or mainly a share of the gross earnings or profits.
- 4 A person who, in performing work under a contract, other than a contract of service, supplies and uses a motor vehicle for driving tuition is not a worker.
- 5 A person participating in an approved program or work for unemployment payment under the *Social Security Act 1991* (Cwlth), section 601 or 606 is not a worker.<sup>295</sup>

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<sup>295</sup> *Social Security Act 1991* (Cwlth), section 601 (Activity test) or 606 (Newstart Activity Agreements—terms)

## **Schedule 3      Who is an employer in particular circumstances**

### section 30

- 1 A person who lends or lets on hire the services of a worker who is party to a contract (regardless of whether the contract is a contract of service) with that person continues to be the worker's employer while the worker's services are lent or let on hire.
- 2 If a labour hire agency or group training organisation arranges for a worker who is party to a contract (regardless of whether the contract is a contract of service) with the agency or organisation to do work for someone else, the agency or organisation continues to be the worker's employer while the worker does the work for the other person under an arrangement made between the agency or organisation and the other person.
- 3 If a holding company lets on hire the services of a worker who is party to a contract (regardless of whether the contract is a contract of service) with the holding company, the holding company continues to be the worker's employer while the worker's services are let on hire.
- 4 The owner of the farm is the employer of a person who works the farm as a sharefarmer, and any worker employed by the sharefarmer, if—
  - (a) the sharefarmer does not provide and use in the sharefarming operations farm machinery driven or drawn by mechanical power; and
  - (b) the sharefarmer is entitled to not more than  $\frac{1}{3}$  of the proceeds of the sharefarming operations under the sharefarming agreement.
- 5 A person by whom commission is payable to a salesperson, canvasser, collector or other person (a *salesperson*), who is paid entirely or partly by commission, is the employer of the salesperson if the commission is not received for or in connection with work incident to a trade or business regularly

**Schedule 3 (continued)**

carried on by the salesperson, individually or by means of a partnership.

- 6 A person is the employer of a contractor (other than a contractor mentioned in schedule 2, part 2, section 4), and any worker employed by the contractor, if—
  - (a) the person makes a contract with the contractor for the performance of work that is not incident to a trade or business regularly carried on by the contractor, individually or by means of a partnership; and
  - (b) the contractor—
    - (i) does not sublet the contract; or
    - (ii) does not employ a worker; or
    - (iii) if the contractor employs a worker, performs part of the work under the contract personally.
- 7 If a corporation is a worker's employer and an administrator is appointed under the Corporations Act to administer the corporation, the corporation continues to be the worker's employer while the corporation is under administration.

## Schedule 4      **Adjacent areas**

section 113(9)

### 1      **Definitions**

In this schedule—

*continental shelf* has the same meaning as in the *Seas and Submerged Lands Act 1973* (Cwlth).

*territorial sea* has the same meaning as in the *Seas and Submerged Lands Act 1973* (Cwlth).

### 2      **Adjacent areas**

- (1) The adjacent area for New South Wales, Victoria, South Australia or Tasmania is so much of the area described in the *Petroleum (Submerged Lands) Act 1967* (Cwlth), schedule 2 in relation to that State as is within the outer limits of the continental shelf and includes the space above and below that area.
- (2) The adjacent area for Queensland is—
  - (a) so much of the area described in the *Petroleum (Submerged Lands) Act 1967* (Cwlth), schedule 2 in relation to Queensland as is within the outer limits of the continental shelf; and
  - (b) the Coral Sea area (within the meaning of the *Petroleum (Submerged Lands) Act 1967* (Cwlth), section 5A(7)) other than the territorial sea within the Coral Sea area; and
  - (c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 4 February 1983 under the *Seas and Submerged Lands Act 1973* (Cwlth), section 7; and
  - (d) the space above and below the areas described in paragraphs (a), (b) and (c).

