

Queensland



# WORKCOVER QUEENSLAND ACT 1996

**Reprinted as in force on 9 May 2003  
(includes commenced amendments up to 2003 Act No. 19)**

**Reprint No. 5E**

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# Queensland



## WORKCOVER QUEENSLAND ACT 1996

### TABLE OF PROVISIONS

Section		Page
<b>CHAPTER 1—PRELIMINARY</b>		
<b>PART 1—INTRODUCTION</b>		
1	Short title . . . . .	29
2	Commencement . . . . .	29
3	Act binds all persons . . . . .	29
<b>PART 2—OBJECTS</b>		
4	Objects of Act . . . . .	29
5	Workers' compensation scheme . . . . .	30
7	Administration . . . . .	31
<b>PART 3—DEFINITIONS</b>		
8	Definitions . . . . .	32
<b>PART 4—BASIC CONCEPTS</b>		
<i>Division 1—Accident insurance, compensation and damages</i>		
9	Meaning of "accident insurance" . . . . .	32
10	Meaning of "compensation" . . . . .	32
11	Meaning of "damages" . . . . .	32
<i>Division 2—Workers</i>		
12	Who is a "worker" . . . . .	33
<i>Division 3—Persons entitled to compensation other than workers</i>		
<i>Subdivision 1—Volunteers etc.</i>		
14	Entitlements of persons mentioned in sdiv 1 . . . . .	33
15	Counterdisaster volunteer . . . . .	34
16	Rural fire brigade member . . . . .	35
17	Volunteer fire fighter or volunteer fire warden . . . . .	35

18	Statutory or industrial body member . . . . .	36
19	Honorary ambulance officers . . . . .	36
20	Person in voluntary or honorary position with religious, charitable or benevolent organisation . . . . .	36
21	Person in voluntary or honorary position with nonprofit organisation . . . . .	37
	<b><i>Subdivision 2—Persons performing community service etc.</i></b>	
22	Entitlements of persons in sdiv 2 . . . . .	37
23	Persons performing community service or unpaid duties . . . . .	38
	<b><i>Subdivision 3—Students</i></b>	
24	Students . . . . .	38
	<b><i>Subdivision 4—Eligible persons</i></b>	
25	Meaning of “eligible person” . . . . .	39
26	Eligible person may apply to be insured . . . . .	40
27	Entitlements of eligible persons . . . . .	40
	<b><i>Subdivision 5—Other persons</i></b>	
28	Other persons . . . . .	40
	<b><i>Division 4—Spouses, members of the family and dependants</i></b>	
29	Meaning of “dependant” . . . . .	41
30	Meaning of “member of the family” . . . . .	41
31	Who is the “spouse” of a deceased worker . . . . .	41
	<b><i>Division 5—Employers</i></b>	
32	Who is an “employer” . . . . .	42
	<b><i>Division 6—Injuries and impairment</i></b>	
	<b><i>Subdivision 1—Event resulting in injury</i></b>	
33	Meaning of “event” . . . . .	43
	<b><i>Subdivision 2—Injury</i></b>	
34	Meaning of “injury” . . . . .	43
	<b><i>Subdivision 3—When injury arises out of, or in the course of, employment</i></b>	
35	Application of sdiv 3 . . . . .	45
36	Injury while at or after worker attends place of employment . . . . .	45
37	Other circumstances . . . . .	45
38	Injury that happens during particular journeys . . . . .	46

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

39	Meaning of “impairment” . . . . .	48
40	Meaning of “permanent impairment” . . . . .	48
41	Meaning of “work related impairment” . . . . .	48

***Division 7—Rehabilitation***

44	Meaning of “rehabilitation” . . . . .	48
45	Meaning of “rehabilitation coordinator” . . . . .	49
46	Meaning of “suitable duties” . . . . .	49
47	Meaning of “workplace rehabilitation” . . . . .	49
48	Meaning of “workplace rehabilitation policy and procedures” . . . . .	50
49	Meaning of “accredited workplace” . . . . .	50

**CHAPTER 2—EMPLOYER’S OBLIGATIONS****PART 1—EMPLOYER’S LEGAL LIABILITY**

50	Employer’s legal liability . . . . .	50
51	WorkCover’s liability confined to compensation . . . . .	50

**PART 2—EMPLOYER’S INSURANCE REQUIREMENTS*****Division 1—General obligations***

52	Employer’s obligation to insure . . . . .	51
53	Exemption if employer has other insurance . . . . .	51

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

54	When an employer contravenes the general obligation to insure . . . . .	52
55	Offence of contravening general obligation to insure . . . . .	52
56	Offence to charge worker for compensation or damages for injury . . . . .	52
57	Recovery of unlawful charge for compensation or damages for injury . . . . .	53

**PART 3—INSURANCE UNDER WORKCOVER POLICIES  
GENERALLY*****Division 1—Premium setting generally***

58	Setting of premium . . . . .	53
59	Setting premium on change of ownership of business . . . . .	54
60	Reassessment of premium for policy . . . . .	55

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

61	Recovery of compensation and unpaid premium . . . . .	56
62	Default assessment on reasonable suspicion . . . . .	57
63	Further assessment and recovery after payment of default assessment. . . .	58
64	Employer’s separate liabilities for 1 period of default . . . . .	59

***Division 3—Additional premiums***

65	Additional premium payable if premium not paid . . . . .	59
66	Further additional premium payable after appeal to industrial magistrate . .	60
67	Additional premium for out-of-State workers. . . . .	60
68	WorkCover may waive or reduce additional premium . . . . .	60

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

69	Meaning of “excess period” . . . . .	61
70	Employer’s liability for excess period. . . . .	61
71	Employer may insure against payment for excess period . . . . .	62

**PART 5—EMPLOYER’S SELF-INSURANCE*****Division 1—Preliminary***

98	What is self-insurance . . . . .	63
----	----------------------------------	----

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

99	Who may apply to be a self-insurer. . . . .	63
100	How the application is made . . . . .	64
101	Issue or renewal of licence to a single employer. . . . .	64
102	Issue or renewal of licence to a group employer. . . . .	65
103	Calculation of the number of fulltime workers . . . . .	66
104	Workers employed in Queensland. . . . .	67
105	Whether applicant fit and proper . . . . .	67
106	Audit of self-insurer . . . . .	67
107	Decision on application for the issue of a licence . . . . .	68
108	Duration of licence . . . . .	68
109	Renewal of licence . . . . .	69
110	Refusal of application for renewal of a licence. . . . .	69
111	Annual levy payable . . . . .	70
112	Conditions of licence. . . . .	71

---

113	Bank guarantee or cash deposit . . . . .	71
114	Investing cash deposit . . . . .	72
115	Reinsurance . . . . .	72
116	Self-insurer replaces WorkCover in liability for injury . . . . .	73
117	Liability of group employers . . . . .	74
	<b><i>Division 2A—Change to membership of self-insurer</i></b>	
118	Change in self-insurer’s membership . . . . .	74
118A	Consequences of change in self-insurer’s membership . . . . .	75
118B	Continuation of membership in particular circumstances . . . . .	76
	<b><i>Division 3—Powers, functions and obligations of self-insurers</i></b>	
119	Powers of self-insurers . . . . .	76
120	Documents that must be kept by self-insurer . . . . .	78
121	Documents must be given to WorkCover on request . . . . .	79
	<b><i>Division 4—Cancellation of self-insurer’s licence</i></b>	
122	When licence may be cancelled . . . . .	79
123	Procedure for cancellation . . . . .	79
124	Self-insurer may ask for cancellation . . . . .	80
125	Premium payable after cancellation . . . . .	80
126	Transfer to WorkCover after cancellation . . . . .	80
127	Certain functions and powers may be held by former self-insurer after cancellation . . . . .	81
128	Recovery of ongoing costs from former self-insurer . . . . .	82
129	Assessing liability after cancellation . . . . .	82
130	Return of bank guarantee or cash deposit after cancellation . . . . .	83
131	Contingency account . . . . .	84
	<b>CHAPTER 3—COMPENSATION</b>	
	<b>PART 1—INTERPRETATION FOR CHAPTER 3</b>	
132	Meaning of “amount payable under an industrial instrument” . . . . .	84
133	Meaning of “normal weekly earnings” . . . . .	84
134	Meaning of “QOTE” . . . . .	85

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

*Division 1—General statement of entitlement*

135	Compensation entitlement . . . . .	85
135A	Who must pay compensation . . . . .	85
136	Compensation entitlement can not be relinquished, assigned or subject to execution . . . . .	86
137	Public trustee may act for claimant . . . . .	86
138	Public trustee may receive payments for minors . . . . .	86

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

139	Entitlement depends on where injury is sustained . . . . .	87
140	Interstate and overseas arrangements . . . . .	87

*Division 3—Relationship of entitlement to other compensation*

141	Entitlement ends if compensated under corresponding laws . . . . .	88
142	Compensation recoverable if later paid under corresponding laws . . . . .	88
143	Condition on compensation application if compensation available under this Act and corresponding law . . . . .	88
144	Entitlement to compensation ends if damages claim is finalised . . . . .	89

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

*Division 1—Seafarers*

145	Application of div 1 . . . . .	89
146	Meaning of “seafarer” . . . . .	89
147	Entitlements of seafarers . . . . .	90
148	Payment on account of seafarers . . . . .	90

*Division 2—Miners*

149	Application of div 2 . . . . .	91
150	Entitlements of miners . . . . .	91

*Division 3—Workers with industrial deafness*

151	Application of div 3 . . . . .	92
152	Entitlements for industrial deafness . . . . .	92
153	Further application for compensation for industrial deafness . . . . .	93

*Division 4—Workers with prescribed disfigurement*

154	Application of div 4 . . . . .	93
-----	--------------------------------	----

155	Entitlements of worker who sustains prescribed disfigurement . . . . .	93
<b>PART 4—COMPENSATION AFFECTED BY WORKERS’ CONDUCT</b>		
156	Self-inflicted injuries . . . . .	93
157	Injuries caused by misconduct . . . . .	94
<b>PART 5—COMPENSATION APPLICATION AND OTHER PROCEDURES</b>		
158	Time for applying . . . . .	94
159	Applying for compensation . . . . .	95
160	Employer’s duty to report injury . . . . .	96
161	Decision about application for compensation . . . . .	96
162	Examination by registered person . . . . .	97
163	Worker must notify return to work or engagement in a calling . . . . .	97
164	Suspension of compensation during term of imprisonment . . . . .	97
165	Compensation not payable during suspension . . . . .	98
<b>PART 6—MAXIMUM STATUTORY COMPENSATION</b>		
166	Application of pt 6 . . . . .	98
167	Maximum entitlement . . . . .	98
<b>PART 7—PAYMENT OF COMPENSATION</b>		
168	Time from which compensation payable . . . . .	99
<b>PART 7A—COMPENSATION FOR DAY OF INJURY</b>		
168A	Application of pt 7A . . . . .	100
168B	Definition for pt 7A . . . . .	100
168C	When employer must pay worker for day of injury . . . . .	100
<b>PART 8—WEEKLY PAYMENT OF COMPENSATION</b>		
<i>Division 1—Application</i>		
169	Application and object of pt 8 . . . . .	101
<i>Division 2—Advances on weekly payments</i>		
170	Advances on account . . . . .	101
<i>Division 3—Adjustment of entitlements under pt 8</i>		
171	Worker can not receive more than if injury had not been sustained . . . . .	101
172	Regard to other benefits for workers . . . . .	102

***Division 4—Entitlement for total incapacity******Subdivision 1—Application of div 4***

173	Entitlement to weekly payments . . . . .	102
-----	--	-----

***Subdivision 2—Workers***

174	Total incapacity—workers whose employment is governed by an industrial instrument . . . . .	102
-----	---	-----

175	Total incapacity—workers whose employment is not governed by industrial instrument . . . . .	103
-----	--	-----

176	Total incapacity—certain contract workers . . . . .	104
-----	---	-----

177	Total incapacity—casual or part-time workers . . . . .	105
-----	--	-----

178	Total incapacity—workers receiving certain benefits under Commonwealth law . . . . .	105
-----	--	-----

179	Total incapacity—workers with more than 1 employer . . . . .	106
-----	--	-----

***Subdivision 3—Persons entitled to compensation other than workers, students and eligible persons***

180	Application of sdiv 3 . . . . .	106
-----	---------------------------------	-----

181	Total incapacity . . . . .	106
-----	----------------------------	-----

***Subdivision 3A—Eligible persons***

181A	Application of sdiv 3A . . . . .	108
------	----------------------------------	-----

181B	Total incapacity . . . . .	108
------	----------------------------	-----

***Subdivision 4—Reference to tribunal***

182	Total incapacity—reference about impairment to medical assessment tribunal . . . . .	109
-----	--	-----

***Division 5—Entitlement for partial incapacity******Subdivision 1—Persons entitled to compensation other than eligible persons***

182A	Application of sdiv 1 . . . . .	110
------	---------------------------------	-----

183	Definitions for sdiv 1 . . . . .	110
-----	----------------------------------	-----

184	Partial incapacity . . . . .	111
-----	------------------------------	-----

***Subdivision 2—Eligible persons***

184A	Application of sdiv 2 . . . . .	111
------	---------------------------------	-----

184B	Definitions for sdiv 2 . . . . .	111
------	----------------------------------	-----

184C	Partial incapacity . . . . .	111
------	------------------------------	-----

<b><i>Subdivision 3—Requiring information</i></b>		
185	WorkCover may require information from partially incapacitated worker or person . . . . .	112
<b><i>Division 6—Review of compensation</i></b>		
186	Review of compensation and associated payments . . . . .	112
187	Review of weekly payments—worker under 18 . . . . .	112
188	Recovery of compensation overpaid . . . . .	113
<b><i>Division 7—Redemption of weekly payments</i></b>		
189	Redemption—worker receiving weekly payments for at least 2 years . . . . .	113
190	Redemption—worker moves interstate . . . . .	114
191	Redemption—worker moves abroad . . . . .	114
192	Calculation of redemption payment . . . . .	114
193	Review of redemption payment . . . . .	115
194	No compensation after redemption payment made . . . . .	115
<b><i>Division 8—When entitlement to weekly payments stops</i></b>		
195	When weekly payments stop . . . . .	115
<b>PART 9—ENTITLEMENT TO COMPENSATION FOR PERMANENT IMPAIRMENT</b>		
<b><i>Division 1—General statement</i></b>		
196	Entitlement to assessment of permanent impairment and lump sum compensation . . . . .	116
<b><i>Division 2—Assessment of permanent impairment under table of injuries</i></b>		
197	Assessment of permanent impairment . . . . .	116
198	Calculation of lump sum compensation . . . . .	117
199	Regard to previous entitlement to lump sum compensation for injury other than industrial deafness . . . . .	117
200	Regard to previous assessment for industrial deafness . . . . .	118
201	Calculation of WRI . . . . .	118
<b><i>Division 3—Notification of assessment of permanent impairment</i></b>		
202	Application of div 3 . . . . .	119
203	WorkCover to give notice of assessment of permanent impairment . . . . .	119
204	Worker’s disagreement with assessment of permanent impairment . . . . .	120
205	Offer of lump sum compensation . . . . .	120

---

206	Worker's decision about lump sum compensation—WRI 20% or more . . .	120
207	Worker's decision about lump sum compensation—WRI less than 20% or no WRI . . . . .	121
208	No further compensation after fixed time . . . . .	122
	<b><i>Division 4—Additional lump sum compensation</i></b>	
209	Application of div 4. . . . .	123
210	Additional lump sum compensation for certain workers . . . . .	123
211	Additional lump sum compensation for gratuitous care . . . . .	123
	<b>PART 10—COMPENSATION ON WORKER'S DEATH</b>	
212	Application and object of pt 10. . . . .	124
213	Definition for pt 10 . . . . .	125
214	To whom payments made for death of worker . . . . .	125
215	Total and partial dependants . . . . .	125
216	Dependant's compensation payable to public trustee . . . . .	126
217	Medical and funeral expenses must be paid by WorkCover . . . . .	126
218	Total dependency. . . . .	126
219	Partial dependency. . . . .	126
220	Workers under 21 . . . . .	127
221	Reduction of amount payable on death. . . . .	127
222	Reduced compensation if dependant dies before payment made . . . . .	128
	<b>PART 11—AUTOMATIC VARIATION OF COMPENSATION PAYABLE</b>	
223	Variation of payments for injuries . . . . .	129
224	Construing entitlements in light of variation. . . . .	129
225	Application of part to existing benefits . . . . .	129
	<b>CHAPTER 4—INJURY MANAGEMENT</b>	
	<b>PART 1—APPLICATION</b>	
226	Application and object of ch 4 . . . . .	130
	<b>PART 2—LIABILITY FOR MEDICAL TREATMENT, HOSPITALISATION AND EXPENSES</b>	
	<b><i>Division 1—Application and general statement of liability</i></b>	
227	Application of pt 2. . . . .	130
228	WorkCover's liability for medical treatment and hospitalisation . . . . .	130

---

<b><i>Division 2—Medical treatment costs</i></b>		
229	Extent of liability for medical treatment . . . . .	131
230	Extent of liability for prosthetic expenses . . . . .	131
231	Accounts for medical treatment, certificate in approved form . . . . .	132
232	Review of costs payable . . . . .	132
<b><i>Division 3—Hospitalisation</i></b>		
233	Definitions for div 3. . . . .	132
234	Extent of liability for period of hospitalisation . . . . .	133
235	Cost of hospitalisation . . . . .	134
236	Maximum liability for cost of hospitalisation . . . . .	134
<b><i>Division 4—Travelling expenses</i></b>		
237	Extent of liability for travelling expenses . . . . .	134
<b>PART 3—RESPONSIBILITY FOR REHABILITATION</b>		
<b><i>Division 1—WorkCover’s responsibility</i></b>		
238	WorkCover’s responsibility for worker’s rehabilitation . . . . .	136
<b><i>Division 2—WorkCover’s liability for rehabilitation fees and costs</i></b>		
239	Liability for rehabilitation fees and costs . . . . .	136
240	Extent of liability for rehabilitation fees and costs . . . . .	136
<b><i>Division 3—Caring allowance</i></b>		
241	Liability for caring allowance . . . . .	137
242	Extent of liability for caring allowance . . . . .	137
<b>PART 4—EMPLOYER’S OBLIGATION FOR REHABILITATION</b>		
243	Employer’s obligation to appoint rehabilitation coordinator . . . . .	138
244	Employer’s obligation to have workplace rehabilitation policy and procedures . . . . .	138
245	Employer’s obligation to assist or provide rehabilitation . . . . .	139
246	Employer’s failure in relation to rehabilitation . . . . .	139
<b>PART 5—WORKER’S MITIGATION AND REHABILITATION OBLIGATIONS</b>		
247	Application of pt 5. . . . .	140
248	Worker must mitigate loss . . . . .	140
249	Worker must participate in rehabilitation . . . . .	140

**CHAPTER 5—ACCESS TO DAMAGES****PART 1—INTERPRETATION AND APPLICATION**

250	Definitions for ch 5 . . . . .	141
251	Meaning of “terminal condition” . . . . .	141
252	Requirements of chapter to prevail and are substantive law . . . . .	141
252A	Period of limitation under Limitation of Actions Act 1974 never affected . . . . .	142

**PART 2—ENTITLEMENT CONDITIONS***Division 1—Limitations on persons entitled to seek damages*

253	General limitation on persons entitled to seek damages . . . . .	142
254	Worker with terminal condition. . . . .	144
255	Worker who is required to make election to seek damages. . . . .	144

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

256	Consequences, to costs, of seeking damages . . . . .	145
-----	--	-----

*Division 3—Claimant who has received notice of assessment**Subdivision 1—Application of division 3*

257	Application of div 3. . . . .	145
-----	-------------------------------	-----

*Subdivision 2—Claimant mentioned in s 253(1)(a)(i)*

258	Application of subdiv 2 . . . . .	146
259	Need for urgent proceedings . . . . .	146

*Subdivision 3—Claimant mentioned in s 253(1)(a)(ii)*

260	Application of subdiv 3 . . . . .	146
261	Claimant with more than 1 injury from an event . . . . .	147
262	Claimant may ask for injury to be assessed for permanent impairment . . . . .	148
263	Need for urgent proceedings . . . . .	148
264	When urgent proceeding must be discontinued. . . . .	149

*Division 4—Claimant mentioned in s 253(1)(b)*

265	Application of div 4. . . . .	149
266	Claimant may seek damages only after being assessed . . . . .	149
267	Need for urgent proceedings . . . . .	150
268	When urgent proceeding must be discontinued. . . . .	150

*Division 5—Claimant mentioned in s 253(1)(c)*

269	Application of div 5. . . . .	151
-----	-------------------------------	-----

---

270	Access to damages if application for compensation is subject to review or appeal . . . . .	151
271	Need for urgent proceedings . . . . .	151
272	When urgent proceedings must be discontinued . . . . .	152
	<b><i>Division 6—Claimant mentioned in s 253(1)(d)</i></b>	
273	Application of div 6 . . . . .	152
273A	Access to damages if claimant has not lodged application for compensation . . . . .	152
273B	Need for urgent proceedings . . . . .	154
273C	When proceedings must be discontinued . . . . .	154
	<b><i>Division 7—Person mentioned in s 253(1)(e)</i></b>	
273D	Application of div 7 . . . . .	155
273E	Claimant may seek damages only in particular cases . . . . .	155
273F	Need for urgent proceedings . . . . .	156
273G	When proceedings must be discontinued . . . . .	157
	<b><i>Division 8—Review of worker’s decision to accept payment of lump sum compensation for injury—WRI less than 20% or no WRI</i></b>	
273H	Application of div 8 . . . . .	157
274	Decision not to seek damages reviewable in certain circumstances . . . . .	158
	<b>PART 3—MITIGATION OF LOSS AND REHABILITATION</b>	
275	Mitigation of loss . . . . .	159
275A	Provision of rehabilitation . . . . .	160
275B	Costs of rehabilitation . . . . .	160
	<b>PART 4—REDUCTION OF RECOVERABLE DAMAGES</b>	
276	When damages are to be reduced . . . . .	161
277	Assessment by court of total liability for damages . . . . .	162
278	WorkCover’s charge on damages for compensation paid . . . . .	162
	<b>PART 5—PRE-COURT PROCEDURES</b>	
279	Object of pt 5 . . . . .	164
279A	Overriding obligations of parties . . . . .	164
280	Notice of claim for damages . . . . .	164
280A	Noncompliance with s 280 and urgent proceedings . . . . .	166
281	Claimant to tell WorkCover of change to information in notice of claim . . . . .	167
282	Response to notice of claim . . . . .	167

283	Claimant and WorkCover to cooperate . . . . .	168
284	Employer to cooperate with WorkCover . . . . .	169
285	WorkCover and claimant to attempt to resolve claim . . . . .	170
286	Worker to undergo medical examination. . . . .	172
287	Joint expert reports . . . . .	172
288	Non-disclosure of certain material . . . . .	173
289	Consequence of failure to give information . . . . .	174
290	Privilege and duties . . . . .	174
291	Court's power to enforce compliance with chapter. . . . .	174

## **PART 6—SETTLEMENT OF CLAIMS**

### *Division 1—Compulsory conference*

292	Application of div 1. . . . .	175
293	Compulsory conference. . . . .	175
293A	Procedure at conference . . . . .	176
293B	Information to be given by party's lawyer before other type of settlement attempted . . . . .	177
294	Parties to make written final offer if claim not settled at compulsory conference . . . . .	178

### *Division 3—Settlement before court proceedings*

300	Settlement of claim for damages. . . . .	178
-----	--	-----

## **PART 7—START OF COURT PROCEEDINGS**

### *Division 1—When claimant can start court proceedings*

301	Application of div 1. . . . .	178
302	Compliance necessary before starting proceeding . . . . .	179
303	Claimant to have given complying notice of claim or WorkCover to have waived compliance . . . . .	179
304	Court to have made declaration about noncompliance . . . . .	180
305	Court to have given leave despite noncompliance. . . . .	180
305A	Other provision for urgent proceedings. . . . .	180

### *Division 2—Court proceedings*

306	Carriage of proceedings. . . . .	181
307	Exclusion of jury trial . . . . .	182
308	Alteration of period of limitation . . . . .	182

309	Court may have regard to claimant's non-compliance with s 280 in relation to costs and interest . . . . .	183
310	Court may have regard to compulsory conference . . . . .	183
<b>PART 7A—STRUCTURED SETTLEMENTS</b>		
310A	Court may make consent order for structured settlement . . . . .	183
<b>PART 8—PARTICULAR MATTERS AFFECTING ASSESSMENTS OF LIABILITY</b>		
311	Absolute defences not reintroduced . . . . .	184
312	Contributory negligence . . . . .	184
<b>PART 9—NO RIGHT TO PARTICULAR DAMAGES</b>		
315	Gratuitous services . . . . .	185
<b>PART 10—EXEMPLARY DAMAGES</b>		
319	Exemplary damages . . . . .	185
<b>PART 11—COSTS</b>		
<i>Division 1—Costs applying to worker with WRI of 20% or more or dependant</i>		
320	Application of div 1 . . . . .	186
321	Principles about orders as to costs. . . . .	186
322	Costs if written final offer by claimant . . . . .	186
323	Costs if written final offer by WorkCover . . . . .	186
323A	Interest after service of written final offer . . . . .	187
<i>Division 2—Costs applying to worker with WRI less than 20% or no WRI</i>		
324	Application of div 2. . . . .	187
325	Principles about orders as to costs. . . . .	187
<i>Division 3—Costs generally</i>		
326	Application of div 3. . . . .	188
327	Costs if proceeding could have been brought in a lower court . . . . .	189
<b>PART 12—EXCESS DAMAGES AWARDED IN ANOTHER JURISDICTION</b>		
328	Application of pt 12. . . . .	189
329	No liability for excess damages. . . . .	189
<b>CHAPTER 6—WORKCOVER QUEENSLAND</b>		
<b>PART 1—ESTABLISHMENT</b>		
330	WorkCover is established . . . . .	190

331	WorkCover is a body corporate etc. . . . .	190
332	Relationship with State . . . . .	190

## **PART 2—FUNCTIONS AND POWERS**

### *Division 1—Functions and insurance business*

333	General statement of WorkCover’s functions . . . . .	191
334	WorkCover’s insurance business. . . . .	191
335	WorkCover as the exclusive provider of accident insurance. . . . .	191
336	WorkCover’s offices . . . . .	192

### *Division 2—Powers generally*

337	Objects of div 2 . . . . .	192
338	WorkCover’s general powers. . . . .	192
339	General restriction on WorkCover’s powers . . . . .	193
340	Disposal of main undertakings . . . . .	194
341	Acquiring and disposing of subsidiaries . . . . .	194
342	Protection of persons who deal with WorkCover . . . . .	194
343	Reserve power of Minister to direct that asset not be disposed of . . . . .	196

## **PART 3—OBLIGATIONS**

### *Division 1—Corporate Plan*

344	WorkCover must have corporate plan . . . . .	197
345	Guidelines in relation to corporate plans. . . . .	197
346	Draft corporate plan. . . . .	197
347	Special procedures for draft corporate plan . . . . .	197
348	Corporate plan on agreement . . . . .	198
349	Corporate plan pending agreement . . . . .	198
350	Changes to corporate plan . . . . .	198

### *Division 2—Statement of corporate intent*

351	WorkCover must have statement of corporate intent . . . . .	198
352	Statement of corporate intent must be consistent with corporate plan . . . . .	199
353	Matters to be included in statement of corporate intent . . . . .	199
354	Additional matters to be included in statement of corporate intent . . . . .	199
355	Draft statement of corporate intent . . . . .	200
356	Special procedures for draft statement of corporate intent . . . . .	200

---

357	Statement of corporate intent on agreement . . . . .	201
358	Changes to statement of corporate intent . . . . .	201
<b><i>Division 3—Community service obligations</i></b>		
359	Meaning of “community service obligations” . . . . .	201
360	Community service obligations to be specified in statement of corporate intent . . . . .	202
<b><i>Division 4—Reports and other accountability matters</i></b>		
361	Quarterly reports . . . . .	203
362	Matters to be included in annual report. . . . .	203
363	Deletion of commercially sensitive matters from annual report etc. . . . .	204
364	Board to keep Minister informed . . . . .	204
<b><i>Division 5—Duties and liabilities of directors and other officers</i></b>		
365	Disclosure of interests by director. . . . .	205
366	Voting by interested director . . . . .	205
367	Duty and liability of certain officers of WorkCover . . . . .	206
368	Prohibition on loans to directors . . . . .	208
369	WorkCover not to indemnify officers . . . . .	208
370	WorkCover not to pay premiums for certain liabilities of officers . . . . .	209
371	Examination of persons concerned with WorkCover . . . . .	210
372	Power to grant relief . . . . .	212
373	False or misleading information or documents. . . . .	213
<b>PART 4—THE MINISTER</b>		
374	Reserve power of Minister to notify board of public sector policies . . . . .	214
375	Reserve power of Minister to give directions in public interest . . . . .	215
376	Additional power to direct WorkCover . . . . .	215
377	Notice of suspected threat to full funding because of direction or notification . . . . .	216
378	WorkCover and board not otherwise subject to government direction. . . . .	217
379	Minister not director etc. . . . .	217
380	Monitoring and assessment of WorkCover . . . . .	217
<b>PART 5—BOARD OF DIRECTORS</b>		
<b><i>Division 1—Establishment of WorkCover’s board</i></b>		
381	Establishment of board . . . . .	218

---

382	Appointment of chairperson and deputy chairperson . . . . .	219
383	Regard to particular ability in appointment of directors . . . . .	219
384	Role of board . . . . .	219
385	Delegation by board . . . . .	220
	<b><i>Division 2—Meetings and other business of board</i></b>	
386	Meaning of “required minimum number” of directors . . . . .	220
387	Conduct of meetings and other business . . . . .	220
388	Times and places of meetings . . . . .	221
389	Presiding at meetings . . . . .	221
390	Quorum and voting at meetings . . . . .	221
391	Participation in meetings by telephone etc. . . . .	221
392	Resolutions without meetings . . . . .	222
393	Minutes . . . . .	222
	<b><i>Division 3—Other provisions about directors</i></b>	
394	Term of appointment of directors . . . . .	222
395	Terms of appointment not provided for under Act . . . . .	223
396	Appointment of acting director . . . . .	223
397	Resignation . . . . .	223
398	Termination of appointment as director . . . . .	223
	<b>PART 6—THE CHIEF EXECUTIVE OFFICER</b>	
399	WorkCover’s chief executive officer . . . . .	224
400	Duties of chief executive officer . . . . .	224
401	Things done by chief executive officer . . . . .	224
402	Delegation by chief executive officer . . . . .	225
403	Additional provisions relating to chief executive officer. . . . .	225
	<b>PART 6A—REVIEW UNIT</b>	
403A	WorkCover must establish review unit . . . . .	225
403B	Function of review unit . . . . .	226
	<b>PART 7—OTHER EMPLOYMENT PROVISIONS</b>	
404	Appointment of senior executives . . . . .	226
405	Basis of employment generally . . . . .	227
406	Superannuation schemes . . . . .	227

407	Arrangements relating to staff . . . . .	228
408	Employment and industrial relations plan . . . . .	228
409	EEO legislation is applicable . . . . .	228

#### **PART 8—FINANCIAL PROVISIONS**

410	Application of financial legislation . . . . .	228
411	Liability for State taxes . . . . .	229
412	Liability for Commonwealth tax equivalents . . . . .	229
413	Procedures for borrowing . . . . .	229
414	Funds and accounts . . . . .	230
415	Reserves. . . . .	230
416	Amounts payable by WorkCover on Minister’s instruction . . . . .	230
417	Payment to consolidated fund . . . . .	231
418	Additional financial reporting requirements . . . . .	231

#### **PART 9—OTHER PROVISIONS ABOUT WORKCOVER**

419	WorkCover’s seal. . . . .	232
420	Authentication of documents. . . . .	232
421	Judicial notice of certain signatures . . . . .	232
422	Giving of documents to board. . . . .	233
423	Application of various other Acts . . . . .	233

### **CHAPTER 6A—WORKCOVER REVIEW COUNCIL**

#### **PART 1—ESTABLISHMENT AND FUNCTIONS**

423A	WorkCover Review Council is established . . . . .	233
423B	Functions of council . . . . .	233

#### **PART 2—MEMBERSHIP**

423C	Membership. . . . .	234
423D	Chairperson . . . . .	234
423E	Term of appointment . . . . .	234
423F	Disqualification from office. . . . .	234
423G	Vacation of office. . . . .	235
423H	Termination of appointment as member of council. . . . .	235
423I	Remuneration . . . . .	235

**PART 3—COUNCIL BUSINESS**

423J	Conduct of business . . . . .	235
423K	Time and place of meetings . . . . .	236
423L	Quorum . . . . .	236
423M	Presiding at meetings . . . . .	236
423N	Voting at meetings . . . . .	236
423O	Council meetings without members being present . . . . .	236
423P	Resolution without meeting . . . . .	237
423Q	Minutes . . . . .	237

**PART 4—OTHER PROVISIONS ABOUT THE COUNCIL**

423R	Administrative support for council . . . . .	237
423S	Giving information to council . . . . .	237
423T	Quarterly report . . . . .	237

**CHAPTER 7—MEDICAL ASSESSMENT TRIBUNALS****PART 1—OBJECT**

424	Object of ch 7 . . . . .	238
-----	--------------------------	-----

**PART 2—COMPOSITION AND PROCEEDINGS OF TRIBUNALS**

425	Assessment tribunals to be maintained . . . . .	238
426	General Medical Assessment Tribunal . . . . .	239
429	Chairperson and deputy chairperson of General Medical Assessment Tribunal . . . . .	239
430	Constitution of General Medical Assessment Tribunal for reference . . . . .	240
431	Panel for specialty medical assessment tribunal . . . . .	240
432	Chairperson and deputy chairperson of specialty medical assessment tribunal . . . . .	240
433	Specialty medical assessment tribunal . . . . .	241
434	Conditions of appointment to tribunal . . . . .	241
435	Proceedings of medical assessment tribunals . . . . .	242

**PART 3—JURISDICTION OF TRIBUNALS**

436	Definition for pt 3 . . . . .	242
437	Reference to tribunals . . . . .	242
438	Reference about application for compensation . . . . .	243
439	Reference about worker's capacity for work . . . . .	244

440	Reference about worker's injury . . . . .	245
441	Reference about worker's impairment. . . . .	245
442	Reference about worker's permanent impairment. . . . .	245
443	Reference about worker's level of dependency. . . . .	246
445	Reference about review of worker's permanent impairment. . . . .	246
445A	Assessment of additional compensation for prescribed disfigurement . . . . .	246
446	Limitation of tribunals' jurisdiction. . . . .	247
447	Power of tribunal to examine worker . . . . .	247

**PART 5—PROCEEDINGS FOR EXERCISE OF TRIBUNALS'  
JURISDICTION**

452	Definition for pt 5 . . . . .	248
453	Right to be heard before tribunals . . . . .	248
454	Further reference on fresh evidence . . . . .	248
455	Deferral of decisions . . . . .	249
455A	Tribunal may refer non-medical matters back to WorkCover . . . . .	249
456	Finality of tribunal's decision . . . . .	250
457	Decisions of tribunal . . . . .	250

**CHAPTER 8—ENFORCEMENT**

**PART 1—AUTHORISED PERSONS**

*Division 1—General*

458	Function of authorised person . . . . .	250
459	Authorised person subject to WorkCover's directions . . . . .	250
460	Powers of authorised persons . . . . .	251
461	Limitation on powers of authorised person . . . . .	251

*Division 2—Appointment of authorised persons and other matters*

462	Appointment of authorised persons. . . . .	251
463	Authorised person's appointment conditions . . . . .	251
464	Authorised person's identity card . . . . .	252
465	Display of authorised person's identity card. . . . .	252
466	Protection from liability . . . . .	252

*Division 3—Powers of authorised persons*

467	Entry to workplaces. . . . .	253
468	Power to require information from certain persons. . . . .	253

469	Keeping and inspection of documents. . . . .	254
471	Warrants for entry . . . . .	254
472	Warrants—applications made other than in person. . . . .	255
472A	General powers after entering places . . . . .	256
473	Power to seize evidence. . . . .	257
474	Receipt for seized things . . . . .	257
475	Access to seized things . . . . .	258
476	Return of seized things . . . . .	258
	<b><i>Division 4—Other enforcement matters</i></b>	
477	Authorised person to give notice of damage. . . . .	258
478	Restitution . . . . .	259
479	Costs of investigation . . . . .	259
	<b><i>Division 5—Obstructing or impersonating authorised persons</i></b>	
480	Obstruction of authorised persons. . . . .	259
481	Impersonation of authorised persons. . . . .	260
	<b>PART 2—FRAUD AND FALSE AND MISLEADING STATEMENTS</b>	
482	Offences involving fraud. . . . .	260
483	False or misleading information or documents. . . . .	260
484	Particular acts taken to be fraud . . . . .	261
485	Duty to report fraud or false or misleading information or documents. . . . .	262
486	Fraud and related offences end entitlement to compensation and damages . . . . .	262
	<b>CHAPTER 9—REVIEWS AND APPEALS</b>	
	<b>PART 1—INTERNAL REVIEW OF PROPOSED DECISIONS</b>	
487	Internal review by WorkCover or self-insurer. . . . .	264
	<b>PART 2—REVIEW OF DECISIONS</b>	
488	Objects of pt 2 . . . . .	264
489	Application of pt 2. . . . .	264
490	Who may apply for review . . . . .	267
491	Applying for review. . . . .	267
492	Right of appearance. . . . .	268
493	Decision-maker must give information to review unit . . . . .	268
494	Review of decision or failure to make a decision . . . . .	268

495	Notice of review decision . . . . .	269
496	Reimbursement of costs of examination and report . . . . .	269

### **PART 3—APPEALS**

#### *Division 1—Appeal to industrial magistrate or Industrial Court*

497	Application of div 1. . . . .	270
498	Who may appeal . . . . .	270
499	Procedure for appeal . . . . .	270
500	Appeal about amount of premium. . . . .	271
501	Notice of time and place for hearing. . . . .	272
501A	Application of Uniform Civil Procedure Rules and Industrial Relations (Tribunals) Rules. . . . .	272
502	Exchanging evidence before hearing. . . . .	272
503	Adjourning hearing . . . . .	273
504	Additional medical evidence. . . . .	273
505	Correcting defects in proceedings. . . . .	274
506	Powers of industrial magistrate. . . . .	274
507	Decision of industrial magistrate. . . . .	275
508	Recovery of costs . . . . .	275
509	Appeal from industrial magistrate to Industrial Court . . . . .	275
510	Powers of Industrial Court. . . . .	275
510A	Costs of appeal to Industrial Court . . . . .	276
510B	Recovery of costs . . . . .	276
511	Decision about amount of premium . . . . .	276
512	Decision about payment of compensation. . . . .	276

#### *Division 2—Appeal to court of competent jurisdiction*

513	Application of div 2. . . . .	277
514	Who may appeal . . . . .	277
515	Starting appeals. . . . .	277
516	Powers of court on appeal . . . . .	278
517	Effect of decision of court on appeal. . . . .	278

### **CHAPTER 10—MISCELLANEOUS**

#### **PART 1—INFORMATION**

519	Worker or claimant entitled to obtain certain documents . . . . .	279
-----	---	-----

520	Disclosure of information . . . . .	279
521	Information from Commissioner of Police Service . . . . .	280
522	Information use immunity . . . . .	281
523	WorkCover's information not actionable . . . . .	281

#### **PART 1A—AUDITS**

523A	Audit of wages and contracts . . . . .	282
------	--	-----

#### **PART 2—PROCEEDINGS**

524	Proceedings for offences against ch 6 . . . . .	282
525	Summary proceedings for offences other than against ch 6 . . . . .	284
526	Recovery of debts under this Act. . . . .	284
527	Self-insurer recovery of debts . . . . .	285
528	Powers of industrial magistrate . . . . .	285
529	Evidence . . . . .	286

#### **PART 3—REGULATIONS**

530	Regulation-making power . . . . .	288
-----	-----------------------------------	-----

#### **PART 4—OTHER PROVISIONS**

531	Entitlements to compensation under industrial instrument prohibited and void . . . . .	288
532	Approval of forms . . . . .	288
533	Service of documents . . . . .	288

### **CHAPTER 11—TRANSITIONAL PROVISIONS FOR WORKCOVER QUEENSLAND ACT 1996**

#### **PART 1—INTERPRETATION**

536	Definitions . . . . .	289
537	Other savings preserved . . . . .	289

#### **PART 2—TRANSFER TO WORKCOVER**

##### *Division 1—Staff*

538	Transfer of staff to WorkCover . . . . .	290
539	Preserved employment conditions of transferred person . . . . .	290
540	Other preserved rights . . . . .	291
541	Public service officers' superannuation on becoming WorkCover employees . . . . .	291

---

<b><i>Division 2—Legal succession</i></b>	
542	WorkCover is the legal successor . . . . . 292
543	First corporate plan and statement of corporate intent . . . . . 292
544	Assets and liabilities etc. . . . . 292
545	Proceedings . . . . . 293
546	References generally . . . . . 293
<b>PART 3—INSURANCE</b>	
547	Policies . . . . . 293
548	Other contracts of insurance . . . . . 294
549	Previous non-policy compensation arrangement with State . . . . . 294
<b>PART 4—INJURY BEFORE REPEAL OF REPEALED ACT</b>	
551	Injury under repealed or other former Act. . . . . 295
<b>PART 5—INJURY MANAGEMENT</b>	
552	Appointment of rehabilitation coordinator . . . . . 295
553	Workplace rehabilitation policy and procedures . . . . . 295
<b>PART 6—MEDICAL ASSESSMENT TRIBUNALS</b>	
554	Continuation of tribunals. . . . . 296
<b>PART 7—FINAL ACCOUNTS</b>	
555	Final accounts . . . . . 296
<b>PART 8—OFFENCES</b>	
556	Offences. . . . . 296
<b>PART 9—SAVING OF REPEALED ACT PROVISIONS</b>	
557	Transitional application of repealed provisions. . . . . 297
558	How to apply provisions of former Acts . . . . . 298
<b>CHAPTER 12—TRANSITIONAL PROVISIONS FOR WORKCOVER QUEENSLAND AMENDMENT ACT 1999</b>	
<b>PART 1—WORKERS, ELIGIBLE PERSONS AND EMPLOYERS</b>	
559	Workers and employers . . . . . 299
560	Eligible persons . . . . . 299
<b>PART 2—INJURIES</b>	
561	Injury before 1 July 1999 . . . . . 300
562	Ex gratia payments . . . . . 300

**PART 3—SELF-RATING***Division 1—Existing self-raters and applicants*

563	Application of div 1 . . . . .	300
564	Registration continues until 30 June 1999 . . . . .	301
565	Premium for former self-rater . . . . .	301
566	Return of bank guarantee or cash deposit . . . . .	301

*Division 2—Self-rater applying to become self-insurer*

567	Application of div 2 . . . . .	301
568	Application to become self-insurer . . . . .	302
569	Premium for former self-rater . . . . .	302
570	Self-raters residual liability . . . . .	302
571	Return of bank guarantee or cash deposit . . . . .	303
572	Powers of self-insurers . . . . .	303