## Schedule 4 (continued)

- (3) The adjacent area for Western Australia is so much of the area described in the *Petroleum (Submerged Lands) Act 1967* (Cwlth), schedule 2 in relation to Western Australia as—
  - (a) is within the outer limits of the continental shelf; and
  - (b) is not within Area A of the Zone of Cooperation;and includes the space above and below that area.
- (4) The adjacent area for the Northern Territory is—
  - (a) so much of the area described in the *Petroleum (Submerged Lands) Act 1967* (Cwlth), schedule 2 in relation to the Northern Territory as—
    - (i) is within the outer limits of the continental shelf; and
    - (ii) is not within Area A of the Zone of Cooperation; and
  - (b) the adjacent area for the Territory of Ashmore and Cartier Islands (within the meaning of the *Petroleum (Submerged Lands) Act 1967* (Cwlth), section 5A(3)) other than the territorial sea within that area; and
  - (c) the space above and below the areas described in paragraphs (a) and (b).
- (5) However, the adjacent area for a State does not include any area inside the limits of any State or Territory.

## Schedule 6 Dictionary

### section 7

***accident insurance*** see section 8.

***accredited workplace*** see section 45.

***aggravation*** includes acceleration.

***aircraft*** includes a machine, glider or apparatus designed to fly by gaining support from the atmosphere.

***amount payable***, under an industrial instrument, see section 107B.

***approved form*** see section 586.

***arrangement***, for schedules 2 and 3, includes agreement, promise, scheme, transaction, understanding and undertaking (whether express or implied).

***authorised auditor*** see section 577.

***authorised person*** means—

- (a) a person appointed as an authorised person by the Authority under section 370; or
- (b) a person appointed as an authorised person by WorkCover under section 466.

***Authority*** means the Workers' Compensation Regulatory Authority.

***Authority employee*** means—

- (a) the Authority's chief executive officer; or
- (b) a person employed by the Authority under a contract of service.

***bank guarantee*** includes a guarantee given by Queensland Treasury Corporation.

***board*** means—

- (a) for chapter 7 and chapter 9, part 1—the Authority's board; or

## Schedule 6 (continued)

(b) for chapter 8 and chapter 9, part 2—WorkCover's board.

**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.

**chief executive officer** means—

- (a) the Authority's chief executive officer appointed under section 355; or
- (b) WorkCover's chief executive officer appointed under section 442.

**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
  - (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.

**community service obligations** of WorkCover, see section 409.

**compensation** see section 9.

**complying notice of claim** means a notice of claim that complies with section 275.

**compulsory conference** see section 289.

**contracted hospital** see section 215.

**contract of service** includes an apprenticeship contract or traineeship contract under the *Vocational Education, Training and Employment Act 2000*.

## Schedule 6 (continued)

**contractor** means a person who has contracted with someone else for the performance of work or provision of a service.

**contribution claim** see section 292A.

**contribution notice** see section 278A.

**contributor** means a person added as a contributor under section 278A.

**contributor's response** see section 278B.

**conviction** means a finding of guilt, or the acceptance of a plea of guilty, by a court.

**councillor** has the meaning given by the *Local Government Act 1993*.

**court** means the court having jurisdiction in relation to the amount or matter referred to.

**damages** see section 10.

**deemed levy** means a levy calculated under a regulation.

**dependant** see section 27.

**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.

**due date** means the day an amount becomes payable under this Act or under a premium notice.

**elective hospitalisation** see section 215.

**eligible person** see section 23.

**employer** see section 30.

**employs 30 or more workers**, for an employer, means that the employer during the current calendar year employed, or is

## Schedule 6 (continued)

likely to employ, 30 or more workers for a total of any 40 days during the year.

**event** see section 31.

**excess period** see section 65.

**former Act** means—

- (a) the *Workers' Compensation Act 1916*; or
- (b) the *Workers' Compensation Act 1990*; or
- (c) the *WorkCover Queensland Act 1996*.

**fully funded**, in relation to WorkCover, means fully funded as provided by section 453.

**government entity** means the State, a State agency or instrumentality or a GOC.

**group employer** means a classification group employer or related bodies corporate group employer.

**group training organisation** means a group training organisation under the *Vocational Education, Training and Employment Act 2000*.

**hospital** see section 215.

**hospitalisation**, of a worker, means the admission of the worker in a private hospital or public hospital for medical treatment for the worker's injury.

**impairment** see section 37.

**industrial deafness** means loss of hearing (other than total loss of hearing in either ear) caused by excessive noise.