**PART 4—SELF-INSURANCE**

573	Number of full-time workers . . . . .	303
574	OHS report . . . . .	304
575	Outstanding liability on or before licence renewal . . . . .	304
576	Change in self-insurer's membership . . . . .	305
577	Recovery of ongoing costs from former self-insurer . . . . .	306
578	Assessing residual liability after cancellation . . . . .	306

**PART 5—REVIEWS AND APPEALS**

579	Decisions by WorkCover or self-insurer . . . . .	307
-----	--	-----

**CHAPTER 13—TRANSITIONAL PROVISIONS FOR  
WORKCOVER QUEENSLAND AND OTHER ACTS AMENDMENT  
ACT 2000**

**PART 1—INJURIES**

580	Injury before commencement of amending Act . . . . .	307
-----	--	-----

**PART 2—SELF-INSURANCE***Division 1—Bank guarantee*

581	Self-insurer's bank guarantee . . . . .	308
-----	---	-----

*Division 2—Application by related bodies corporate group employer*

582	Application of div 2 . . . . .	308
583	Variation of s 102 for particular purposes . . . . .	309

**PART 3—MEDICAL ASSESSMENT TRIBUNALS**

584	General Medical Assessment Tribunal . . . . .	310
585	Specialty medical assessment tribunals . . . . .	310
586	Prescribed disfigurement assessment tribunal . . . . .	311

**CHAPTER 14—TRANSITIONAL PROVISIONS FOR  
WORKCOVER QUEENSLAND AMENDMENT ACT 2001**

587	Definitions for ch 14 . . . . .	311
588	Injury before 1 July 2001 . . . . .	311
589	Reference to medical assessment tribunal . . . . .	311
590	Formal revival of claim for loss of consortium . . . . .	312

**CHAPTER 15—TRANSITIONAL PROVISION FOR  
DISCRIMINATION LAW AMENDMENT ACT 2002**

591	Spouse of worker dying within 1 year . . . . .	312
-----	--	-----

	<b>SCHEDULE 1</b> . . . . .	313
--	-----------------------------	-----

**REGULATIONS**

	<b>SCHEDULE 2</b> . . . . .	315
--	-----------------------------	-----

**WHO IS A WORKER**

	<b>SCHEDULE 2A</b> . . . . .	318
--	------------------------------	-----

**PERSONS WHO ARE EMPLOYERS**

	<b>SCHEDULE 3</b> . . . . .	320
--	-----------------------------	-----

**DICTIONARY****ENDNOTES**

1	Index to endnotes . . . . .	329
2	Date to which amendments incorporated . . . . .	329
3	Key . . . . .	330
4	Table of reprints . . . . .	330
5	Tables in earlier reprints . . . . .	331
6	List of legislation . . . . .	331
7	List of annotations . . . . .	334
8	List of forms notified or published in the gazette . . . . .	353
9	Provisions that have not commenced and are not incorporated into reprint . . . . .	360



# WORKCOVER QUEENSLAND ACT 1996

[as amended by all amendments that commenced on or before 9 May 2003]

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

### **CHAPTER 1—PRELIMINARY**

#### **PART 1—INTRODUCTION**

##### **1 Short title**

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

##### **2 Commencement**

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

##### **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.

#### **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 WorkCover or employers acting as self-insurers;
- (f) injury management, emphasising rehabilitation of workers particularly for return to work;
- (g) procedures for assessment of injuries by appropriately qualified persons or by independent medical assessment tribunals;
- (h) rights of review of, and appeal against, decisions made under this Act.

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

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

- (a) maintain a balance between—
  - (i) providing fair and appropriate benefits for injured workers or dependants and persons other than workers; and
  - (ii) ensuring reasonable premium levels for employers; and

- (b) ensure that injured workers or dependants are treated fairly by WorkCover and self-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
- (e) provide for flexible insurance arrangements suited to the particular needs of industry; and
- (f) be maintained in a fully funded state that meets insurance industry solvency standards.

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

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

(6) The reserves established under section 415<sup>1</sup> are not to be taken into account in determining solvency under subsection (5).

(7) 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.

## **7 Administration**

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

---

1 Section 415 (Reserves)

## PART 3—DEFINITIONS

### 8 Definitions

The dictionary in schedule 3 defines particular words used in this Act.

## PART 4—BASIC CONCEPTS

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

### 9 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.

### 10 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 WorkCover or a self-insurer to a worker, a dependant of a deceased worker or anyone else, and includes compensation paid or payable under a former Act.

### 11 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 the damages to—

- (a) the worker; or

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

(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*

#### **12 Who is a “worker”**

(1) A “**worker**” is an individual who works under a contract of service.

(2) Also, a person mentioned in schedule 2, part 1 is a “**worker**”.

(3) However, a person mentioned in schedule 2, part 2 is not a “**worker**”.

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

#### *Subdivision 1—Volunteers etc.*

#### **14 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 8, division 4, subdivision 3 and division 5;<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.

## **15 Counterdisaster volunteer**

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

(2) The contract may cover a member of—

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

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

- (a) a member of the State Counterdisaster Organisation or a person acting under the member’s authority; or

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3 Chapter 3 (Compensation), part 8 (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)

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

(4) In this section—

“**counterdisaster**” see the *State Counter-Disaster Organisation Act 1975*, section 6.<sup>4</sup>

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

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

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

## 16 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.

## 17 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.

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

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<sup>4</sup> Under the *State Counter-Disaster Organisation Act 1975*, section 6, definition “director”, the chief executive of the department within which the Act is administered nominates an officer of the department as the executive director (counterdisaster services).

(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.

## **18 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.

## **19 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.

## **20 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.

## **21 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.*

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

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5 Chapter 3 (Compensation), part 8 (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)

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

### **23 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>6</sup>

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

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

### ***Subdivision 3—Students***

### **24 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

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<sup>6</sup> For the definition of “chief executive (corrective services)”, see *Acts Interpretation Act 1954*.

(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**” see the *Training and Employment Act 2000*, section 14.<sup>7</sup>

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

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

### *Subdivision 4—Eligible persons*

## **25 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—

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7 *Training and Employment Act 2000*, section 14, definition ‘registered training organisation’—

“**registered training organisation**”, is a training organisation that is registered to provide—

- (a) training services; or
- (b) recognition services.

8 *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) 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.

## **26 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.

## **27 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—

- (a) an entitlement to weekly payments of compensation under chapter 3, part 8, division 4, subdivision 3A 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*

## **28 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.

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<sup>9</sup> Chapter 3 (Compensation), part 8 (Weekly payment of compensation), division 4 (Entitlement for total incapacity), subdivision 3A (Eligible persons) and division 5 (Entitlement for partial incapacity), subdivision 2 (Eligible 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*

### **29 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 death or, but for the worker’s death, would have been so dependent.

### **30 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.

### **31 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.

(2) This section applies despite the *Acts Interpretation Act 1954*, section 32DA(6).

(3) 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*

## **32 Who is an “employer”**

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

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

(2) Also, a person mentioned in schedule 2A is an **“employer”**.

(3) 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.

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

*Division 6—Injuries and impairment**Subdivision 1—Event resulting in injury***33 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***34 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 36(2) or 37(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 employment is a significant contributing factor to the disease;

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<sup>11</sup> Section 36 (Injury while at or after worker attends place of employment) or 37 (Other circumstances)

*WorkCover Queensland Act 1996*

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- (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 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 WorkCover or a self-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***

**35 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.

**36 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.

**37 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.

### **38 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 37.

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

- (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—

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

- (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*

### **39 Meaning of “impairment”**

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

### **40 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.

### **41 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 198<sup>13</sup> expressed as a percentage of statutory maximum compensation calculated under section 201.<sup>14</sup>

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

#### *Division 7—Rehabilitation*

### **44 Meaning of “rehabilitation”**

- (1) **“Rehabilitation”**, of a worker, is—
  - (a) necessary and reasonable—
    - (i) suitable duties programs; or

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13 Section 198 (Calculation of lump sum compensation)

14 Section 201 (Calculation of WRI)

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

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

#### **45 Meaning of “rehabilitation coordinator”**

A “rehabilitation coordinator” is a person who—

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

#### **46 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.

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

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

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

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

**49 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****50 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.

**51 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.

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15 Chapter 5 (Access to damages)

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

### *Division 1—General obligations*

#### **52 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.

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

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

- (a) under a licence as a self-insurer under part 5;<sup>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.

(6) An employer is not required by subsection (1) to insure against legal liability for injury sustained by a seafarer employed by the employer, unless the seafarer is employed on a Queensland ship.

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

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

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

- (a) the employer’s workers will not be disadvantaged; and

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16 Part 5 (Employer’s self-insurance)

- (b) the exemption will not adversely affect the workers' compensation scheme.

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

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

An employer who is not a self insurer contravenes section 52<sup>17</sup> if—

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

**55 Offence of contravening general obligation to insure**

An employer must not contravene section 52.

Maximum penalty—275 penalty units.

**56 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

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17 Section 52 (Employer's obligation to insure)

(b) damages for injury that is, or may be, sustained by the worker.  
Maximum penalty—20 penalty units.

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

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

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

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

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

### *Division 1—Premium setting generally*

#### **58 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 of the proposed specification of method or rate.

(5) The specification is subject to any direction the Minister may make under section 375.<sup>18</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;
- (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 apply to have the decision reviewed under chapter 9.<sup>19</sup>

## **59 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.

(2A) 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—

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18 Section 375 (Reserve power of Minister to give directions in public interest)

19 Chapter 9 (Reviews and appeals)

- (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
  - (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.

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

(4) In this section—

“**officer**” has the meaning given by the Corporations Act.

## **60 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.
- (3) WorkCover must reassess the premium—
- (a) for a period after the commencement of this chapter—under section 58;<sup>20</sup> or
  - (b) for a period before the commencement of this chapter—under the *Workers' Compensation Act 1990*.
- (4) If, after the premium is reassessed, WorkCover is satisfied that premium for the period has been overpaid, WorkCover must refund or credit the amount of overpayment to the employer to whom the reassessment premium notice is given.
- (5) If, after the premium is reassessed, WorkCover is satisfied that premium for the period has been underpaid, the employer to whom the reassessment premium notice is given must pay the premium as reassessed.
- (6) If an employer is aggrieved by WorkCover's decision, the employer may apply to have the decision reviewed under chapter 9.<sup>21</sup>
- (7) This section does not limit another provision of this Act that—
- (a) allows WorkCover to recover an amount, whether by way of penalty or otherwise; or
  - (b) creates an offence for a contravention of this Act.

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

**61 Recovery of compensation and unpaid premium**

- (1) This section applies if an employer contravenes section 52.<sup>22</sup>

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20 Section 58 (Setting of premium)

21 Chapter 9 (Reviews and appeals)

22 Section 52 (Employer's obligation to insure)

(2) WorkCover may recover from the employer—

- (a) the amount of unpaid premium together with a penalty equal to 100% of the unpaid premium; and
- (b) if WorkCover has paid compensation or damages for an injury sustained by a worker when the employer was in contravention of section 52 in relation to the worker—the amount of the payment made together with a penalty equal to 50% of the payment.

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

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

(5) WorkCover must consider the application and may—

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

(6) If the employer is aggrieved by WorkCover's decision, the employer may apply to have the decision reviewed under chapter 9.<sup>23</sup>

(7) In this section—

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

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

(1) This section applies if WorkCover suspects on reasonable grounds, that an employer has contravened section 52.<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 9 (Reviews and appeals)

24 Section 52 (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 58.<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 21 days of receiving the premium notice.

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

(8) WorkCover must consider the objection and may—

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

(9) If the employer is aggrieved by WorkCover's decision under subsection (8), the employer may apply to have the decision reviewed under chapter 9.<sup>26</sup>

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

(11) WorkCover may act under this section even if WorkCover knows the employer has contravened section 52.

### **63 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 58 (Setting of premium)

26 Chapter 9 (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 61.<sup>27</sup>

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

For any period an employer contravenes section 52,<sup>28</sup> the employer is liable—

- (a) to a proceeding for an offence under section 55;<sup>29</sup> and
- (b) to a proceeding to recover an amount of premium or another amount under section 61 or 62<sup>30</sup> with or without a charge imposed by WorkCover, whether or not a proceeding is taken for an offence under section 55.

#### *Division 3—Additional premiums*

#### **65 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 61 (Recovery of compensation and unpaid premium)

28 Section 52 (Employer's obligation to insure)

29 Section 55 (Offence of contravening general obligation to insure)

30 Section 61 (Recovery of compensation and unpaid premium) or 62 (Default assessment on reasonable suspicion)

**66 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 500(4)<sup>31</sup> as a condition of the appeal to an industrial magistrate within 21 days after the day the decision is made.

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

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

**67 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.

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

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

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

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31 Section 500 (Appeal about amount of premium)

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

(4) WorkCover must consider the application and may—

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

(5) If the employer is aggrieved by WorkCover’s decision, the employer may apply to have the decision reviewed under chapter 9.<sup>32</sup>

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

### **69 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>

### **70 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.

(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).

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32 Chapter 9 (Reviews and appeals)

33 Chapter 3 (Compensation), part 7 (Payment of compensation)

The time from which compensation is payable is dealt with under section 168.

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

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

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

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

- (a) as a debt under section 526;<sup>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.

(10) If the employer is dissatisfied with WorkCover's decision, the employer may ask that the decision be reviewed under chapter 9.<sup>35</sup>

(11) This section does not limit section 54.<sup>36</sup>

## **71 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—

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34 Section 526 (Recovery of debts under this Act)

35 Chapter 9 (Reviews and appeals)

36 Section 54 (When an employer contravenes the general obligation to insure)

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

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

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

### *Division 1—Preliminary*

#### **98 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 WorkCover.

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

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

### **100 How the application is made**

The application must—

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

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

(1) WorkCover may issue or renew a licence to be a self-insurer to a single employer only if satisfied that—

- (a) the number of fulltime workers employed in Queensland by the employer is at least 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 WorkCover the unconditional bank guarantee or cash deposit required under section 113;<sup>37</sup> and

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37 Section 113 (Bank guarantee or cash deposit)

- (f) the employer has the reinsurance cover required under section 115;<sup>38</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), WorkCover 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.

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

(1) WorkCover may issue or renew a licence to be a self-insurer to a group employer only if satisfied that—

- (a) the applicant is a group employer; and
- (b) the combined number of fulltime workers employed in Queensland by all members of the group is at least 2000; and
- (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 WorkCover the unconditional bank guarantee or cash deposit required under section 113;<sup>39</sup> and

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38 Section 115 (Reinsurance)

39 Section 113 (Bank guarantee or cash deposit)

- (g) the group employer has the reinsurance cover required under section 115;<sup>40</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), WorkCover 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.

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

(1) For sections 101(1)(a) and 102(1)(b),<sup>41</sup> the number of fulltime workers is calculated by—

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

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

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

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40 Section 115 (Reinsurance)

41 Sections 101 (Issue or renewal of licence to a single employer) and 102 (Issue or renewal of licence to a group employer)

## **104 Workers employed in Queensland**

For sections 101 and 102, a worker is employed in Queensland if the worker would have an entitlement for an injury under section 139.<sup>42</sup>

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

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

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

- (a) whether the single employer or group employer is, and is likely to continue to be, able to meet its liabilities;
- (b) the long term financial viability of the single employer or group employer evidenced by any relevant consideration including, for example, its level of capitalisation, profitability and liquidity;
- (c) the resources and systems that the single employer or group employer has in Queensland for administering claims for compensation and managing rehabilitation of workers;
- (d) whether the single employer or group employer will be able to give the information WorkCover may require in the way WorkCover may require;
- (e) for an application for renewal of a licence—whether the self-insurer has performed the functions, or exercised the powers, under section 119<sup>43</sup> reasonably.

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

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

- (a) satisfies section 101 (other than paragraph (c)) or 102 (other than paragraph (d));<sup>44</sup> and

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42 Section 139 (Entitlement depends on where injury is sustained)

43 Section 119 (Powers of self-insurers)

44 Section 101 (Issue or renewal of licence to a single employer) or 102 (Issue or renewal of licence to a group employer)

(b) is fit and proper under section 105;<sup>45</sup> and

(c) satisfies the conditions of the licence.

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

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

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

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

(a) it has refused the application; and

(b) the reasons for the refusal; and

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

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

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

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

(6) If WorkCover does not change its decision, WorkCover must advise the applicant that the applicant may appeal against the refusal under chapter 9.<sup>46</sup>

### **108 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.

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45 Section 105 (Whether applicant fit and proper)

46 Chapter 9 (Reviews and appeals)

### **109 Renewal of licence**

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

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

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

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

- (a) complied with this Act and the conditions of the licence; and
- (b) acted reasonably in relation to the functions and powers under section 119.<sup>47</sup>

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

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

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

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

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

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

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

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<sup>47</sup> Section 119 (Powers of self-insurers)

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

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

(7) If WorkCover refuses the application, WorkCover must advise the applicant that the applicant may appeal against the refusal under chapter 9.<sup>48</sup>

(8) Despite section 108,<sup>49</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.

### **111 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 an amount that relates to the amount paid by WorkCover under section 237(2)<sup>50</sup> for transportation of self-insurers' workers by ambulance vehicle provided by the Queensland Ambulance Service.

(3) A regulation must prescribe the way the levy is calculated.

(4) The levy is to be set at the rate specified by WorkCover and approved by the Minister for each financial year.

(5) WorkCover must recommend the rate for each financial year to the Minister.

(6) WorkCover must consult with the Minister before giving the recommendation.

(7) WorkCover must publish the rate approved by the Minister in the industrial gazette.

(8) WorkCover must give a self-insurer written notice of the amount of the levy.

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48 Chapter 9 (Reviews and appeals)

49 Section 108 (Duration of licence)

50 Section 237 (Extent of liability for travelling expenses)

(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 WorkCover's decision about the amount of levy payable, the self-insurer may apply to have the decision reviewed under chapter 9.

## **112 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 WorkCover—
  - (i) on the issue or renewal of a licence; or
  - (ii) at any time during the period of the licence.

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

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

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

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

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

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

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

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

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

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

- (a) at all times during the period of the licence; and
- (b) after cancellation of the licence, as required by section 129.<sup>51</sup>

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

(6) In this section—

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

- (a) the liability for—
  - (i) claims expected to arise in the 12 months after the assessment; and
  - (ii) existing claims incurred for which a self-insurer is liable under section 116;<sup>52</sup> less
- (b) the total amount expected to be paid in the 12 months after the assessment.

### 114 Investing cash deposit

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

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

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

(4) In this section—

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

### 115 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 WorkCover; and

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51 Section 129 (Assessing liability after cancellation)

52 Section 116 (Self-insurer replaces WorkCover in liability for injury)

(b) give WorkCover a copy of the contract certified by the approved insurer.

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

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

(4) The contract—

(a) must be current for the period of the licence; and

(b) must not be cancelled or varied by the self-insurer, or the approved insurer, without WorkCover's consent.

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

(6) In this section—

**“approved insurer”** means an insurer approved by the Australian Prudential Regulation Authority under the *Insurance Act 1973* (Cwlth).

### **116 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.

### **117 Liability of group employers**

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

#### *Division 2A—Change to membership of self-insurer*

### **118 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 WorkCover in writing for the change in the group membership on the licence.

(2) WorkCover 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 of the residual liability and outstanding liability (“**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 99

(the “**section 99 application**”), to be a self-insurer as a related bodies corporate group employer.

(4) WorkCover 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) WorkCover has decided to approve the section 99 application; or
- (b) if WorkCover has decided not to approve the section 99 application, it is satisfied that satisfactory arrangements have been made in relation to the total liability of the applicants for the section 99 application.

### **118A 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 WorkCover 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 WorkCover 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 WorkCover 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 WorkCover 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 WorkCover; and
- (b) paid within the time allowed under a regulation.

### **118B 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 WorkCover approves an application for a change in the group membership on the licence under section 118.

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

#### **119 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 of WorkCover under the following provisions—
  - (i) chapter 3 (other than sections 136(5), 160, 163 and 188(3), and part 11);<sup>53</sup>
  - (ii) chapter 4 (other than sections 235(3)(a), 237(2) and 238, and part 4);<sup>54</sup>

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53 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))

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

- (iii) chapter 5 (other than sections 284, 306 and 319);<sup>55</sup>
- (iv) chapter 7, parts 3 and 5;<sup>56</sup> and
- (b) 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
- (c) 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), a reference to WorkCover or the board 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.

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55 Chapter 5 (Access to damages) (other than sections 284 (Employer to cooperate with WorkCover), 306 (Carriage of proceedings) and 319 (Exemplary damages))

56 Chapter 7 (Medical assessment tribunals), parts 3 (Jurisdiction of tribunals) and 5 (Proceedings for exercise of tribunals' jurisdiction)

(4) The functions and powers may be 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 exercise the self-insurer's functions and powers for not longer than 3 months if WorkCover's board 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 and exercise the functions and 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 127.<sup>57</sup>

## **120 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
  - (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 WorkCover's written consent.

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<sup>57</sup> Section 127 (Certain functions and powers may be held by former self-insurer after cancellation)

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

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

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

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

***Division 4—Cancellation of self-insurer's licence*****122 When licence may be cancelled**

WorkCover may cancel a licence if—

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

**123 Procedure for cancellation**

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

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

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

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

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

- (a) the reasons for the decision; and
- (b) that the self-insurer may appeal against the cancellation under chapter 9.<sup>58</sup>

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

(6) WorkCover must record particulars of the cancellation.

### **124 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 28 days after the date the notice is given to WorkCover.

(3) Cancellation takes effect—

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

### **125 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.

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

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

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58 Chapter 9 (Reviews and appeals)

- (a) the self-insurer's functions and powers under section 119<sup>59</sup> end; and
- (b) for all applications for compensation held by the former self-insurer immediately before the cancellation—
  - (i) the former self-insurer must immediately give WorkCover all documents relating to the applications; and
  - (ii) WorkCover has all its functions and powers; and
- (c) an application for compensation that, other than for this section, would have been lodged with the self-insurer, must be lodged with WorkCover; and
- (d) WorkCover replaces the self-insurer for any proceeding being taken, or that may be taken, by a worker or claimant against, or by, the self-insurer as an insurer; and
- (e) WorkCover has the rights, and assumes the obligations, of the self-insurer under the contract of reinsurance.

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

### **127 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 WorkCover considers it appropriate, WorkCover 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 119.

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

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

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

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59 Section 119 (Powers of self-insurers)

**128 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 a worker for which a self-insurer is liable under section 116;<sup>60</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 28 days of WorkCover's written demand for payment, or a further period allowed by WorkCover.

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

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

(4) In this section—

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

**129 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 section 116(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 28 days of the date of assessment, or a further period allowed by WorkCover.

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60 Section 116 (Self-insurer replaces WorkCover in liability for injury)

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

(6) WorkCover must retain the deposit or bank guarantee until it is satisfied that the former self-insurer's liability under section 116(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.

### **130 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 given at least 1 year after the cancellation, ask WorkCover to return the balance of the bank guarantee or cash deposit.

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

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

(4) If WorkCover refuses to return the balance, the former self-insurer may appeal under chapter 9.<sup>61</sup>

(5) In this section—

**“return”** includes relinquish.

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61 Chapter 9 (Reviews and appeals)

### **131 Contingency account**

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

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

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

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

## **CHAPTER 3—COMPENSATION**

### **PART 1—INTERPRETATION FOR CHAPTER 3**

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

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

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

#### **133 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.

### **134 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>62</sup>

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

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

### **135 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 34(3)(b),<sup>63</sup> the worker is entitled to compensation for the injury only to the extent of the effects of the aggravation.

### **135A Who must pay compensation**

(1) If an employer is a self-insurer, the employer must pay the compensation.

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62 The publication is currently entitled ‘Average Weekly Earnings States and Australia’.

63 Section 34 (Meaning of “injury”)

(2) Otherwise, WorkCover must pay the compensation.

(3) Subsection (2) is subject to section 70.<sup>64</sup>

### **136 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 188(2)(b).<sup>65</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.

### **137 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.

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

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64 Section 70 (Employer's liability for excess period)

65 Section 188 (Recovery of compensation overpaid)

***Division 2—Entitlement in relation to place where injury is sustained*****139 Entitlement depends on where injury is sustained**

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

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

**140 Interstate and overseas arrangements**

(1) If—

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

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

(2) If—

- (a) an injury is sustained by a worker in Queensland; and
- (b) at the time of the injury, the worker's principal place of employment was in another State or country;

compensation is not payable for the injury.

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

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

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

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

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

#### **141 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.

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

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

- (a) payment of compensation is made under this Act to, or on account of, a person; and
- (b) subsequently payment (by whatever name called) that corresponds to compensation under this Act is made to, or on account of, the person under an entitlement under a law of the Commonwealth or of a place other than Queensland for the injury.

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

#### **143 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 WorkCover the claimant's statutory declaration that—

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

#### **144 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 11.

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

### *Division 1—Seafarers*

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

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

#### **146 Meaning of “seafarer”**

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

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

### **147 Entitlements of seafarers**

(1) A seafarer is entitled to compensation for an injury sustained only if the seafarer is employed—

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

(2) However, a seafarer employed on a Queensland ship that is on a voyage is entitled to compensation while an exemption for the seafarer's employment on the ship is in force under the *Seafarers' Rehabilitation and Compensation Act 1992* (Cwlth).

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

(1) Compensation is not payable for the death of a seafarer who leaves no dependants, if the owner or charterer of the ship on which the seafarer was employed when the injury was sustained is, under an Act or law in force in the State, liable to pay the expenses of the seafarer's funeral.

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

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

(4) Subsection (3) applies subject to section 141.<sup>66</sup>

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66 Section 141 (Entitlement ends if compensated under corresponding laws)

***Division 2—Miners*****149 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.

**150 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
- (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*****151 Application of div 3**

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

**152 Entitlements for industrial deafness**

(1) The worker is entitled to compensation for the industrial deafness under part 9 and sections 229(1)(a) and 237(1)<sup>67</sup> and not under any other provision.

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

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

(3) The worker is entitled to compensation for industrial deafness that is attributable to the worker's employment in the State as a worker if the 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) WorkCover must ask that the worker's degree of permanent impairment resulting from the diminution of hearing be assessed under section 197.<sup>68</sup>

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67 Part 9 (Entitlement to compensation for permanent impairment) and sections 229 (Extent of liability for medical treatment) and 237 (Extent of liability for travelling expenses)

68 Section 197 (Assessment of permanent impairment)

**153 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 WorkCover.

(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 152.

***Division 4—Workers with prescribed disfigurement*****154 Application of div 4**

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

**155 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****156 Self-inflicted injuries**

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

### **157 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) WorkCover considers that the injury could result in a WRI of 50% or more.

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

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

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

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

(4) In this section—

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

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

### **158 Time for applying**

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

(2) If an application is lodged more than 28 days after the entitlement to compensation arises, the extent of WorkCover's liability to pay

compensation is limited to a period starting no earlier than 28 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) WorkCover 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) WorkCover may waive subsection (1) or (2) for a particular application if WorkCover 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.

## **159 Applying for compensation**

(1) An application for compensation must be made in the approved form by the claimant.

(2) The application must be lodged—

- (a) if the claimant's employer is a self-insurer—with the self-insurer;<sup>69</sup> or
- (b) if the claimant's employer is not a self-insurer—with WorkCover.

(3) The application must be accompanied by—

- (a) a certificate in the approved form of a doctor who attended the claimant; and
- (b) any other evidence or particulars prescribed under a regulation.

(4) A registered dentist may issue the certificate mentioned in subsection (3)(a) for an oral injury.

(5) If the claimant can not complete an application because of a physical or mental incapacity, someone else may complete it on the claimant's behalf.

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<sup>69</sup> Specific reference to a self-insurer is included for clarity only, as a self-insurer has WorkCover's functions under this chapter.

**160 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 10 days after any of the circumstances mentioned in subsection (2), the employer commits an offence, unless the employer has a reasonable excuse.

Maximum penalty—50 penalty units.

**161 Decision about application for compensation**

(1) An application for compensation must be allowed or rejected in the first instance by WorkCover.

(2) WorkCover must make a decision on the application within 3 months after the application is made.

(3) WorkCover must notify the claimant of its decision on the application.

(4) If WorkCover rejects the application, WorkCover 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 WorkCover does not make a decision on the application within 3 months after the application is made.

(6) WorkCover must, within 7 days after the end of the 3 month period, notify the claimant of its reasons for not making the decision and that the claimant may apply to have the claimant's application reviewed under chapter 9.

**162 Examination by registered person**

(1) WorkCover may at any time require a claimant or a worker to submit to a personal examination by a registered person at a place reasonably convenient for the claimant or worker.

(2) Subsection (3) applies if the claimant or worker—

- (a) fails, without reasonable excuse, to attend for the examination at the time and place advised by WorkCover; or
- (b) having attended, refuses to be examined by the registered person; or
- (c) obstructs, or attempts to obstruct, the examination.

(3) Any entitlement the claimant or worker may have to compensation is suspended until the claimant or worker undergoes the examination.

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

(1) A worker receiving compensation for an injury must give written notice within 14 days of the worker's—

- (a) return to work; or
- (b) engagement in a calling.

Maximum penalty—50 penalty units.

(2) The notice must be given—

- (a) if the worker's employer is a self-insurer—to the self-insurer; or
- (b) if the worker's employer is not a self-insurer—to WorkCover.

(3) The notice may be a certificate in the approved form of a doctor stating the worker's capacity for work.

**164 Suspension of compensation during term of imprisonment**

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

### **165 Compensation not payable during suspension**

If an entitlement to compensation is suspended under this chapter or chapter 4, 7 or 9,<sup>70</sup> no compensation is payable for the period of suspension.

## **PART 6—MAXIMUM STATUTORY COMPENSATION**

### **166 Application of pt 6**

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

### **167 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 8<sup>71</sup>—\$150 000;
- (b) for lump sum compensation payable under section 198<sup>72</sup>—\$150 000;
- (c) for the total of compensation payable under paragraphs (a) and (b)—\$150 000.

(2) A worker to whom the maximum amount of compensation is paid is not entitled to further compensation for the injury or multiple injuries arising from the event for any period after the payment is made.

(3) However, subsections (1) and (2) do not limit the power to make additional payment of compensation under part 9, division 4.<sup>73</sup>

(4) In subsection (1)—

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70 Chapter 4 (Injury management), 7 (Medical assessment tribunals) or 9 (Reviews and appeals)

71 Part 8 (Weekly payment of compensation)

72 Section 198 (Calculation of lump sum compensation)

73 Part 9 (Entitlement to compensation for permanent impairment), division 4 (Additional lump sum compensation)

“**compensation**” does not include compensation provided for under part 7A.

## **PART 7—PAYMENT OF COMPENSATION**

### **168 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 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 7A.

(4) Subsection (2) is subject to section 158(2).<sup>74</sup>

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74 Section 158 (Time for applying)

## **PART 7A—COMPENSATION FOR DAY OF INJURY**

### **168A Application of pt 7A**

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.

### **168B Definition for pt 7A**

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.

### **168C 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 135A,<sup>75</sup> the employer must pay the 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 70.<sup>76</sup>

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75 Section 135A (Who must pay compensation)

76 Section 70 (Employer’s liability for excess period)

## **PART 8—WEEKLY PAYMENT OF COMPENSATION**

### *Division 1—Application*

#### **169 Application and object of pt 8**

(1) This part applies if a worker is totally or partially incapacitated because of injury for which compensation is payable.

(2) The object of this part is to provide for weekly payments to the worker during the period of incapacity.

### *Division 2—Advances on weekly payments*

#### **170 Advances on account**

(1) If WorkCover is satisfied that an application for compensation under this part is well founded, it may from time to time advance to the worker amounts on account of weekly payment of compensation as it considers appropriate in the circumstances.

(2) WorkCover may exercise the power under subsection (1) at any time before the entitlement to compensation is—

- (a) ascertained; or
- (b) reviewed under chapter 9.<sup>77</sup>

### *Division 3—Adjustment of entitlements under pt 8*

#### **171 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.

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<sup>77</sup> Chapter 9 (Reviews and appeals)

**172 Regard to other benefits for workers**

Despite divisions 4 and 5,<sup>78</sup> in assessing the amount of weekly payment of compensation WorkCover—

- (a) may have regard to the amount of an entitlement had by the worker independently of this Act by way of—
  - (i) payment or other benefit that is being, has been, or will be received by the worker; and
  - (ii) payment that is being, has been, or will be made on account of the worker; and
- (b) may reduce the weekly payment of compensation by the equivalent weekly amount of the payment or other benefit mentioned in paragraph (a) for the relevant period of compensation.

***Division 4—Entitlement for total incapacity******Subdivision 1—Application of div 4*****173 Entitlement to weekly payments**

Compensation payable to a totally incapacitated worker or person to whom subdivision 3 or 3A<sup>79</sup> applies is a weekly payment under this division.

***Subdivision 2—Workers*****174 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—

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78 Divisions 4 (Entitlement for total incapacity) and 5 (Entitlement for partial incapacity)

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

- (a) for the first 26 weeks of the incapacity, the greater of the following—
  - (i) 85% of the worker's NWE;
  - (ii) the amount payable under the worker's industrial instrument; and
- (b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the greater of the following—
  - (i) 65% of the worker's NWE;
  - (ii) 60% of QOTE; and
- (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
  - (i) if a worker demonstrates to WorkCover that the injury could result in a WRI of more than 15%—the greater of the following—
    - (A) 65% of the worker's NWE;
    - (B) 60% of QOTE; or
  - (ii) otherwise—an amount equal to the single pension rate.

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

### **175 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 2 years of the incapacity, the greater of the following—

- (i) 65% of the worker's NWE;
  - (ii) 60% of QOTE; and
  - (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
    - (i) if a worker demonstrates to WorkCover that the injury could result in a WRI of more than 15%—the greater of the following—
      - (A) 65% of the worker's NWE;
      - (B) 60% of QOTE; or
    - (ii) otherwise—an amount equal to the single pension rate.
- (2) However, the amount must not be more than the worker's NWE.

### **176 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 2 years of the incapacity, the greater of the following—
    - (i) 65% of the worker's NWE;
    - (ii) 60% of QOTE; and
  - (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
    - (i) if a worker demonstrates to WorkCover that the injury could result in a WRI of more than 15%—the greater of the following—
      - (A) 65% of the worker's NWE;
      - (B) 60% of QOTE; or

(ii) otherwise—an amount equal to the single pension rate.

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

(3) In this section—

“**contract worker**” means a worker employed under a contract of service—

- (a) as an officer of the public service; or
- (b) as an officer of a government entity; or
- (c) by a university; or
- (d) as a salaried employee in the electricity industry; or
- (e) by the chief executive of the department within which the *Health Services Act 1991* is administered.

### **177 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 174, 175 or 176.<sup>80</sup>

(2) However, the payment must not be more than the worker’s NWE.

### **178 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;

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<sup>80</sup> Section 174 (Total incapacity—workers whose employment is governed by an industrial instrument), 175 (Total incapacity—workers whose employment is not governed by industrial instrument) or 176 (Total incapacity—certain contract workers)

- (b) the amount the worker is entitled to earn before the maximum pension payable to the worker is reduced.

### **179 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) WorkCover may decide that the worker's entitlement to compensation is to be calculated under the industrial instrument that increases the worker's entitlement to compensation.

(3) If WorkCover makes a decision under subsection (2), the entitlement to compensation is calculated under the industrial instrument decided by WorkCover.

### ***Subdivision 3—Persons entitled to compensation other than workers, students and eligible persons***

### **180 Application of sdiv 3**

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

### **181 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 174, 175, 176, 177, 178 or 179.<sup>81</sup>

(5) The payment for a person who is self-employed is, for each week—

- (a) for the first 26 weeks of the incapacity—
  - (i) if subparagraph (ii) does not apply—70% of QOTE; or
  - (ii) if the person replaces the person's labour—the payment under subsection (6); and
- (b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the lesser of the following—
  - (i) 60% of QOTE;
  - (ii) the reasonable cost of labour paid to replace the person; and
- (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
  - (i) if a person demonstrates to WorkCover that the injury could result in a WRI of more than 15%—the greater of the following—
    - (A) 65% of the person's NWE;
    - (B) 60% of QOTE; or
  - (ii) otherwise—an amount equal to the single pension rate.

(6) For subsection (5)(a)(ii), the amount is—

- (a) if paragraph (b) does not apply—85% of the reasonable cost of labour paid to replace the person; or
- (b) if the reasonable cost of labour paid to replace the person is less than 70% of QOTE—the reasonable cost of labour paid to replace the person.

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81 Section 174 (Total incapacity—workers whose employment is governed by an industrial instrument), 175 (Total incapacity—workers whose employment is not governed by industrial instrument), 176 (Total incapacity—certain contract workers), 177 (Total incapacity—casual or part-time workers), 178 (Total incapacity—workers receiving certain benefits under Commonwealth law) or 179 (Total incapacity—workers with more than 1 employer)

***Subdivision 3A—Eligible persons*****181A Application of sdiv 3A**

This subdivision applies to an eligible person.

**181B 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
  - (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 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
- (c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—
  - (i) if 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) and (b)(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) or (c) must not be more than the amount to which the person would be entitled under subsection (1)(a).

#### *Subdivision 4—Reference to tribunal*

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

(1) This section applies if—

- (a) for section 174(1)(c)(i), 175(1)(c)(i), 176(1)(c)(i) or 181(5)(c)(i) or 181B(1)(c)(i) WorkCover and a worker or a person can not agree that the injury could result in a WRI of more than 15%; or
- (b) for section 174(1)(c)(ii), 175(1)(c)(ii), 176(1)(c)(ii) or 181(5)(c)(ii) or 181B(1)(c)(ii) WorkCover and a worker or a person can not agree that the injury could result in a WRI of 15% or less.

(2) The degree of impairment that could result from the injury may be decided only by a medical assessment tribunal.

(3) WorkCover must refer the question of impairment to a tribunal for decision.

(4) In deciding the degree of impairment that could result from the injury, a psychiatric or psychological injury must not be combined with another injury.

***Division 5—Entitlement for partial incapacity******Subdivision 1—Persons entitled to compensation other than eligible persons*****182A Application of sdiv 1**

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

**183 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 133.<sup>82</sup>

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

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82 Section 133 (Meaning of “normal weekly earnings”)

**184 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***184A Application of sdiv 2**

This subdivision applies to an eligible person.

**184B Definitions for sdiv 2**

In this subdivision—

“**AP**” means the amount payable under section 181B(1)(a).

“**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 181B(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.

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

**184C 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*

#### **185 WorkCover may require information from partially incapacitated worker or person**

(1) WorkCover may, by written notice given to a partially incapacitated worker or person, require the worker or person to give WorkCover 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 WorkCover the required information or particulars within 14 days after receiving the notice, WorkCover 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*

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

(1) WorkCover may, from time to time, review an entitlement to compensation.

(2) On a review, WorkCover may terminate, suspend, decrease or increase an entitlement.

#### **187 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.

### **188 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) WorkCover may—

- (a) recover from the worker or person the difference between the payment and the entitlement; or
- (b) from time to time deduct from weekly payments of compensation that become payable to the worker, whether for that application or a subsequent application for compensation, the difference between the payment and the entitlement, or any part of the difference.

(3) If the overpayment has been made because of incorrect information given by a worker's employer, WorkCover may recover the overpaid amount from the employer.

### *Division 7—Redemption of weekly payments*

### **189 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) WorkCover receives a report from a doctor that the worker's injury is not stable and stationary for the purposes of assessing permanent impairment.

(2) WorkCover's liability to make weekly payments of compensation may be discharged by a redemption payment to the worker in an amount agreed between WorkCover and the worker.

### **190 Redemption—worker moves interstate**

(1) This section applies if—

- (a) a worker receiving weekly payments of compensation moves interstate permanently; and
- (b) WorkCover receives a report from a doctor that the worker's injury is not stable and stationary for the purposes of assessing permanent impairment.

(2) WorkCover's liability to make weekly payments of compensation may be discharged by a redemption payment to the worker in an amount agreed between WorkCover and the worker.

### **191 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 WorkCover that the worker's incapacity resulting from the injury for which the compensation is payable is permanent, the worker is entitled to a redemption payment in an amount agreed between WorkCover and the worker.

### **192 Calculation of redemption payment**

(1) The amount of a redemption payment that WorkCover may pay to a worker is an amount that is not more than the amount calculated under the following formula—

$$(156 \times Q) - TWP$$

(2) In subsection (1)—

“Q” is 60% of QOTE.

“TWP” means the total weekly payments already paid to the worker.

**193 Review of redemption payment**

(1) If a worker asks, a redemption payment may be reviewed by WorkCover within 12 months after the payment is made.

(2) On a review, WorkCover may decrease or, subject to section 192, increase the payment.

**194 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.

*Division 8—When entitlement to weekly payments stops***195 When weekly payments stop**

(1) The entitlement of a worker to weekly payments under this part stops when the first of the following happens—

- (a) the incapacity because of the work related injury stops;
- (b) the worker has received weekly payments for the incapacity for 5 years;
- (c) compensation under this part reaches the maximum amount under part 6.<sup>83</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.

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83 Part 6 (Maximum statutory compensation)

## **PART 9—ENTITLEMENT TO COMPENSATION FOR PERMANENT IMPAIRMENT**

### *Division 1—General statement*

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

(1) Under this part, WorkCover or a worker is entitled to ask for an assessment to decide if a worker has sustained a degree of permanent impairment from injury.

(2) If the worker is assessed under this part as having sustained a degree of permanent impairment, the worker is entitled to a payment, or an offer of payment, of lump sum compensation for the permanent impairment.

(3) In particular circumstances, the worker may be entitled to a payment of additional lump sum compensation.

### *Division 2—Assessment of permanent impairment under table of injuries*

#### **197 Assessment of permanent impairment**

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

(2) WorkCover must have the degree of permanent impairment assessed—

- (a) for industrial deafness—by an audiologist; or
- (b) for a psychiatric or psychological injury—by a medical assessment tribunal; or
- (c) for another injury—by a doctor.

(3) The degree of permanent impairment must be assessed in the way prescribed under a regulation and a report must be given to WorkCover stating—

- (a) the matters taken into account, and the weight given to the matters, in deciding the degree of permanent impairment; and
- (b) any other information prescribed under a regulation.

### **198 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>84</sup>

(2) Without limiting subsection (1), lump sum compensation for injury must not include an amount for a degree of impairment attributable to—

- (a) a condition existing before the injury; or
- (b) a condition for which the worker is not entitled to compensation.

(3) The amount of lump sum compensation is to be calculated as at the day WorkCover makes an offer of lump sum compensation to the worker under section 205.<sup>85</sup>

### **199 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 198 for the later injury must be reduced by the worker's previous entitlement.

*Example—*

A worker loses the distal joint of the right index finger in a work related event and has an entitlement to lump sum compensation for the permanent impairment. The worker loses the remaining part of the right index finger in a subsequent work related event.

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84 For the maximum amount of lump sum compensation payable under section 198, see part 6 (Maximum statutory compensation).

85 Section 205 (Offer of lump sum compensation)

The entitlement for the second permanent impairment must be reduced by the entitlement from the first permanent impairment.

## **200 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 198<sup>86</sup> for the further industrial deafness, the assessed percentage loss of hearing must be reduced by the previously assessed percentage loss of hearing.