**industrial instrument** means—

- (a) any of the following under the *Industrial Relations Act 1999*—
  - (i) an award;
  - (ii) a certified agreement;
  - (iii) an industrial agreement;
  - (iv) an EFA;

## Schedule 6 (continued)

- (v) a QWA;
- (vi) an order under chapter 5, part 5, 6 or 7 of that Act;  
or
- (b) an award or agreement under the *Workplace Relations Act 1996* (Cwlth).

***injury*** see section 32.

***insurer***—

- (a) generally—means WorkCover or a self-insurer; or
- (b) in relation to a claimant or worker whose employer for the purposes of the injury is a self-insurer—means the self-insurer; or
- (c) in relation to any person otherwise entitled to compensation for the injury—means WorkCover.

***labour hire agency***, for schedules 2 and 3, means an entity, other than a holding company, that conducts a business that includes the supply of services of workers to others.

***local government group employer*** means a group employer whose members are all local governments.

***local government self-insurer*** means a self-insurer that is a single local government or a local government group employer.

***maximum statutory compensation***, means an amount equal to the amount of compensation payable under chapter 3, part 6.

***medical assessment tribunal*** means—

- (a) the General Medical Assessment Tribunal mentioned in section 491; or
- (b) a specialty medical assessment tribunal mentioned in section 491.

***medical condition*** means a condition of a medical nature that is not an injury under section 32.

***medical treatment*** means—

**Schedule 6 (continued)**

- (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
- (c) a caravan, caravan trailer or other trailer designed to be attached to a motor vehicle.

**non-reviewable decision** see section 548.

**normal weekly earnings** see section 106.

**notice of assessment** means a notice of assessment of permanent impairment issued by WorkCover under section 185.

**notice of claim** means a notice under section 275 that a claimant intends to seek damages for an injury sustained by the claimant.

**NWE** means normal weekly earnings.

**OHS report**, for chapter 2, part 4, means a report about occupational health and safety performance prepared under the *Workplace Health and Safety Act 1995*, part 14, division 1A.

**outstanding liability** see section 87(1)(b).

**party**, for chapter 5, see section 233.

**payable amount** means an amount due and payable.

## Schedule 6 (continued)

***period of insurance*** means the period of accident insurance cover specified in a policy, policy renewal certificate or premium notice.

***permanent impairment*** see section 38.

***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 a policy under a former Act.

***pre-existing stable business relationship***, for a classification group employer, includes—

- (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 215.

***private patient*** see section 215.

***public hospital*** see section 215.

***public patient*** see section 215.

## Schedule 6 (continued)

**QUOTE** see section 107.

**redemption payment** means a payment under section 171, 172 or 173.

**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 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.

**registered person** means a registered person of a description mentioned in the definition *medical treatment*.

**rehabilitation** see section 40.

**rehabilitation coordinator** see section 41.

**related bodies corporate group employer** means 2 or more employers who are related bodies corporate.

**related body corporate** has the meaning given by the Corporations Act.

**residual liability** see section 87(1)(a).

**review decision** see section 545.

**self-insurer** means a single employer or group employer licensed under chapter 2, part 4.

**self-insurer's workers** means the workers employed by a self-insurer before the issue of the self-insurer's licence or during the period of the self-insurer's licence.

**ship** means any kind of vessel used in navigation by water, however propelled or moved, and includes—

- (a) a barge, lighter, or other floating vessel; and
- (b) an air-cushion vehicle, or other similar craft, used wholly or primarily in navigation by water.

## Schedule 6 (continued)

***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 Act 1891*.

***single pension rate***, for chapter 3, part 9, 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.

***specialist*** means a person registered as a specialist registrant under the *Medical Practitioners Registration Act 2001*.

***spouse*** of a deceased worker, see section 29.

***student*** for chapter 3, part 11, see section 195.

***substantive law***, for chapter 6, see section 322.

***suitable duties*** see section 42.

***superannuation contribution*** means a superannuation contribution under the *Payroll Tax Act 1971*.

***suspects*** includes believes.

***table of costs*** means the table of costs for the provision of the relevant ambulance transportation, medical treatment or rehabilitation for the time being as decided by the Authority to be acceptable for this Act.

***table of injuries*** means the table of injuries prescribed under a regulation.

***terminal condition*** see section 234.

***this Act*** for chapter 5, includes a former Act.

***total liability***, for chapter 2, part 4, means the total of the following—

- (a) residual liability;
- (b) outstanding liability;
- (c) any liability under section 68C.