## **201 Calculation of WRI**

(1) If the worker is assessed as having a degree of permanent impairment, WorkCover must calculate the worker's WRI.

(2) The WRI must be calculated under a regulation having regard to—

- (a) the worker's entitlement to lump sum compensation calculated under section 198; and
- (b) if the worker had a previous entitlement to lump sum compensation for a similar injury other than industrial deafness—the previous entitlement; and
- (c) if the worker previously had an entitlement to lump sum compensation for industrial deafness—the previous percentage loss of hearing.

(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.

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86 Section 198 (Calculation of lump sum compensation)

***Division 3—Notification of assessment of permanent impairment*****202 Application of div 3**

This division applies if an assessment of permanent impairment of a worker's injury has been made under section 197.<sup>87</sup>

**203 WorkCover to give notice of assessment of permanent impairment**

(1) WorkCover must, within 14 days after receiving the assessment of the worker's permanent impairment, give the worker a notice of assessment in the approved form.

(2) However, if a worker sustains multiple injuries in an event, WorkCover must give the notice only after the worker's degree of permanent impairment from all the injuries has been assessed.

(3) The notice must state—

- (a) whether the worker has sustained permanent impairment from the injury; and
- (b) if the worker has sustained permanent impairment—
  - (i) the degree of permanent impairment attributable to the injury; and
  - (ii) the WRI calculated for the injury; and
  - (iii) the amount of lump sum compensation under section 198<sup>88</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 210;<sup>89</sup> and
- (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 211.<sup>90</sup>

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87 Section 197 (Assessment of permanent impairment)

88 Section 198 (Calculation of lump sum compensation)

89 Section 210 (Additional lump sum compensation for certain workers)

90 Section 211 (Additional lump sum compensation for gratuitous care)

(4) If the notice states the worker has not sustained a degree of permanent impairment, WorkCover must also give the worker a copy of sections 11, 253(3), 255, 256 and 325.<sup>91</sup>

## **204 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 WorkCover within 28 days after the notice is given (the “**decision period**”) that the worker does not agree with the degree of permanent impairment.

(3) The degree of permanent impairment may then be decided only by a medical assessment tribunal.

(4) WorkCover must refer the question of degree of permanent impairment to a tribunal for decision.

## **205 Offer of lump sum compensation**

If the worker has an entitlement to lump sum compensation under section 198,<sup>92</sup> WorkCover must include, in the notice of assessment, an offer of lump sum compensation to the worker (the “**offer**”).

## **206 Worker’s decision about lump sum compensation—WRI 20% or more**

(1) This section applies if—

- (a) the worker has—

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91 Sections 11 (Meaning of “damages”), 253 (General limitation on persons entitled to seek damages), 255 (Worker who is required to make election to seek damages), 256 (Consequences, to costs, of seeking damages) and 325 (Principles about orders as to costs)

92 Section 198 (Calculation of lump sum compensation)

- (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 WorkCover written notice within the decision period.

(3) The worker is taken to have deferred the decision if, within the decision period, the worker does not advise WorkCover that—

- (a) the offer is accepted; or
- (b) the worker wants to defer the decision.

(4) If the worker accepts the offer, WorkCover must pay the worker the amount of lump sum compensation.

### **207 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) WorkCover must also, when giving the notice of assessment—

- (a) give the worker a copy of sections 11, 255, 256 and 325;<sup>93</sup> and

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93 Sections 11 (Meaning of “damages”), 255 (Worker who is required to make election to seek damages), 256 (Consequences, to costs, of seeking damages) and 325 (Principles about orders as to costs)

(b) advise the worker that the worker must make an irrevocable election as to whether the worker—

- (i) accepts the offer of payment of lump sum compensation; or
- (ii) seeks damages for the injury.

(3) The worker may accept, reject or defer a decision about the offer by giving WorkCover written notice within the decision period.

(4) The worker is taken to have deferred the decision if, within the decision period, the worker does not advise WorkCover that the offer is accepted or rejected.

(5) If the worker accepts the offer, WorkCover must pay the worker the amount of lump sum compensation.

(6) If the worker fails to give WorkCover notice of the worker's election before the worker seeks damages for the injury, the worker is taken to have rejected lump sum compensation for the injury.

(7) For subsection (6), the worker is taken to seek damages for the injury when the worker lodges a notice of claim under chapter 5.<sup>94</sup>

## **208 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—

- (a) the worker notifies WorkCover of the worker's decision about the offer within the decision period;
- (b) 28 days have passed since the worker received the offer.

(3) This section does not limit the worker's entitlement to payment of—

- (a) lump sum compensation under section 206(4) or 207(5);<sup>95</sup> or
- (b) additional compensation, if any, under division 4.

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94 Chapter 5 (Access to damages)

95 Section 206 (Worker's decision about lump sum compensation—WRI 20% or more) or 207 (Worker's decision about lump sum compensation—WRI less than 20% or no WRI)

***Division 4—Additional lump sum compensation*****209 Application of div 4**

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

**210 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 \$150 000 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.

**211 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) WorkCover must ask that a registered occupational therapist assess the worker's level of dependency resulting from the impairment in the way prescribed under a regulation.

(5) The occupational therapist must give WorkCover an assessment report stating—

- (a) the matters the therapist took into account, and the weight the therapist gave to the matters, in deciding the worker's level of dependency; and
- (b) any other information prescribed under a regulation.

(6) WorkCover must decide the amount of the worker's entitlement to additional compensation of up to \$150 000, payable according to a graduated scale prescribed under a regulation, having regard to—

- (a) the worker's WRI; and
- (b) the worker's level of dependency; and
- (c) any other information prescribed under a regulation.

(7) If the worker does not agree with the level of dependency assessed under subsection (4), WorkCover must refer the matter of the worker's level of dependency to the General Medical Assessment Tribunal for decision.

(8) In this section—

“**home**”, of a worker, means a private dwelling where the worker usually resides.

## **PART 10—COMPENSATION ON WORKER'S DEATH**

### **212 Application and object of pt 10**

(1) This part applies if a worker dies because of an injury.

- (2) The object of this part is to provide for payment by WorkCover of—
- (a) particular expenses arising from the worker’s injury and death; and
  - (b) compensation to persons having an entitlement to compensation under this part.

### **213 Definition for pt 10**

In this part—

“**student**” means a person who is under 21 and receiving full time education at a school, college, university or similar institution.

### **214 To whom payments made for death of worker**

- (1) Compensation for the death of a worker is payable—
- (a) to the worker’s legal personal representative; or
  - (b) if there is no legal personal representative—
    - (i) so far as the payment is by way of expenses to which a person is entitled—to the person who has incurred the expenses; or
    - (ii) so far as the payment is by way of compensation to the worker’s dependants—to the dependants entitled to compensation.

(2) The worker’s legal personal representative must pay or apply the compensation to or for the benefit of the worker’s dependants or other persons entitled to compensation.

### **215 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.

**216 Dependant's compensation payable to public trustee**

WorkCover may pay an amount of compensation payable to a dependant to the public trustee for the dependant's benefit.

**217 Medical and funeral expenses must be paid by WorkCover**

WorkCover must pay the reasonable expenses—

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

**218 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—\$250 000; 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—\$9 375; and
- (c) if the worker has left dependent members of the worker's family or a child of the worker's spouse who was totally dependent on the worker's earnings and who are under 16 or students, for each member or child—a weekly amount equal to 7% of QOTE while the member or child is under 16 or a student.

(3) However, the amount payable under subsection (2)(a) is subject to any reduction made under section 221.<sup>96</sup>

**219 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.

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96 Section 221 (Reduction of amount payable on death)

(2) The amount of compensation payable for the worker's dependants is—

- (a) if the worker has left dependent members of the worker's family, for the members—an amount WorkCover considers is reasonable and proportionate to the monetary value of the loss of dependence by the dependants; and
- (b) if the worker has left dependent members of the worker's family or a child of the worker's spouse who was partially dependent on the worker's earnings and who are under 16 or students, for each member or child—a weekly amount equal to 7% of QOTE while the member or child is under 16 or a student.

(3) However, the amount payable under subsection (2)(a)—

- (a) is subject to any reduction made under section 221; but
- (b) must not be less than 15% of the amount payable under section 218(2)(a); and
- (c) must not be more than the amount payable under section 218(2)(a).

## **220 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 \$11 395.

(3) If more than 1 parent is entitled to compensation—

- (a) the total amount of compensation payable to the parents is \$11 395; and
- (b) the amount payable to each parent is to be decided by WorkCover.

## **221 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 218(2)(a) or 219(2)(a)<sup>97</sup> must be reduced by the total of all payments mentioned in subsection (1).

(3) However, the amount must not be reduced by more than 50% of the amount payable under section 218(2)(a).<sup>98</sup>

## **222 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

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97 Section 218 (Total dependency) or 219 (Partial dependency)

98 Section 218 (Total dependency)

dependent on the worker's earnings—the payment is, for each week, 7% of QOTE.

## **PART 11—AUTOMATIC VARIATION OF COMPENSATION PAYABLE**

### **223 Variation of payments for injuries**

(1) If QOTE varies, each payment or amount under part 6, 9 or 10<sup>99</sup> that is not expressed as a percentage of QOTE must be varied proportionately.

(2) An amount varied under subsection (1) is to be rounded up to the nearest \$5.

(3) Notification of a variation under this section must be published in the industrial gazette.

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

(1) This section applies if an amount is varied under section 223.

(2) An entitlement to an amount mentioned in section 223 is to be construed as an entitlement to the payment or amount as varied for the time being under section 223.

(3) A reference in part 6, 9 or 10 to the amount is to be construed as a reference to the amount as varied for the time being under section 223.

### **225 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 224(3) of this Act to part 6, 9 or 10 is to be construed as a reference to the corresponding provision of the former Act under which an entitlement arose.

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99 Part 6 (Maximum statutory compensation), 9 (Entitlement to compensation for permanent impairment) or 10 (Compensation on worker's death)

## **CHAPTER 4—INJURY MANAGEMENT**

### **PART 1—APPLICATION**

#### **226 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*

#### **227 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.

#### **228 WorkCover’s liability for medical treatment and hospitalisation**

(1) WorkCover must pay the cost of the medical treatment or hospitalisation that WorkCover considers reasonable, having regard to the worker’s injury.

(2) Under the table of costs, WorkCover may impose conditions on the provision of the medical treatment.

***Division 2—Medical treatment costs*****229 Extent of liability for medical treatment**

(1) WorkCover must pay the following costs for medical treatment for an injury, whether provided at 1 time or at different times—

- (a) for medical treatment by a registered person—the cost that WorkCover accepts as reasonable, having regard to the relevant table of costs;
- (b) for nursing, medicines, medical or surgical supplies, curative apparatus, crutches or other assistive devices given to the worker otherwise than as an in-patient at a private hospital—the cost that WorkCover accepts as reasonable.

(2) WorkCover's liability for the cost of medical treatment by a registered chiropractor or a registered osteopath extends only to the cost of treatment involving the manipulation, mobilisation and management of the neuromusculoskeletal system of the human body.

**230 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) WorkCover must pay expenses necessarily incurred by the worker that WorkCover accepts as reasonable on account of—

- (a) reasonable wear and tear of the prosthesis, medical aid or device; or
- (b) replacement of the prosthesis, medical aid or device due to reasonable wear and tear; or
- (c) damage to, or destruction of, a prosthesis, medical aid or device as a result of injury in a further event.

(3) WorkCover's liability under this section stops when the worker's entitlement to compensation stops.

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

(1) This section applies if WorkCover is liable for the costs of medical treatment.

(2) Accounts for medical treatment must be sent to WorkCover promptly and within 2 months after the treatment is completed.

(3) The accounts must specify—

- (a) the worker's full name, date of birth and residential address; and
- (b) any item number that the medical treatment may have that is listed in the relevant table of costs; and
- (c) the date of each attendance; and
- (d) detailed particulars of treatment; and
- (e) the name and place of business of the worker's employer.

(4) A worker who receives medical treatment must be given a certificate in the approved form free of charge.

**232 Review of costs payable**

(1) This section applies if a person who provides medical treatment considers that the cost that WorkCover accepts as reasonable, in a particular case, is inadequate because of special circumstances.

(2) The person may apply to WorkCover in writing for an increase in the cost.

(3) The application must specify the special circumstances and the reasons the cost should be increased in the particular case.

(4) WorkCover may approve the increase if, after considering the application, WorkCover accepts that the increase is justified.

***Division 3—Hospitalisation*****233 Definitions for div 3**

In this division—

“**elective hospitalisation**” means hospitalisation involving a treatment or procedure decided on by a worker or the worker's doctor that is of

advantage to the worker, but is not fundamental in the treatment of the worker's injury.

**“private hospital”** means a hospital other than a public hospital, and includes—

- (a) a ward or room of a public hospital that is not a public ward; and
- (b) a day hospital or an emergency centre.

**“public hospital”** means a public sector hospital under the *Health Services Act 1991*.

### **234 Extent of liability for period of hospitalisation**

**(1)** WorkCover's liability for the cost of hospitalisation of a worker extends only to the cost of hospitalisation of the worker as an in-patient at a private hospital—

- (a) for non-elective hospitalisation—for not more than 4 days; or
- (b) for non-elective hospitalisation for more than 4 days—to the extent agreed to by WorkCover under arrangements entered into between WorkCover and the worker or someone for the worker before the hospitalisation or any extension of the hospitalisation; or
- (c) for elective hospitalisation—to the extent agreed to by WorkCover under arrangements entered into between WorkCover and the worker or someone for the worker before the hospitalisation.

**(2)** Before agreeing to arrangements under subsection (1)(b) or (c), WorkCover must be satisfied that—

- (a) a public hospital is not reasonably available to the worker or a public hospital that is reasonably available can not admit the worker as an in-patient to a public ward within a reasonable time; or
- (b) admission of the worker to a private hospital—
  - (i) would relieve prolonged pain and suffering to the worker; or
  - (ii) would result in saving of costs.

**235 Cost of hospitalisation**

(1) The cost for which WorkCover is liable for hospitalisation of a worker as an in-patient is the cost for the provision of the facility at a hospital where a procedure is carried out.

(2) WorkCover must pay the cost of hospitalisation, whether the hospitalisation is provided at 1 time or at different times.

(3) WorkCover must pay the cost of hospitalisation that—

- (a) is published by WorkCover by notice in the industrial gazette; or
- (b) if a cost of hospitalisation is not published—the cost lawfully charged by the hospital.

**236 Maximum liability for cost of hospitalisation**

The maximum amount that WorkCover is liable to pay for hospitalisation of a worker for injury sustained in any 1 event, whether the hospitalisation occurs at 1 time or at different times, is the amount prescribed under a regulation.

***Division 4—Travelling expenses*****237 Extent of liability for travelling expenses**

(1) WorkCover must pay the travelling expenses, that WorkCover considers are necessary and reasonable, incurred by a worker for the injury for—

- (a) obtaining medical treatment; or
- (b) undertaking rehabilitation; or
- (c) attending a medical assessment tribunal; or
- (d) undertaking examination by a registered person.

(2) WorkCover must pay the cost of the worker's transportation by ambulance vehicle 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) WorkCover 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 WorkCover must pay is—

- (a) the cost WorkCover accepts as reasonable, having regard to the relevant table of costs; or
- (b) if there is no relevant table of costs—the cost WorkCover approves.

(5) WorkCover must also pay the cost of transportation by ambulance vehicle if WorkCover gives written approval for the transportation.

(6) Other than as provided by subsections (2), (3), (4), (5) and (7), WorkCover is not liable for travelling expenses incurred by a worker—

- (a) in travelling a distance of less than 20 km one way; or
- (b) if treatment or rehabilitation for the injury was reasonably available to the worker nearer than the place to which the worker has travelled to seek the treatment or rehabilitation.

(7) WorkCover must reimburse the worker for expenses if—

- (a) the worker is not entitled under subsection (6)(a) to be reimbursed by WorkCover for travelling expenses; and
- (b) in a period of 7 consecutive days, the worker incurs travelling expenses in reasonably travelling at least 150 km to and from a place to seek treatment or rehabilitation.

## **PART 3—RESPONSIBILITY FOR REHABILITATION**

### *Division 1—WorkCover’s responsibility*

#### **238 WorkCover’s responsibility for worker’s rehabilitation**

(1) WorkCover must take the steps it considers practicable to secure the rehabilitation and early return to suitable duties of workers who have an entitlement to compensation.

(2) For that purpose, WorkCover must—

- (a) provide or approve workplace rehabilitation training courses for employers; and
- (b) ensure that rehabilitation programs are provided for workers.

### *Division 2—WorkCover’s liability for rehabilitation fees and costs*

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

(1) This section applies if WorkCover considers rehabilitation is necessary for a worker for whose injury WorkCover has accepted liability.

(2) In addition to compensation otherwise payable, WorkCover must pay the fees or costs of rehabilitation that WorkCover accepts to be reasonable, having regard to the worker’s injury.

(3) Under the table of costs, WorkCover may impose conditions on the provision of the rehabilitation.

(4) WorkCover’s liability under this division stops when the worker’s entitlement to compensation stops.

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

WorkCover must pay the following fees or costs for rehabilitation for an injury, whether provided at 1 time or at different times—

- (a) for rehabilitation provided by a registered person—the fees or costs accepted by WorkCover to be reasonable, having regard to the relevant table of costs;

- (b) for other rehabilitation—the fees or costs approved by WorkCover.

### *Division 3—Caring allowance*

#### **241 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 WorkCover is satisfied that—

- (a) the worker depends on day to day care for the fundamental activities of daily living; and
- (b) the care is to be provided to the worker at the worker’s home on a voluntary basis by another person in relation to whom compensation is not payable.

(3) WorkCover must ask that a registered occupational therapist assess the worker’s level of dependency and day to day care requirements resulting from the injury in the way prescribed under a regulation.

(4) The occupational therapist must give WorkCover an assessment report stating—

- (a) the matters the therapist took into account, and the weight the therapist gave to the matters, in deciding the worker’s level of dependency and day to day care requirements; and
- (b) any other information prescribed under a regulation.

(5) In this section—

“**home**”, of a worker, means a private dwelling where the worker usually resides.

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

WorkCover may pay the caring allowance—

- (a) in the way prescribed under a regulation; and
- (b) to, or on account of, the person providing the care.

## **PART 4—EMPLOYER’S OBLIGATION FOR REHABILITATION**

### **243 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 WorkCover.

Maximum penalty—50 penalty units.

(4) An employer may, with WorkCover’s written approval, appoint 1 rehabilitation coordinator for more than 1 workplace of 30 or more workers.

(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.

### **244 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 WorkCover.

Maximum penalty—50 penalty units.

(4) The employer must review the employer's workplace rehabilitation policy and procedures at least every 3 years and must comply with reporting requirements as prescribed under a regulation.

#### **245 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.

#### **246 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 compensation paid to the worker during the period of non-compliance by the employer.

(3) WorkCover may recover the amount from the employer—

(a) as a debt; or

(b) as an addition to a premium payable by the employer.

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

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

(6) WorkCover must consider the application and may—

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

(7) If the employer is dissatisfied with WorkCover's decision, the employer may ask that the decision be reviewed under chapter 9.<sup>100</sup>

## **PART 5—WORKER'S MITIGATION AND REHABILITATION OBLIGATIONS**

### **247 Application of pt 5**

This part applies to a worker who has sustained an injury and is required to participate in rehabilitation.

### **248 Worker must mitigate loss**

(1) The common law duty of mitigation of loss applies to the worker.

(2) The worker's duty may be discharged by participating in rehabilitation.

(3) The worker's duty under this section is in addition to any duty the worker may have under section 275.<sup>101</sup>

### **249 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.

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100 Chapter 9 (Reviews and appeals)

101 Section 275 (Mitigation of loss)

(2) If a worker fails or refuses to participate in rehabilitation without reasonable excuse, WorkCover may, by written notice given to the worker, suspend the worker's entitlement to compensation until the worker satisfactorily participates in rehabilitation.

(3) If WorkCover suspends the worker's entitlement to compensation, the worker may have the decision reviewed under chapter 9.

## CHAPTER 5—ACCESS TO DAMAGES

### PART 1—INTERPRETATION AND APPLICATION

#### 250 Definitions for ch 5

In this chapter—

**“claimant”** means a person entitled to seek damages.

**“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 294.

#### 251 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 WorkCover accepts the doctor's diagnosis of the terminal nature of the condition.

#### 252 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.

**252A 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>102</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 308.<sup>103</sup>

**PART 2—ENTITLEMENT CONDITIONS*****Division 1—Limitations on persons entitled to seek damages*****253 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 WorkCover 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

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

103 Section 308 (Alteration of period of limitation)

- (B) for the assessed injury, the worker has a WRI of 20% or more or, under section 255,<sup>104</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 9; 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.

(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 255 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 9, division 3<sup>105</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 274.<sup>106</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.

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104 Section 255 (Worker who is required to make election to seek damages)

105 Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

106 Section 274 (Decision not to seek damages reviewable in certain circumstances)

**254 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 275(2);<sup>107</sup>
- (b) part 6, other than section 300;<sup>108</sup>
- (c) part 7, other than sections 306 to 308.<sup>109</sup>

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

**255 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 9, division 3<sup>110</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 WorkCover; or

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107 Section 275 (Mitigation of loss)

108 Part 6 (Settlement of claims), other than section 300 (Settlement of claim for damages)

109 Part 7 (Start of court proceedings), other than sections 306 (Carriage of proceedings), 307 (Exclusion of jury trial) and 308 (Alteration of period of limitation)

110 Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

- (b) if the worker is taken, under section 207(7),<sup>111</sup> to have elected to seek damages for the injury—after the worker lodges a notice of claim.

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

#### **256 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 11, division 1 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 11, division 2 applies in relation to costs in the claimant's proceeding for damages.

(3) If the claimant is a dependant, part 11, 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*

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

This division applies to a claimant who is a person mentioned in section 253(1)(a).

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<sup>111</sup> Section 207 (Worker's decision about lump sum compensation—WRI less than 20% or no WRI)

***Subdivision 2—Claimant mentioned in s 253(1)(a)(i)*****258 Application of subdiv 2**

This subdivision applies to a claimant who is a person mentioned in section 253(1)(a)(i).

**259 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 280A<sup>112</sup> provides a way for the claimant to satisfy section 308(1)(a)(ii).<sup>113</sup>

(3) Also, the claimant may, under section 305,<sup>114</sup> seek leave to start a proceeding for damages for an injury without complying with section 302.<sup>115</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 302.

***Subdivision 3—Claimant mentioned in s 253(1)(a)(ii)*****260 Application of subdiv 3**

This subdivision applies to a claimant who is a person mentioned in section 253(1)(a)(ii).

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112 Section 280A (Noncompliance with s 280 and urgent proceedings)

113 Section 308 (Alteration of period of limitation)

114 Section 305 (Court to have given leave despite noncompliance)

115 Section 302 (Compliance necessary before starting proceeding)

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

(1) The claimant need not have, and WorkCover can not decide to have, the injury assessed under chapter 3, part 9<sup>116</sup> to decide if the injury has resulted in a degree of permanent impairment.

(2) WorkCover can not decide that the claimant's notice of claim does not comply with section 280<sup>117</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 WorkCover decides that the claimant—

- (a) was a worker when the injury was sustained; and
- (b) has sustained an injury.

(4) WorkCover 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 WorkCover waives compliance with the requirements of section 280, with or without conditions; or
- (c) a court makes a declaration under section 304.<sup>118</sup>

(5) WorkCover must notify the claimant and the claimant's employer of a decision it makes for the purpose of subsection (3).

(6) If WorkCover 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 WorkCover 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 9.

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116 Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment)

117 Section 280 (Notice of claim for damages)

118 Section 304 (Court to have made declaration about noncompliance)

(8) A person aggrieved by a decision made by WorkCover for the purpose of subsection (3) may have the decision reviewed under chapter 9.

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

(1) Despite section 261, the claimant may ask WorkCover to have the injury assessed under chapter 3, part 9 to decide if the injury has resulted in a degree of permanent impairment.

(2) WorkCover must have the degree of permanent impairment assessed under chapter 3, part 9 and give the claimant a notice of assessment.

(3) Chapter 3, part 9 applies to the assessment, but only for the purpose of assessing the degree of permanent impairment for the purposes of part 11.

(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 9, division 3<sup>119</sup> for the injury.

## **263 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 280A<sup>120</sup> provides a way for the claimant to satisfy section 308(1)(a)(ii).<sup>121</sup>

(3) Also, the claimant may, under section 305,<sup>122</sup> seek leave to start a proceeding for damages for an injury without complying with section 302.<sup>123</sup>

(4) However, if the leave mentioned in subsection (3) is given, the proceeding started by leave is stayed until—

- (a) WorkCover decides that the claimant was a worker when the injury was sustained; and

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119 Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

120 Section 280A (Noncompliance with s 280 and urgent proceedings)

121 Section 308 (Alteration of period of limitation)

122 Section 305 (Court to have given leave despite noncompliance)

123 Section 302 (Compliance necessary before starting proceeding)

- (b) WorkCover decides that the claimant has sustained an injury; and
- (c) any review or appeal under chapter 9 ends; and
- (d) if the claimant decides to have the injury assessed under chapter 3, part 9—WorkCover gives the claimant a notice of assessment; and
- (e) the claimant complies with section 302.

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

(1) This section applies to a proceeding mentioned in section 263(4).

(2) The claimant must discontinue the proceeding if it is decided by WorkCover, or on review or appeal under chapter 9, 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 253(1)(b)*

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

This division applies to a claimant who is a person mentioned in section 253(1)(b).<sup>124</sup>

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

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

(2) For subsection (1), WorkCover must have the degree of permanent impairment assessed under chapter 3, part 9 and give the claimant a notice of assessment.

(3) Chapter 3, part 9 applies to the assessment.

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<sup>124</sup> Section 253 (General limitation on persons entitled to seek damages)

**267 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 280A<sup>125</sup> provides a way for the claimant to satisfy section 308(1)(a)(ii).<sup>126</sup>

(3) Also, the claimant may, under section 305,<sup>127</sup> seek leave to start a proceeding for damages for an injury without complying with section 302.<sup>128</sup>

(4) However, if the leave mentioned in subsection (3) is given, the proceeding started by leave is stayed until—

- (a) WorkCover gives the claimant a notice of assessment; and
- (b) the claimant—
  - (i) elects to seek damages for the injury; and
  - (ii) complies with section 302.

**268 When urgent proceeding must be discontinued**

(1) This section applies if a claimant has started a proceeding mentioned in section 267(4).

(2) The claimant must discontinue the proceeding if the claimant—

- (a) is required under section 255 to make an election to seek damages for the injury; and
- (b) accepts an offer of payment of lump sum compensation under chapter 3, part 9, division 3 for the injury.

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125 Section 280A (Noncompliance with s 280 and urgent proceedings)

126 Section 308 (Alteration of period of limitation)

127 Section 305 (Court to have given leave despite noncompliance)

128 Section 302 (Compliance necessary before starting proceeding)

***Division 5—Claimant mentioned in s 253(1)(c)*****269 Application of div 5**

This division applies to a claimant who is a person mentioned in section 253(1)(c).<sup>129</sup>

**270 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 9 ends; and
- (b) the application for compensation is decided; and
- (c) WorkCover gives the claimant a notice of assessment.

(2) For subsection (1)(c), WorkCover must have the degree of permanent impairment assessed under chapter 3, part 9 and give the claimant a notice of assessment.

(3) Chapter 3, part 9 applies to the assessment.

**271 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 280A<sup>130</sup> provides a way for the claimant to satisfy section 308(1)(a)(ii).<sup>131</sup>

(3) Also, the claimant may, under section 305,<sup>132</sup> seek leave to start a proceeding for damages for an injury without complying with section 302.<sup>133</sup>

(4) However, if the leave mentioned in subsection (3) is given, the proceeding started by leave is stayed until—

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129 Section 253 (General limitation on persons entitled to seek damages)

130 Section 280A (Noncompliance with s 280 and urgent proceedings)

131 Section 308 (Alteration of period of limitation)

132 Section 305 (Court to have given leave despite noncompliance)

133 Section 302 (Compliance necessary before starting proceeding)

- (a) any review or appeal under chapter 9 ends; and
- (b) WorkCover gives the claimant a notice of assessment; and
- (c) the claimant—
  - (i) elects to seek damages for the injury; and
  - (ii) complies with section 302.

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

(1) This section applies if the claimant has started a proceeding mentioned in section 271(4) and—

- (a) it has been decided by WorkCover, or on review or appeal under chapter 9, 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 255 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 9, division 3 for the injury.

(2) The claimant must discontinue the proceeding.

#### *Division 6—Claimant mentioned in s 253(1)(d)*

### **273 Application of div 6**

This division applies to a claimant who is a person mentioned in section 253(1)(d).<sup>134</sup>

### **273A Access to damages if claimant has not lodged application for compensation**

(1) The claimant may seek damages for the injury only if WorkCover—

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134 Section 253 (General limitation on persons entitled to seek damages)

- (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)(b), WorkCover must have the degree of permanent impairment assessed under chapter 3, part 9 and give the claimant a notice of assessment.

(3) Chapter 3, part 9 applies to the assessment, but only for the purpose of assessing the degree of permanent impairment for the purposes of part 11.

(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 9, division 3<sup>135</sup> for the injury.

(5) WorkCover must make a decision or decisions for the purpose of subsection (1)(a) 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 WorkCover waives compliance with the requirements of section 280, with or without conditions; or
- (c) a court makes a declaration under section 304.

(6) WorkCover must notify the claimant and the claimant's employer of any decision it makes for the purpose of subsection (1)(a).

(7) If, for any injury, WorkCover 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, WorkCover does not make a decision for the purpose of subsection (1)(a) within the time mentioned in subsection (5), the claimant may have the failure to make a decision reviewed under chapter 9.

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135 Chapter 3 (Compensation), part 9 (Entitlement to compensation for permanent impairment), division 3 (Notification of assessment of permanent impairment)

(9) A person aggrieved by a decision made by WorkCover for the purpose of subsection (1)(a) may have the decision reviewed under chapter 9.

(10) For any assessment mentioned in subsection (1)(b) made by WorkCover with which the person does not agree, section 204<sup>136</sup> applies.

### **273B 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 280A<sup>137</sup> provides a way for the claimant to satisfy section 308(1)(a)(ii).<sup>138</sup>

(3) Also, the claimant may, under section 305,<sup>139</sup> seek leave to start a proceeding for damages for an injury without complying with section 302.<sup>140</sup>

(4) However, if the leave mentioned in subsection (3) is given, the proceeding started by leave is stayed until—

- (a) WorkCover 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 9 ends; and
- (c) WorkCover gives the claimant a notice of assessment; and
- (d) the claimant complies with section 302.

### **273C When proceedings must be discontinued**

(1) This section applies to a proceeding mentioned in section 273B(4).

(2) The claimant must discontinue the proceeding if it has been decided by WorkCover, or on review or appeal under chapter 9, that the claimant—

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136 Section 204 (Worker's disagreement with assessment of permanent impairment)

137 Section 280A (Noncompliance with s 280 and urgent proceedings)

138 Section 308 (Alteration of period of limitation)

139 Section 305 (Court to have given leave despite noncompliance)

140 Section 302 (Compliance necessary before starting proceeding)

- (a) was not a worker when the injury was sustained; or
- (b) has not sustained an injury.

***Division 7—Person mentioned in s 253(1)(e)***

**273D Application of div 7**

This division applies to a claimant who is a person mentioned in section 253(1)(e).

**273E 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 10<sup>141</sup> and—
  - (i) WorkCover has paid compensation under chapter 3, part 10 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 9 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 WorkCover 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) WorkCover 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

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141 Chapter 3 (Compensation), part 10 (Compensation on worker's death)

- (b) the claimant gives a notice of claim for which WorkCover waives compliance with the requirements of section 280, with or without conditions; or
- (c) a court makes a declaration under section 304.

(3) WorkCover must notify the claimant and the worker's employer of a decision it makes for the purpose of subsection (1)(b).

(4) If WorkCover 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 WorkCover 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 9.

(6) A person aggrieved by a decision made by WorkCover for the purpose of subsection (1)(b) may apply to have the decision reviewed under chapter 9.

### **273F 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 280A<sup>142</sup> provides a way for the claimant to satisfy section 308(1)(a)(ii).<sup>143</sup>

(3) Also, the claimant may, under section 305,<sup>144</sup> seek leave to start a proceeding for damages for the injury without complying with section 302.<sup>145</sup>

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142 Section 280A (Noncompliance with s 280 and urgent proceedings)

143 Section 308 (Alteration of period of limitation)

144 Section 305 (Court to have given leave despite noncompliance)

145 Section 302 (Compliance necessary before starting proceeding)

(4) However, if the leave mentioned in subsection (3) is given, for a claimant mentioned in section 273E(1)(a)(i), the proceeding started by leave is stayed until the claimant complies with section 302.

(5) Also, if the claimant is a claimant mentioned in section 273E(1)(a)(ii) or (b), the proceeding is stayed until—

- (a) WorkCover 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 9 ends; and
- (c) the claimant complies with section 302.

### **273G When proceedings must be discontinued**

(1) This section applies to a proceeding mentioned in section 273F(5).

(2) The claimant must discontinue the proceeding if it is decided by WorkCover, or on review or appeal under chapter 9, 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***

#### **273H Application of div 8**

This division applies if—

- (a) a worker has elected, under section 207,<sup>146</sup> to accept payment of lump sum compensation for an injury; and

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146 Section 207 (Worker's decision about lump sum compensation—WRI less than 20% or no WRI)

- (b) the worker has been assessed under chapter 3, part 9 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.

### **274 Decision not to seek damages reviewable in certain circumstances**

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

- (a) to satisfy WorkCover of the matters mentioned in subsection (7) for the purpose of seeking damages for the injury; and
- (b) within the period of limitation for bringing a proceeding for damages for personal injury under the *Limitation of Actions Act 1974*.

(2) WorkCover is required to consider the medical evidence only if the worker satisfies WorkCover that—

- (a) when the worker's degree of permanent impairment was assessed under section 197,<sup>147</sup> there was no reason to believe that there would be a material deterioration of the worker's injury; and
- (b) the further material deterioration is a deterioration of the injury for which the worker was assessed and accepted payment of lump sum compensation under section 207; and
- (c) the medical evidence—
  - (i) was not available when the worker's permanent impairment was previously assessed or when the worker made the election not to seek damages; and
  - (ii) establishes there has been a further material deterioration of the worker's injury that would have entitled the worker to an additional WRI of 10% or more.

(3) If WorkCover rejects the evidence, WorkCover must refer the evidence to a review panel for review.

(4) The review panel must consider the medical evidence produced by the worker and may accept or reject the evidence.

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147 Section 197 (Assessment of permanent impairment)

(5) A decision of the review panel is final and may not be appealed against.

(6) If WorkCover or the review panel accepts the medical evidence, WorkCover must refer the question of degree of permanent impairment to an appropriate medical assessment tribunal for decision.

(7) The worker may seek damages for the injury if WorkCover is satisfied that—

- (a) the worker's further material deterioration is an additional WRI of 10% or more; and
- (b) the deterioration is a deterioration of the injury for which the worker has accepted payment of lump sum compensation; and
- (c) the deterioration does not arise from combining a psychiatric or psychological injury with another injury; and
- (d) the additional WRI, when added to the worker's WRI as previously calculated by WorkCover under section 201,<sup>148</sup> results in a WRI of the worker of 20% or more.

(8) In this section—

**“review panel”** means a panel consisting of the chairperson or deputy chairperson of the General Medical Assessment Tribunal and a member of an appropriate medical assessment tribunal.

## **PART 3—MITIGATION OF LOSS AND REHABILITATION**

### **275 Mitigation of loss**

(1) The common law duty of mitigation of loss applies to all workers in relation to claims or proceedings for damages.

(2) The worker must satisfactorily participate in rehabilitation.

(3) The worker's duty mentioned in this section is in addition to any duty the worker may have under section 248.<sup>149</sup>

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148 Section 201 (Calculation of WRI)

149 Section 248 (Worker must mitigate loss)

**275A Provision of rehabilitation**

(1) WorkCover may make rehabilitation available to a worker on WorkCover's own initiative or if the worker asks.

(2) If WorkCover makes rehabilitation available to a worker before admitting or denying liability for damages, WorkCover must not be taken, only for that reason, to have admitted liability.

(3) If—

- (a) liability has been admitted for damages; or
- (b) WorkCover has agreed to fund rehabilitation without making an admission of liability;

WorkCover 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 WorkCover to appoint a mediator to help resolve the questions between the worker and WorkCover.

(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) WorkCover must make rehabilitation available to the worker, and the worker must satisfactorily participate in the rehabilitation, in sufficient time to enable WorkCover and the worker to comply with parts 5, 6 and 7.<sup>150</sup>

**275B Costs of rehabilitation**

(1) If WorkCover intends to ask a court to take the cost of rehabilitation into account in the assessment of damages payable to a worker, WorkCover must, before providing the rehabilitation, give the worker a written statement estimating the cost of the rehabilitation.

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<sup>150</sup> Parts 5 (Pre-court procedures), 6 (Settlement of claims) and 7 (Start of court proceedings)

(2) WorkCover must bear, or reimburse, the cost of providing the rehabilitation, unless WorkCover's liability for the cost is reduced—

- (a) by agreement with the worker; or
- (b) by order of the court.

(3) The cost to WorkCover of providing the rehabilitation is to be taken into account in the assessment of damages on the claim if, and only if, WorkCover 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 WorkCover. Damages (exclusive of the cost of rehabilitation) before apportionment are fixed at \$100 000. WorkCover 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 WorkCover on rehabilitation will be set off against this amount, resulting in a final award of \$47 500.

(5) If WorkCover is induced by a worker's fraud to provide rehabilitation to the worker, WorkCover may recover the cost of providing the rehabilitation, as a debt, from the worker.

## **PART 4—REDUCTION OF RECOVERABLE DAMAGES**

### **276 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 WorkCover by way of compensation for the injury.

(2) However, the amount of damages must not be reduced by an amount paid under section 211.<sup>151</sup>

(3) This section does not limit the reduction of the amount of the damages by any other amount that WorkCover or the claimant is legally liable to pay on account of the worker under another law.

### **277 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 276(1) in damages for compensation paid, the claimant or WorkCover may apply to—

- (a) the court in which the proceeding is brought; or
- (b) if a proceeding has not been started—the Industrial Magistrates Court.

(3) The court's decision is binding on WorkCover and all persons entitled to payment by WorkCover for the injury.

### **278 WorkCover'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.

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<sup>151</sup> Section 211 (Additional lump sum compensation for gratuitous care)

(3) An employer or other person from whom the damages are recoverable must pay WorkCover the amount of the first charge or, if the damages are not more than the amount of the first charge, the whole of the damages.

(4) Payment to WorkCover under subsection (3), to the extent of the payment, satisfies the liability of the employer or other person for payment of the damages.

(5) A person can not settle, for a sum less than the amount that is a first charge on damages under subsection (2), a claim for damages had by the person independently of this Act for an injury to which there is an entitlement to payment of damages without WorkCover's written consent.

(6) If, without WorkCover's consent, a settlement mentioned in subsection (5) is made, then to the extent that the damages recovered are insufficient to meet all payments due to WorkCover under this section—

- (a) WorkCover is entitled to be indemnified by the employer or other person who is required by the settlement to pay the damages; and
- (b) to that end, WorkCover is subrogated to the rights of the person who has sought the damages, as if the settlement had not been made.

(7) If a person who has received compensation has not recovered, or taken proceedings to recover, damages for the injury from another person, other than the worker's employer—

- (a) WorkCover is entitled to be indemnified for the amount of the compensation by the other person to the extent of that person's liability for the damages, so far as the amount of damages payable for the injury by that person extends; and
- (b) to that end, WorkCover is subrogated to the rights of the person for the injury.

(8) Payment made as indemnity under subsection (7), to the extent of the payment, satisfies the person's liability on a judgment for damages for the injury.

(9) In addition to all rights of action had by WorkCover to give effect to its right to indemnity under this section, all questions about the right and the amount of the indemnity may, in default of agreement, be decided by an industrial magistrate if all persons affected by the indemnity consent.

(10) In this section—

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

## **PART 5—PRE-COURT PROCEDURES**

### **279 Object of pt 5**

The object of this part is to facilitate the just and expeditious resolution of the real issues in a claim for damages at a minimum of expense.

### **279A Overriding obligations of parties**

(1) In accordance with the object of this part, this part is to be applied by the parties to avoid undue delay, expense and technicality and to facilitate the object.

(2) A party impliedly undertakes to other parties to proceed in an expeditious way.

(3) A court may impose appropriate sanctions if a party does not comply with a provision of this part.<sup>152</sup>

### **280 Notice of claim for damages**

(1) Before starting a proceeding in a court for damages, a claimant must give notice under this section within the period of limitation for bringing a proceeding for the damages under the *Limitation of Actions Act 1974*.

(2) The claimant must—

- (a) if the worker’s employer is not a self-insurer—
  - (i) give the notice of claim in the approved form to WorkCover at WorkCover’s registered office; and
  - (ii) give a copy of the notice of claim to the worker’s employer;  
or

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<sup>152</sup> See section 291 (Court’s power to enforce compliance with chapter).

- (b) if the worker's employer is a self-insurer—give the notice of claim in the approved form to the self-insurer at the self-insurer's registered office.
- (3) The notice must include the particulars prescribed under a regulation.
- (4) The claimant must state in the notice—
- (a) whether, and to what extent, liability expressed as a percentage is admitted for the injury; or
  - (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 be made.
- (7) The notice must be accompanied by the claimant's written authority allowing WorkCover to obtain information, including copies of documents relevant to the claim, and in the possession of—
- (a) a hospital; or
  - (b) the ambulance service of the State or another State; or
  - (c) a doctor, provider of treatment or rehabilitation services or person qualified to assess cognitive, functional or vocational capacity; or
  - (d) the employer or a previous employer; or
  - (e) insurers that carry on the business of providing workers' compensation insurance, compulsory third party insurance, personal accident or illness insurance, insurance against loss of income through disability, superannuation funds or any other type of insurance; or
  - (f) a department, agency or instrumentality of the Commonwealth or the State; or
  - (g) a solicitor, other than where giving the information or documents would breach legal professional privilege.
- (8) The notice must also be accompanied by copies of all documents supporting the claim including, but not limited to—

- (a) hospital, medical and other reports relating to the injury sustained by the worker, other than reports obtained by or on behalf of WorkCover; and
- (b) income tax returns, group certificates and other documents for the 3 years immediately before the injury supporting the claimant's claim for lost earnings or diminution of income-earning capacity; and
- (c) invoices, accounts, receipts and other documents evidencing the claimant's claim for out-of-pocket expenses.

### **280A Noncompliance with s 280 and urgent proceedings**

(1) The purpose of this section is to enable a claimant to avoid the need to bring an application under section 305.

(2) Without limiting section 304 or 305,<sup>153</sup> if the claimant alleges an urgent need<sup>154</sup> to start a proceeding for damages despite noncompliance with section 280, 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 WorkCover to waive compliance with the requirements of section 280.

(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) WorkCover must, before the end of 3 business days after receiving the notice of claim, advise the claimant that WorkCover agrees or does not agree that there is an urgent need to start a proceeding for damages.