## Schedule 6 (continued)

**tribunal**, other than in section 114(4), means a medical assessment tribunal.

**usual employment** see section 107C.

**vehicle** for section 36, 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
- (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 66.

**WorkCover** means WorkCover Queensland.

**WorkCover employee** means—

- (a) WorkCover's chief executive officer; or
- (b) a senior executive of WorkCover; or
- (c) a person employed by WorkCover under a contract of service.

**WorkCover Queensland** means WorkCover Queensland established under section 380.

**worker** see section 11.

## Schedule 6 (continued)

***Workers' Compensation Regulatory Authority*** means the Workers' Compensation Regulatory Authority established under section 326.

***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 43.

***workplace rehabilitation policy and procedures*** see section 44.

***work related impairment*** see section 39.

***WRI*** means work related impairment.

***written final offer***, for chapter 5, see section 233.

## 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 1 April 2005. Future amendments of the Workers' Compensation and Rehabilitation Act 2003 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

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No.[X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
o in c	= order in council	s	= section
om	= omitted	sch	= schedule
orig	= original	sdiv	= subdivision
p	= page	SIA	= Statutory Instruments Act 1992
para	= paragraph	SIR	= Statutory Instruments Regulation 2002
prec	= preceding	SL	= subordinate legislation
pres	= present	sub	= substituted
prev	= previous	unnum	= unnumbered

## 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	none	1 July 2003	
1A	to 2003 Act No. 85	6 November 2003	
1B	to 2003 Act No. 85	1 January 2004	
1C	to 2003 Act No. 91	31 March 2004	
1D	to 2004 Act No. 45	18 November 2004	
1E	to 2004 Act No. 45	22 November 2004	
1F	to 2004 Act No. 53	29 November 2004	
1G	to 2004 Act No. 53	1 January 2005	
1H	to 2005 Act No. 11	1 April 2005	

## 5 List of legislation

### **Workers' Compensation and Rehabilitation Act 2003 No. 27**

date of assent 23 May 2003

ss 1–2, 612, 619–620 commenced on date of assent (see s 2(2))

ss 613–618, 621 commenced 1 April 2003 (see s 2(1))

remaining provisions commenced 1 July 2003 (see s 2(2))

amending legislation—

### **Training Reform Act 2003 No. 63 ss 1, 2(2), 60 sch**

date of assent 13 October 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2004 (2003 SL No. 293)

### **Local Government and Other Legislation Amendment Act 2003 No. 85 s 1, pt 5, s 28 sch**

date of assent 6 November 2003

commenced on date of assent

### **Disaster Management Act 2003 No. 91 ss 1–2, 175 sch 1**

date of assent 18 November 2003

ss 1–2 commenced on date of assent

remaining provisions commenced 31 March 2004 (2004 SL No. 24)

### **Partnership and Other Acts Amendment Act 2004 No. 29 ss 1, 2(2), 71–72**

date of assent 12 October 2004

ss 1–2 commenced on date of assent

remaining provisions commenced 22 November 2004 (2004 SL No. 250)

**Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004****No. 45 ss 1–2(1), (3)–(4), pt 2, s 3 sch**

date of assent 18 November 2004

ss 1–2 commenced on date of assent

ss 8–9, 61, 86 (to the extent it ins s 614), 89(3) commence 1 July 2005 (see s 2(3))

ss 12–17, 19, 28–31, 85, 86 (to the extent it ins ss 615–616), 89(1) (to the extent it om def “amount payable under an industrial instrument”), 89(2) (to the extent it ins defs “amount payable” and “usual employment”) commenced 1 January 2005 (see s 2(1))

ss 21–26, 86 (to the extent it ins s 619) commenced 1 January 2005 (2004 SL No. 287)

ss 33, 35–41, 86 (to the extent it ins s 621), 89(1) (to the extent it om def “hospitalisation”), 89(2) (to the extent it ins defs “hospitalisation”, “private patient” and “public patient”) commenced 1 April 2005 (2005 SL No. 39)

ss 32, 68, 69(1), 70–71, 72(2), 73–80, 86 (to the extent it ins ss 620, 625), 89(2) (to the extent it ins def “appeal body”), sch item 18 not yet proclaimed into force (see s 2(4))

remaining provisions commenced on date of assent

**Pay-roll Tax Administration Amendment Act 2004 No. 46 ss 1–2, 41 sch**

date of assent 18 November 2004

ss 1–2 commenced on date of assent

remaining provisions commence 1 July 2005 (2005 SL No. 8)**Statute Law (Miscellaneous Provisions) Act 2004 No. 53**

date of assent 29 November 2004

commenced on date of assent

**Industrial Relations and Other Acts Amendment Act 2005 No. 11 pts 1, 4**

date of assent 1 April 2005

commenced on date of assent

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**s 20** amd 2003 No. 85 s 28 sch