(6) If WorkCover agrees that there is an urgent need to start a proceeding for damages, WorkCover may, in the advice to the claimant under subsection (5), impose the conditions WorkCover considers necessary or appropriate to satisfy WorkCover to waive compliance under section 282(2)(b).

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153 Section 304 (Court to have made declaration about noncompliance) or 305 (Court to have given leave despite noncompliance)

154 See sections 259, 263, 267, 271, 273B and 273F.

(7) The claimant must comply with the conditions within a reasonable time that is agreed between WorkCover and the claimant.

(8) The claimant's agreement to comply with the conditions is taken to satisfy section 308(1)(a)(ii).<sup>155</sup>

### **281 Claimant to tell WorkCover of change to information in notice of claim**

(1) The claimant must give WorkCover 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.

### **282 Response to notice of claim**

(1) This section applies if a notice of claim is given to WorkCover.

(2) WorkCover must, within 14 days after receiving the notice, give the claimant written notice—

- (a) stating whether WorkCover 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 WorkCover is only willing to waive compliance with the requirements if the claimant agrees to satisfy conditions imposed by WorkCover under section 280A; and
- (c) if WorkCover is not so satisfied—identifying the noncompliance and stating whether WorkCover waives compliance with the requirements; and
- (d) if WorkCover does not waive compliance with the requirements—allowing the claimant a reasonable period of at least 14 days either to satisfy WorkCover that the claimant has complied with the requirements or to take reasonable action to remedy the noncompliance; and
- (e) stating whether WorkCover is prepared, without admitting liability on the claim, to meet the cost of the claimant's reasonable and appropriate rehabilitation.

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155 Section 308 (Alteration of period of limitation)

(3) If WorkCover is not prepared to waive compliance with the requirements in the first instance, WorkCover must, within 14 days after the end of the period specified in subsection (2)(c), give the claimant written notice stating that—

- (a) WorkCover—
  - (i) is satisfied the claimant has complied with the relevant requirements; or
  - (ii) is satisfied with the action taken by the claimant to remedy the noncompliance; or
  - (iii) waives the noncompliance; or
- (b) WorkCover is not satisfied that the claimant has taken reasonable action to remedy the noncompliance, with full particulars of the noncompliance and the claimant's failure to remedy it.

(4) If WorkCover does not give the written notice mentioned in subsection (2) within 14 days after receiving the notice of claim, the notice of claim is taken to be a complying notice of claim.

(5) WorkCover must, within 7 days after receiving a complying notice of claim or waiving noncompliance with the requirements of section 280, advise the employer or employers against whom negligence is alleged.

### **283 Claimant and WorkCover to cooperate**

(1) A claimant and WorkCover 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 the 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 WorkCover; 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 the claimant or WorkCover; or
- (b) are reasonably required by WorkCover from the worker’s employer under section 284.

(3) WorkCover must—

- (a) give the claimant copies of the relevant documents—
  - (i) within 30 days after the claimant gives WorkCover a notice of claim; or
  - (ii) if the relevant documents come into WorkCover’s possession later—within 30 days after they come into WorkCover’s possession; and
- (b) respond to a request from the claimant under subsection (1)(b) within 30 days after receiving it.

(4) The claimant must respond to a request from WorkCover under subsection (1)(b) within 30 days after receiving it.

(5) This section is subject to section 288.<sup>156</sup>

(6) In this section—

**“relevant documents”** means reports and other documentary material, including written statements made by the claimant, the worker’s employer, or by witnesses.

## **284 Employer to cooperate with WorkCover**

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

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156 Section 288 (Non-disclosure of certain material)

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.

### **285 WorkCover and claimant to attempt to resolve claim**

(1) The claimant and WorkCover must endeavour to resolve a claim as quickly as possible.

(2) WorkCover must give the claimant a written notice under subsection (4) within 6 months after—

- (a) WorkCover receives a complying notice of claim or waives the claimant's noncompliance with the requirements of section 280;<sup>157</sup> or
- (b) the court makes an order under section 304;<sup>158</sup> or
- (c) the court makes an order under section 305.<sup>159</sup>

(3) For subsection (2), for a worker with a terminal condition, WorkCover must give the claimant the written notice within 3 months.

(4) The written notice must—

- (a) state whether liability in connection with the event to which the claim relates is admitted or denied and—
  - (i) if liability is admitted—
    - (A) state whether contributory liability is claimed from the worker or another party; and

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157 Section 280 (Notice of claim for damages)

158 Section 304 (Court to have made declaration about noncompliance)

159 Section 305 (Court to have given leave despite noncompliance)

*WorkCover Queensland Act 1996*

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- (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 WorkCover accepts or rejects any offer of settlement that may be made by the claimant; and
  - (c) if the claimant did not make an offer of settlement in the notice of claim or WorkCover is rejecting the offer—contain a genuine offer or counter-offer of settlement, or a statement of the reasons why an offer or counter-offer of settlement can not yet be made; and
  - (d) be accompanied by copies of all medical reports, assessments of cognitive, functional or vocational capacity, or other material in WorkCover's possession not previously given to the claimant that may help the claimant to make a proper assessment of the offer.
- (5) WorkCover must also, within 7 days after giving the claimant the written notice, give a copy of the notice to the worker's employer.
- (6) WorkCover or the claimant to whom a written offer or counter-offer of settlement is made must respond in writing to the offer within 14 days after receiving it, indicating acceptance or rejection of the offer, unless a response to the offer is to be made under subsection (4)(b).
- (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 WorkCover under this section—
- (a) is not binding on WorkCover at all if it is later shown at the trial in the proceeding for damages that the claimant has been relevantly guilty of fraud or attempted fraud; and
  - (b) is not binding on WorkCover at all if it is later shown that liability was admitted because of misrepresentation by any person; and
  - (c) is not an admission about the nature and extent of the claimant's loss or damage or that the claimant has sustained loss or damage, unless it specifically states otherwise; and

- (d) does not entitle the claimant to apply for judgment, summary or otherwise, in a court of competent jurisdiction; and
- (e) is confined to damages under the claim.

(9) In calculating the period of 6 months mentioned in subsection (2), any period during which a decision of WorkCover 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 9 that has been started.

## **286 Worker to undergo medical examination**

(1) WorkCover may, at any time, ask the worker to undergo, at WorkCover’s expense—

- (a) a medical examination by a doctor to be selected by the worker from a panel of at least 3 doctors nominated in the request; or
- (b) an assessment of cognitive, functional or vocational capacity by a registered person to be selected by the worker from a panel of at least 3 persons with appropriate qualifications and experience nominated in the request.

(2) The worker must comply with the request unless it would be unreasonable or unnecessarily repetitious.

(3) If 3 doctors or persons with appropriate qualifications and experience are not available for inclusion on a panel, the number on the panel may be reduced to 2.

## **287 Joint expert reports**

(1) WorkCover and a claimant may jointly arrange for an expert report about—

- (a) the event or events giving rise to the claim; or
- (b) the worker’s medical condition; or
- (c) the worker’s capacity to undertake specific rehabilitation programs; or

(d) the worker's capacity to undertake further work and earn income;  
or

(e) any other matter about the claim.

(2) Neither party is under an obligation to agree to a proposal to obtain a report.

(3) The person preparing the report must be a person agreed to by both parties and have appropriate qualifications and experience in the relevant field.

(4) The person preparing the report must give both parties a copy of the report.

(5) The cost of obtaining a report is to be paid by the parties in proportions agreed to in writing between them or, in default of agreement, in equal proportions.

(6) This section does not prevent a party from obtaining a report other than under this section.

## **288 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, investigative reports, medical reports and reports relevant to the worker's rehabilitation must be disclosed even though otherwise protected by legal professional privilege.

(3) If WorkCover has reasonable grounds to suspect a claimant of fraud, WorkCover may withhold from disclosure information, or omit a document or a passage from a document, that—

(a) would alert the claimant to the suspicion; or

(b) could help further the fraud; or

(c) WorkCover believes would meet the requirements of the *Freedom of Information Act 1992*, part 3, division 2.<sup>160</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).

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<sup>160</sup> *Freedom of Information Act 1992*, part 3 (Access to documents), division 2 (Exempt matter)

(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>161</sup>

### **289 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 the other party.

(2) The document can not be used by the party in a subsequent court proceeding for the claim, or the deciding of the claim, unless the court orders otherwise.

(3) If the document comes to the other party's knowledge, the document may be used by the other party.

### **290 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.

### **291 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.

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

## PART 6—SETTLEMENT OF CLAIMS

### *Division 1—Compulsory conference*

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

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

#### **293 Compulsory conference**

(1) Before the claimant starts a proceeding for damages, there must be a conference of the parties (the “**compulsory conference**”).

(2) Either party may call the compulsory conference.

(3) The compulsory conference must be held within 3 months after WorkCover gives the claimant a written notice under section 285.<sup>162</sup>

(4) However, if the parties agree, the conference may be held at a later date.

(5) 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 and a person authorised to settle on WorkCover’s behalf must attend the conference and actively participate in an attempt to settle the claim, unless the claimant or person has a reasonable excuse.

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162 Section 285 (WorkCover and claimant to attempt to resolve claim)

(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.

### **293A Procedure at conference**

(1) The compulsory conference may be held with a mediator if both 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 30 days after the date for the compulsory conference is fixed, either party may apply to the registrar of the court for the nomination of a mediator.

(5) At least 7 days before the compulsory conference is to be held, each party must give the other party—

- (a) copies of all documents not yet given to the other 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.

(6) 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
- (d) the party has complied fully with the party's obligations to give the other party 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 subsection (7).

**(7)** 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, WorkCover's written final offer;
  - (iii) the amount of the damages awarded by the court is equal to, or less than, WorkCover's written final offer.

**(8)** WorkCover must give a copy of the certificates of readiness and WorkCover's costs statement to the worker's employer at least 7 days before the compulsory conference.

### **293B 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 293A(7).

**294 Parties to make written final offer if claim not settled at compulsory conference**

(1) If the claim is not settled at a conference, each party must make a written final offer at the conference.

(2) The final offer must remain open for 14 days and proceedings must not be started while the offer remains open.

(3) If the claimant brings a proceeding in a court for the claim, the claimant must, at the start of the proceeding, file at the court a sealed envelope containing a copy of the claimant's offer.

(4) WorkCover must, after being served with the legal process that starts the proceeding, file at the court a sealed envelope containing a copy of WorkCover's offer.

(5) The court must not read the offers until it has decided the claim.

(6) However, the court must have regard to the offers in making a decision about costs.

***Division 3—Settlement before court proceedings*****300 Settlement of claim for damages**

If a claim is settled before the start of a court proceeding, the parties to the settlement must sign a discharge for the claim.

**PART 7—START OF COURT PROCEEDINGS*****Division 1—When claimant can start court proceedings*****301 Application of div 1**

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

**302 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>163</sup> to the extent the division imposes a requirement on the person; and
- (b) part 5, other than as provided by section 304 and 305;<sup>164</sup> and
- (c) part 6;<sup>165</sup> and
- (d) section 303.

**303 Claimant to have given complying notice of claim or WorkCover 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) WorkCover has waived the claimant's noncompliance with the requirements of section 280 with or without conditions; or
  - (iii) the court has made an order under section 304 or 305;
- (c) WorkCover has admitted liability, but is claiming contributory liability from the claimant or another party, and the claimant has given WorkCover written notice that the extent of the admission is disputed;
- (d) WorkCover has admitted liability but damages can not be agreed.

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163 Part 2 (Entitlement conditions)

164 Part 5, (Pre-court procedures) (other than sections 304 (Court to have made declaration about noncompliance) and 305 (Court to have given leave despite noncompliance))

165 Part 6 (Settlement of claims)

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

(1) Subject to section 303,<sup>166</sup> the claimant may start the proceeding if the court, on application by the claimant dissatisfied with WorkCover's response under section 282<sup>167</sup> to a notice of claim, declares that—

- (a) notice of claim has been given under section 280;<sup>168</sup> or
- (b) the claimant is taken to have remedied noncompliance with the requirements of section 280.

(2) A declaration that a claimant is taken to have remedied noncompliance with section 280 may be made on conditions the court considers necessary or appropriate to minimise prejudice to WorkCover from the claimant's failure to comply with the requirements of section 280.

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

(1) Subject to section 303, the claimant may start the proceeding if the court, on application by the claimant, gives leave to bring the proceeding despite noncompliance with the requirements of section 280.

(2) The order giving leave to bring the proceeding may be made on conditions the court considers necessary or appropriate to minimise prejudice to WorkCover from the claimant's failure to comply with the requirements of section 280.

**305A Other provision for urgent proceedings**

Part 2, divisions 3 to 7 provide for the urgent starting of proceedings by persons mentioned in section 253(1), and for the staying and discontinuance of those proceedings.

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166 Section 303 (Claimant to have given complying notice of claim or WorkCover to have waived compliance)

167 Section 282 (Response to notice of claim)

168 Section 280 (Notice of claim for damages)

***Division 2—Court proceedings*****306 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 284(1),<sup>169</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

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<sup>169</sup> Section 284 (Employer to cooperate with WorkCover)

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).

### **307 Exclusion of jury trial**

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

### **308 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 WorkCover waives compliance with the requirements of section 280 with or without conditions; or
  - (iii) a court makes a declaration under section 304;<sup>170</sup> or
  - (iv) a court gives leave under section 305;<sup>171</sup> and
- (b) the claimant complies with section 302.<sup>172</sup>

(2) However, the proceeding must be brought within 60 days after a compulsory conference for the claim is held.

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170 Section 304 (Court to have made declaration about noncompliance)

171 Section 305 (Court to have given leave despite noncompliance)

172 Section 302 (Compliance necessary before starting proceeding)

**309 Court may have regard to claimant's non-compliance with s 280 in relation to costs and interest**

If a claimant does not comply with the requirements of section 280, the court before which the claimant brings a proceeding for damages—

- (a) on WorkCover's application, may award in WorkCover's favour costs, including legal and investigation costs reasonably incurred by WorkCover because of the claimant's default; and
- (b) subject to section 318,<sup>173</sup> may award interest in the claimant's favour for a period for which the claimant was in default but only if the court is satisfied that there is a reasonable excuse for the default.

**310 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.

**PART 7A—STRUCTURED SETTLEMENTS****310A 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—

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<sup>173</sup> Section 318 (Interest) was omitted by the *WorkCover Queensland Amendment Act 2001*, section 40.

**“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 8—PARTICULAR MATTERS AFFECTING ASSESSMENTS OF LIABILITY**

### **311 Absolute defences not reintroduced**

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

### **312 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 9—NO RIGHT TO PARTICULAR DAMAGES**

### **315 Gratuitous services**

A court can not award damages for the value of services of any kind—

- (a) that have been, or are to be, provided by another person to a worker; and
- (b) that are services of a kind that have been, or are to be, or ordinarily would be, provided to the worker by a member of the worker's family or household; and
- (c) for which the worker is not, and would ordinarily not be, liable to pay.

## **PART 10—EXEMPLARY DAMAGES**

### **319 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 11—COSTS

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

#### **320 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.

#### **321 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 322 to 323A.

#### **322 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 WorkCover; 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 WorkCover to pay the claimants's costs, calculated on the indemnity basis, unless WorkCover shows another order for costs is appropriate in the circumstances.

#### **323 Costs if written final offer by WorkCover**

(1) This section applies if—

- (a) WorkCover 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 WorkCover was at all material times willing and able to carry out what was proposed in the written final offer.

(2) Unless a party shows another order for costs is appropriate in the circumstances, the court must—

- (a) order WorkCover 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 WorkCover's costs, calculated on the standard basis, after the day of service of the written final offer.

### **323A 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 322 or 323, 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***

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

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

#### **325 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 party to the proceeding makes a written final offer of settlement that is refused and the court later awards damages to the worker, the court must, in the following circumstances, make the order about costs provided for—

- (a) if the amount of damages awarded is equal to or more than the worker's written final offer—an order that WorkCover 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 WorkCover's written final offer—an order that the worker pay WorkCover'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 WorkCover'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 WorkCover is joined as a defendant in the proceeding, the court may make an order about costs in favour of, or against, the entity according to the proportion of liability of the defendants and the justice of the case.

(6) The court may make an order for costs against the worker's employer or WorkCover under subsection (5) only if—

- (a) the order is in favour of the entity; and
- (b) the worker's employer or WorkCover joined the entity as a defendant.

### *Division 3—Costs generally*

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

This division applies to all claimants.

**327 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 12—EXCESS DAMAGES AWARDED IN ANOTHER JURISDICTION****328 Application of pt 12**

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) WorkCover would be liable to pay all the damages if section 329 did not apply.

**329 No liability for excess damages**

WorkCover is not liable for the difference between the amount of damages awarded to the claimant and the amount of damages that would have been awarded in a proceeding before a court of the State.

## **CHAPTER 6—WORKCOVER QUEENSLAND**

### **PART 1—ESTABLISHMENT**

#### **330 WorkCover is established**

WorkCover Queensland is established.

#### **331 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.

#### **332 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*

#### **333 General statement of WorkCover’s functions**

- (1) WorkCover’s functions are as follows—
- (a) to manage the workers’ compensation scheme;
  - (b) to undertake the insurance business mentioned in section 334;
  - (c) to perform other functions conferred on it by this or another Act;
  - (d) to do anything necessary for the administration of this Act that is not the function of another entity.
- (2) In performing its functions, WorkCover—
- (a) must, as far as practicable, deliver insurance as a commercial enterprise; and
  - (b) must enforce this Act as a regulator; and
  - (c) is subject to the Minister’s directions under part 4.

#### **334 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.

#### **335 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.

### **336 WorkCover's offices**

WorkCover may establish offices anywhere and discontinue any WorkCover offices.

## *Division 2—Powers generally*

### **337 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.

### **338 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.

### **339 General restriction on WorkCover’s powers**

(1) Section 338 applies to WorkCover subject to any restrictions on WorkCover’s powers expressly imposed under this or another Act.

(2) Section 338 also applies to WorkCover subject to any restrictions expressly imposed by—

- (a) WorkCover’s statement of corporate intent; and
- (b) any relevant directions, notifications or approvals given to WorkCover by the Minister

(3) WorkCover contravenes this subsection if—

- (a) WorkCover exercises a power contrary to a restriction mentioned in subsection (1) or (2); or
- (b) does an act otherwise than for its functions.

(4) The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.

(5) A WorkCover officer who is involved in the contravention contravenes this subsection.

(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

(7) WorkCover or an officer of WorkCover is not guilty of an offence merely because of the contravention.

(8) The fact that—

- (a) by exercising the powers mentioned in subsection (3)(a), or doing the act as mentioned in subsection (3)(b), WorkCover contravened, or would contravene, subsection (3); or

- (b) by doing a particular act, an officer of WorkCover contravened, or would contravene, subsection (5);

may be asserted or relied on only in proceedings between the Minister or the State and officers of WorkCover.

(9) In this section—

“**officer**” of WorkCover means—

- (a) a WorkCover director; or
- (b) the chief executive officer; or
- (c) an employee of WorkCover.

“**restriction**” includes prohibition.

### **340 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.

### **341 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.

### **342 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

*WorkCover Queensland Act 1996*

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- (b) in a proceeding about the dealings, any assertion by WorkCover that the matters that the person is entitled to assume were not correct must be disregarded.

(2) If a person has dealings with a person who has acquired, or purports to have acquired, title to property from WorkCover (whether directly or indirectly)—

- (a) the person is entitled to make the assumptions mentioned in subsection (3); and
- (b) in a proceeding for the dealings, any assertion by WorkCover or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

(3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are—

- (a) that, at all relevant times, this Act has been complied with; and
- (b) that a person who is held out by WorkCover to be an officer or agent of WorkCover—
  - (i) has been properly appointed; and
  - (ii) has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and
- (c) that an officer or agent of WorkCover who has authority to issue a document for WorkCover has authority to warrant that the document is genuine; and
- (d) that an officer or agent of WorkCover who has authority to issue a certified copy of a document for WorkCover has authority to warrant that the copy is a true copy; and
- (e) that a document has been properly sealed by WorkCover if—
  - (i) it bears what appears to be an imprint of WorkCover's seal; and
  - (ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be a WorkCover director or the chief executive officer; and
- (f) that the directors, chief executive officer, employees and agents of WorkCover have properly performed their duties to WorkCover.

(4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—

- (a) the person has actual knowledge that the assumption would be incorrect; or
- (b) because of the person's connection or relationship with WorkCover, the person ought to know that the assumption would be incorrect.

(5) If, because of subsection (4), a person is not entitled to make a particular assumption—

- (a) if the assumption is in relation to dealings with WorkCover—subsection (1) does not apply to any assertion by WorkCover in relation to the assumption; or
- (b) if the assumption is in relation to an acquisition or purported acquisition from WorkCover of title to property—subsection (2) does not apply to any assertion by WorkCover or another person in relation to the assumption.

(6) In this section—

“**officer**” of WorkCover means—

- (a) a WorkCover director; or
- (b) the chief executive officer; or
- (c) an employee of WorkCover.

### **343 Reserve power of Minister to direct that asset not be disposed of**

(1) The Minister may, after consultation with the board, give the board a written direction requiring WorkCover not to dispose of a specified asset.

(2) The board must ensure that the direction is complied with.

(3) The Minister must cause a copy of the direction to be published in the gazette within 21 days after it is given.

## **PART 3—OBLIGATIONS**

### *Division 1—Corporate Plan*

#### **344 WorkCover must have corporate plan**

WorkCover must have a corporate plan.

#### **345 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.

#### **346 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.

#### **347 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 a direction to be published in the industrial gazette within 21 days after it is given.

### **348 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.

### **349 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 the board to the Minister before the start of the financial year, with any changes made by the board, whether before or after that time, at the direction of the Minister, is taken to be WorkCover's corporate plan until a draft corporate plan becomes WorkCover's corporate plan under section 348.