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**Self-insurer's bank guarantee**

s 602 exp 30 September 2006 (see s 602(4))

**Continuation of tribunals**

s 607 amd 2003 No. 85 s 28 sch

**CHAPTER 16—TRANSITIONAL PROVISIONS FOR WORKERS'  
COMPENSATION AND REHABILITATION AND OTHER ACTS  
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ch 16 prev ch 16 hdg om R1 (see RA s 7(1)(k))  
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**Definitions for ch 16**

s 612 prev s 612 om R1 (see RA s 40)  
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**Amendment of s 275 (Power to declare persons to be employees or employers)**

s 614 om R1 (see RA s 40)

**Employers who pay own claims**

s 615 prev s 615 om R1 (see RA s 40)  
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**Entitlement to compensation**

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**When entitlement to compensation stops**

s 618 prev s 618 om R1 (see RA s 40)  
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**Weekly payment for total incapacity**

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## **7 List of forms notified or published in the gazette**

- Form 132.AMH Version 1—Application for Compensation Form (Australia Meat Holdings Pty Limited)**  
pubd gaz 1 July 2003 pp 764–8
- Form 132.ANZ Version 1—Application for Compensation (ANZ Banking Group Limited)**  
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- Form 132.ARN Version 1—Application for Workers Compensation (Arnott's Biscuits Campbell's Soups (Queensland))**  
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- Form 132.BAL Version 1—Application for Compensation Form for Workers (Brambles Australia Limited)**  
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- Form 132.BHP Version 1—Application for Compensation Form (BHP Billiton)**  
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- Form 132.CBA Version 1—Commonwealth Bank of Australia Group Application for Workers' Compensation**  
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- Form 132.CC Version 1—Compensation Application (Brisbane City Council)**  
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- Form 132.CMG Version 1—Application for Compensation Form for Workers (Consolidated Meat Group)**  
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- Form 132.CML Version 1—Employee's Application for Compensation (Coles Myer Ltd)**  
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- Form 132.CSR Version 1—Application for Compensation (CSR Limited)**  
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- Form 132.FNAB Version 1—Application for Compensation Form—Fatal Injury**  
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- Form 132.GCCC Version 1—Application for Compensation Form for Workers (Gold Coast City Council)**  
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- Form 132.GCL Version 1—Compensation Application Form for Workers (Golden Circle Limited)**  
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- Form 132.JL Version 1—Application for Compensation Form for Injured Workers (Jupiters Limited)**  
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- Form 132.LGW Version 1—Application for Compensation (Local Government Association of Queensland)**  
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- Form 132.MIM Version 1—Application for Compensation Form for Workers (M.I.M. Holdings Limited)**  
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- Form 132.MNL Version 1—Application for Compensation (Mayne Group Limited)**  
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- Form 132.NAB Version 1—Application for Compensation Form**  
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- Form 132.OS Version 1—Application for Compensation (OneSteel Limited)**  
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- Form 132.QF Version 1—Workers Compensation Claim (Qantas Airways Limited)**  
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- Form 132.TCC Version 1—Application for Compensation Form for Workers (Townsville City Council)**  
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- Form 132.UQ Version 1—Application for Workers' Compensation (University of Queensland)**  
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- Form 132.WBC Version 1—Application for Compensation (Westpac Banking Corporation)**  
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- Form 132.WW Version 1—Application for Compensation Form for Workers (Woolworths Limited – Queensland)**  
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- Form 132.WC Version 1—Application for Compensation (WorkCover Queensland)**  
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- Form 132F.AMH Version 1—Application for Compensation – Fatal Injury (Australia Meat Holdings Pty Limited)**  
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