### **350 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***

### **351 WorkCover must have statement of corporate intent**

WorkCover must have a statement of corporate intent for each financial year.

**352 Statement of corporate intent must be consistent with corporate plan**

WorkCover's statement of corporate intent must be consistent with its corporate plan.

**353 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 354;
- (b) section 360;<sup>174</sup>
- (c) section 408.<sup>175</sup>

**354 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 417;<sup>176</sup>
- (e) an outline of the borrowings made, and proposed to be made, by WorkCover;

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174 Section 360 (Community service obligations to be specified in statement of corporate intent)

175 Section 408 (Employment and industrial relations plan)

176 Section 417 (Payment to consolidated fund)

- (f) an outline of the policies adopted by WorkCover to minimise and manage any risk of investments and borrowings that may adversely affect its financial stability;
- (g) an outline of WorkCover's policies and procedures relating to the acquisition and disposal of major assets;
- (h) WorkCover's accounting policies that apply to the preparation of its accounts;
- (i) the type of information to be given to the Minister, including information to be given in quarterly and annual reports.

(2) The Minister may exempt WorkCover from including any matter, or any aspect of a matter, mentioned in subsection (1) in the statement of corporate intent.

(3) Subsection (1) does not limit the matters that may be included in a statement of corporate intent.

### **355 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.

### **356 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.

### **357 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.

### **358 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*

### **359 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 343;<sup>177</sup>
- (b) a direction given to WorkCover's board under section 347;<sup>178</sup>
- (c) a direction given to WorkCover's board under section 350;<sup>179</sup>
- (d) a direction given to WorkCover's board under section 356;<sup>180</sup>
- (e) a direction given to WorkCover's board under section 358;<sup>181</sup>
- (f) a notification given to WorkCover's board under section 374;<sup>182</sup>
- (g) a direction given to WorkCover's board under section 375;<sup>183</sup>
- (h) a statutory duty to perform activities, including any economic development activities or activities of a regulatory or policy formulation nature, that arise under an Act applying specifically to WorkCover.

### **360 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—

- (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.

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177 Section 343 (Reserve power of Minister to direct that asset not be disposed of)

178 Section 347 (Special procedures for draft corporate plan)

179 Section 350 (Changes to corporate plan)

180 Section 356 (Special procedures for draft statement of corporate intent)

181 Section 358 (Changes to statement of corporate intent)

182 Section 374 (Reserve power of Minister to notify board of public sector policies)

183 Section 375 (Reserve power of Minister to give directions in public interest)

***Division 4—Reports and other accountability matters*****361 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—

- (a) the information required to be given in the report by WorkCover's statement of corporate intent; and
- (b) a report from the council.

**362 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 417;<sup>184</sup> and
- (c) include the statement of corporate intent for the relevant financial year; and
- (d) include particulars of any changes made to the statement of corporate intent during the relevant financial year; and
- (e) include particulars of any directions and notifications given to WorkCover's board by the Minister that relate to the relevant financial year; and
- (f) include particulars of the impact on the financial position, profits and losses and prospects of WorkCover of any changes made to

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184 Section 417 (Payment to consolidated fund)

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.

### **363 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 362<sup>185</sup> or another Act.

(4) Subsection (1) has effect despite subsection (2).

### **364 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

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<sup>185</sup> Section 362 (Matters to be included in annual report)

- (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*

#### **365 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.

Maximum penalty—100 penalty units.

(2) The disclosure must be recorded in the board's minutes.

#### **366 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).

### **367 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—

- (a) if the contravention is committed with intent to deceive or defraud WorkCover, WorkCover's creditors or creditors of another person or for another fraudulent purpose—500 penalty units or 5 years imprisonment; or
- (b) in any other case—100 penalty units.

(2) In the exercise of powers and the discharge of functions, a WorkCover officer must exercise the degree of care and diligence that a reasonable person in a like position within WorkCover would exercise.

Maximum penalty—100 penalty units.

(3) A person who is, or was, a WorkCover officer must not make improper use of information acquired because of the person's position as a WorkCover officer—

- (a) to gain, directly or indirectly, an advantage for the person or for another person; or

(b) to cause detriment to WorkCover.

Maximum penalty—500 penalty units or 5 years imprisonment.

(4) An officer of WorkCover must not make improper use of the officer's position as a WorkCover officer—

(a) to gain, directly or indirectly, an advantage for the officer or another person; or

(b) to cause detriment to WorkCover.

Maximum penalty—500 penalty units or 5 years imprisonment.

(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—

“**officer**” of WorkCover means—

- (a) a WorkCover director; or
- (b) the chief executive officer; or
- (c) another person who is concerned, or takes part, in WorkCover's management.

### **368 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 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.

### **369 WorkCover not to indemnify 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.

“**officer**” of WorkCover means—

- (a) a director of WorkCover; or
- (b) the chief executive officer; or
- (c) another person who is concerned, or takes part, in WorkCover’s management.

### **370 WorkCover not to pay premiums for certain liabilities of 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 an officer of WorkCover against a liability—

- (a) incurred by the person as an officer; and
- (b) arising out of conduct involving—
  - (i) a wilful breach of duty in relation to WorkCover; or

- (ii) without limiting subparagraph (i), a contravention of section 367(3) or (4).<sup>186</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—

“**officer**” of WorkCover means—

- (a) a director of WorkCover; or
- (b) the chief executive officer; or
- (c) another person who is concerned, or takes part, in WorkCover’s management.

“**pay**” includes pay indirectly through 1 or more interposed entities.

### **371 Examination of persons concerned with WorkCover**

(1) If it appears to the Attorney-General that—

- (a) a person who has been concerned, or taken part, in WorkCover’s management, administration or affairs, has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to WorkCover; or
- (b) a person may be capable of giving information about WorkCover’s management, administration or affairs;

the Attorney-General may apply to the Supreme Court or a District Court for an order under this section about the person.

(2) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on anything about WorkCover’s management, administration or affairs.

(3) The examination of the person is to be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.

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186 Section 367 (Duty and liability of certain officers of WorkCover)

**(4)** 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.

**(5)** The person must not fail, without reasonable excuse—

- (a) to attend as required by the order; or
- (b) to continue to attend as required by the court until the completion of the examination.

Maximum penalty—200 penalty units or 2 years imprisonment.

**(6)** The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty—200 penalty units or 2 years imprisonment.

**(7)** The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty—200 penalty units or 2 years imprisonment.

**(8)** The person may be directed by the court, in the order or by subsequent direction, to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

**(9)** The person must not, without reasonable excuse, contravene a direction under subsection (8).

Maximum penalty—200 penalty units or 2 years imprisonment.

**(10)** If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.

**(11)** The person must not knowingly make a statement at the examination that is false or misleading in a material particular.

Maximum penalty—500 penalty units or 5 years imprisonment.

**(12)** The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

(13) If—

- (a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty; and
- (b) the answer might in fact tend to incriminate the person or make the person liable to a penalty;

the answer is not admissible in evidence against the person in—

- (c) a criminal proceeding; or
- (d) a proceeding for the imposition of a penalty;

other than a proceeding for an offence against this section or another proceeding in relation to the falsity of the answer.

(14) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.

(15) Subject to subsection (13), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.

(16) The person may, at the person's own expense, employ counsel or a solicitor, and the counsel or solicitor may put to the person questions that the court considers just for the purpose of enabling the person to explain or qualify any answers given by the person.

(17) The court may adjourn the examination from time to time.

(18) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order the whole or any part of the costs incurred by the person be paid by the State.

### **372 Power to grant relief**

(1) This section applies to a WorkCover director, the chief executive or other WorkCover employee.

(2) If, in a proceeding against a person to whom this section applies for negligence, default, breach of trust or breach of duty as a person to whom this section applies, it appears to the court that—

- (a) the person is or may be liable for the negligence, default or breach;

- (b) the person has acted honestly and, having regard to all the circumstances of the case, including circumstances connected with the person's appointment, the person ought fairly to be excused for the negligence, default or breach;

the court may relieve the person, completely or partly, from liability on terms that the court considers appropriate.

(3) If a person to whom this section applies believes that a claim will or might be made against the person for negligence, default, breach of trust or breach of duty as a person to whom this section applies, the person may apply to the Supreme Court or a District Court for relief.

(4) The court has the same power to relieve the person as it would have if a proceeding had been brought against the person in the court for the negligence, default or breach.

(5) If—

- (a) a proceeding mentioned in subsection (2) is being tried by a judge with a jury; and
- (b) the judge, after hearing the evidence, is satisfied that the defendant ought under that subsection be relieved, completely or partly, from the liability sought to be enforced against the person;

the judge may withdraw the case, completely or partly, from the jury and direct that judgment be entered for the defendant on the terms, as to costs or otherwise, the judge considers appropriate.

### **373 False or misleading information or documents**

(1) An officer of WorkCover must not make a statement concerning the affairs of WorkCover to another officer or the Minister that the first officer knows is false or misleading in a material particular.

(2) A complaint against a person for an offence against subsection (1) is sufficient if it states that the statement was false or misleading to the person's knowledge, without specifying which.

(3) An officer of WorkCover must not give to another officer or the Minister a document containing information that the first officer knows is false or misleading in a material particular without—

- (a) indicating to the recipient that the document is false or misleading and the respect in which the document is false or misleading; and

- (b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty—

- (a) if the contravention is committed with intent to deceive or defraud WorkCover, creditors of WorkCover or creditors of another person or for another fraudulent purpose—500 penalty units or 5 years imprisonment; or
- (b) in any other case—100 penalty units.

(4) In this section—

“**officer**” of WorkCover means—

- (a) a director of WorkCover; or
- (b) the chief executive officer; or
- (c) an employee of WorkCover.

## **PART 4—THE MINISTER**

### **374 Reserve power of Minister to notify board of public sector policies**

(1) The Minister may notify WorkCover’s board, in writing, of a public sector policy that is to apply to WorkCover if the Minister is satisfied that it is necessary to give the notification in the public interest.

(2) The board must ensure that the policy is carried out in relation to WorkCover.

(3) Before giving the notification, the Minister must—

- (a) consult with the board; and
- (b) request the board to advise the Minister whether, in its opinion, carrying out the policy would not be in the commercial interests of WorkCover.

(4) The Minister must cause a copy of the notification to be—

- (a) published in the industrial gazette within 21 days after it is given; and

- (b) tabled in the Legislative Assembly within 14 sitting days after it is given.

### **375 Reserve power of Minister to give directions in public interest**

(1) The Minister may give WorkCover's board a written direction in relation to WorkCover if the Minister is satisfied that it is necessary to give the direction in the public interest.

(2) The board must ensure that the direction is complied with in relation to WorkCover.

(3) Before giving the direction, the Minister must—

- (a) consult with the board; and
- (b) request the board to advise the Minister whether, in its opinion, complying with the direction would not be in the commercial interests of WorkCover.

(4) The Minister must cause a copy of the direction to be—

- (a) published in the industrial gazette within 21 days after it is given; and
- (b) tabled in the Legislative Assembly within 14 sitting days after it is given.

### **376 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 the board; and
- (b) ask the board to advise the Minister whether it considers complying with the direction would adversely affect the performance of its functions.

(4) Subsection (3) does not apply if the Minister's direction is in response to a written recommendation of the board about the relevant matter, whether or not the direction implements the recommendation.

- (5) The board must comply with the direction.
- (6) The Minister must cause a copy of the direction to be—
  - (a) published in the industrial gazette within 21 days after it is given; and
  - (b) tabled in the Legislative Assembly within 14 sitting days after it is given.

### **377 Notice of suspected threat to full funding because of direction or notification**

- (1) If—
  - (a) WorkCover's board is given a direction or notification by the Minister; and
  - (b) the board suspects that complying with the direction or notification will threaten WorkCover's ability to achieve or maintain full funding;

the board must immediately give written notice to the Minister and the auditor-general of the suspicion and its reasons for its opinion.

- (2) The notice must state that it is given under this section.
- (3) The giving of the notice operates to suspend the direction or notification until the Minister gives a written direction to the board stating—
  - (a) whether the direction or notification mentioned in subsection (1) is to be—
    - (i) revoked and replaced with an alternative direction or notification; or
    - (ii) revoked; or
    - (iii) complied with by the board; and
  - (b) the reasons for the direction.

(4) The board must ensure that the direction under subsection (3) is complied with, subject to subsection (6).

(5) The Minister must cause a copy of the written notice given by the board to the Minister and the auditor-general and the Minister's direction under subsection (3) to be—

- (a) published in the industrial gazette within 21 days after it is given; and
- (b) tabled in the Legislative Assembly within 14 sitting days after it is given.

(6) This section applies to an alternative direction mentioned in subsection (3)(a)(i) in the way it applies to any other direction.

### **378 WorkCover and 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.

### **379 Minister not director etc.**

(1) The Minister is not to be treated as a director of WorkCover.

(2) The Minister does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under or for this Act in relation to WorkCover.

(3) A liability that would, apart from subsection (2), attach to the Minister attaches instead to the State.

(4) This section has effect despite the Corporations Act.

### **380 Monitoring and assessment of WorkCover**

(1) The Minister may delegate the Minister's powers under section 364<sup>187</sup> to—

- (a) for any provision of section 364—the chief executive of the department (the “**department chief executive**”) or an appropriately qualified public service officer of the department; or
- (b) for section 364(1)(a) or (b)—a person appropriately qualified to assess the matters mentioned in section 364(1)(a).

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187 Section 364 (Board to keep Minister informed)

(2) The Minister may request the department chief executive to investigate, and report to the Minister on, any matter relating to WorkCover.

(3) For an investigation under this section of a matter relating to WorkCover, the department chief executive may give WorkCover written directions.

(4) Without limiting subsection (3), the department chief executive may direct WorkCover—

- (a) to give to the department chief executive any information about WorkCover that the department chief executive considers necessary or desirable in connection with the investigation; and
- (b) to permit persons authorised by the department chief executive to have access to specified documents about WorkCover that the department chief executive considers necessary or desirable in connection with the investigation; and
- (c) to take steps that the department chief executive considers necessary or desirable for the purposes of the investigation.

(5) WorkCover must ensure that any direction given to it under this section is complied with.

(6) The department chief executive may delegate to an officer of the department or another person the chief executive's powers under this section, including powers delegated to the chief executive under subsection (1)(b).

## **PART 5—BOARD OF DIRECTORS**

### *Division 1—Establishment of WorkCover's board*

#### **381 Establishment of board**

(1) WorkCover's Board of Directors is established.

(2) The board consists of at least 7 members appointed by the Governor in Council.

**382 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.

**383 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 and regulator.

(2) A person is not eligible for appointment as a director if the person is not able to manage a corporation because of the Corporations Act, part 2D.6.<sup>188</sup>

**384 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;
- (c) responsibility for WorkCover's commercial policy and management;
- (d) reporting to the Minister, on its own initiative or the Minister's request, on the adequacy, operation, and enforcement of this Act;
- (e) notifying the Minister of the methods and rates it proposes to use to assess premiums;
- (f) making recommendations to the Minister about—

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188 Corporations Act, part 2D.6 (Disqualification from managing corporations)

- (i) entitlements that should be paid under this Act; or
- (ii) regulation of access to damages under this Act; or
- (iii) legislative policy issues;
- (g) performing of other functions conferred on the board under this or another Act;
- (h) ensuring WorkCover otherwise performs its functions in a proper, effective and efficient way.

### **385 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 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***

### **386 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.

### **387 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.

**388 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.

**389 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.

**390 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 366.<sup>189</sup>

**391 Participation in meetings by telephone etc.**

(1) The board may permit directors to participate in a particular meeting, or all meetings, by—

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<sup>189</sup> Section 366 (Voting by interested director)

- (a) telephone; or
- (b) closed circuit television; or
- (c) another means of communication.

(2) A director who participates in a meeting of the board under a permission under subsection (1) is taken to be present at the meeting.

### **392 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.

### **393 Minutes**

The board must keep minutes of its proceedings.

## *Division 3—Other provisions about directors*

### **394 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.

**395 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.

**396 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.

**397 Resignation**

(1) A director, or person appointed under section 382<sup>190</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.

**398 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 an officer of the public service when appointed as a director ceases to be an officer of the public service, the person ceases to be a director.

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190 Section 382 (Appointment of chairperson and deputy chairperson)

## PART 6—THE CHIEF EXECUTIVE OFFICER

### 399 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.

(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>191</sup>

### 400 Duties of chief executive officer

WorkCover’s chief executive officer is, under the board, to manage WorkCover.

### 401 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.

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191 *Industrial Relations Act 1999*, section 276 (Power to amend or void contracts) or chapter 3 (Dismissals)

**402 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.

**403 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.

(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 6A—REVIEW UNIT****403A WorkCover must establish review unit**

WorkCover must establish a review unit that is separate from WorkCover’s commercial insurance business.

**403B Function of review unit**

The review unit's function is to undertake reviews under chapter 9, part 2.<sup>192</sup>

**PART 7—OTHER EMPLOYMENT PROVISIONS****404 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.

(3) Subsection (2) does not affect the *Public Service Act 1996*, section 22.<sup>193</sup>

(4) A person appointed as a senior executive must enter into a contract with WorkCover.

(5) The conditions of the contract are to be decided by the board.

(6) The contract must state the conditions of appointment, including—

- (a) a term of the contract of not longer than 5 years; and
- (b) the remuneration to which the person is entitled.

(7) The contract must be signed for WorkCover by the board's chairperson.

(8) Subsection (6)(a) does not prevent the senior executive from being reappointed.

(9) An industrial instrument does not apply to a person appointed as a senior executive.

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192 Chapter 9 (Reviews and appeals), part 2 (Review of decisions)

193 *Public Service Act 1996*, section 22 (Application of Act to certain public sector units etc.)

(10) However, subsection (9) has no effect on the *Industrial Relations Act 1999*, section 276 or chapter 3.<sup>194</sup>

#### **405 Basis of employment generally**

(1) This section does not apply to the chief executive officer or a senior executive.

(2) WorkCover may employ persons it considers necessary or convenient for the administration of this Act or for its functions or powers under any Act.

(3) The employment conditions of a person employed by WorkCover are to be decided by WorkCover, subject to any applicable industrial instrument.

(4) A person employed by WorkCover is to be employed under this Act, and not the Public Service Act.

(5) Subsection (4) does not affect the *Public Service Act 1996*, section 22.<sup>195</sup>

#### **406 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.

(3) Subsection (2) is subject to the *Financial Administration and Audit Act 1977*, part 6.<sup>196</sup>

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194 *Industrial Relations Act 1999*, section 276 (Power to amend or void contracts) or chapter 3 (Dismissals)

195 *Public Service Act 1996*, section 22 (Application of Act to certain public sector units etc.)

196 *Financial Administration and Audit Act 1977*, part 6 (Audit of consolidated fund and public sector entities)

**407 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 an employee of WorkCover to be made available to—

- (a) the Commonwealth or another State; or
- (b) an authority of the Commonwealth or another State.

**408 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.

**409 EEO legislation is applicable**

WorkCover is a unit of public sector under the *Equal Opportunity in Public Employment Act 1992*.

**PART 8—FINANCIAL PROVISIONS****410 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*.

#### **411 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 11.<sup>197</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.

#### **412 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>198</sup>

#### **413 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.

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197 Chapter 11 (Transitional provisions for WorkCover Queensland Act 1996)

198 *Government Owned Corporations Act 1993*, section 155 (Liability for Commonwealth tax equivalents)

(2) If a proposed borrowing is in accordance with those policies, the *Statutory Bodies Financial Arrangements Act 1982* does not apply to the borrowing.

#### **414 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.

#### **415 Reserves**

WorkCover may establish reserves it considers appropriate for the performance of its functions.

#### **416 Amounts payable by WorkCover on Minister's instruction**

(1) WorkCover must make payments to organisations or bodies that the Minister considers will help in—

- (a) the treatment or alleviation of injury sustained by workers; or
- (b) the prevention or recognition of injury to workers; 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.

**417 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 the workers' compensation scheme is fully funded, and the payment does not stop the scheme being fully funded.

(3) WorkCover's payment must not exceed profits after provision has been made for—

- (a) payment of income tax and its equivalents; and
- (b) exclusion of unrealised capital gains from upward revaluation of non-current assets.

(4) Within 4 months after the end of each financial year, the board must—

- (a) recommend to the Minister whether or not WorkCover may make a payment; and
- (b) if the board recommends WorkCover make a payment—recommend to the Minister the amount WorkCover should pay.

(5) The board must consult with the Minister before giving the recommendation.

(6) Within 1 month after receiving the recommendation, the Minister must—

- (a) approve the recommendation; or
- (b) direct the board to pay an amount the Minister specifies.

(7) The Minister must cause a copy of the direction to be published in the industrial gazette within 21 days after it is given.

**418 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 the workers' compensation scheme is fully funded.

(2) WorkCover must seek the advice of an appropriately qualified actuary in preparing the report.

## **PART 9—OTHER PROVISIONS ABOUT WORKCOVER**

### **419 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.

### **420 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) the chief executive officer; or
- (c) a person authorised to sign the document by—
  - (i) resolution of the board; or
  - (ii) direction of the chief executive officer.

### **421 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 the chief executive officer; and
- (b) the fact that the person holds or has held the relevant office.

**422 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.

**423 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 359.<sup>199</sup>

“excluded activities” means—

- (a) commercial activities other than activities about policies, applications for compensation, proceedings for damages; or
- (b) community service obligations prescribed under a regulation.

**CHAPTER 6A—WORKCOVER REVIEW COUNCIL****PART 1—ESTABLISHMENT AND FUNCTIONS****423A WorkCover Review Council is established**

The WorkCover Review Council is established.

**423B Functions of council**

The council’s functions are—

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<sup>199</sup> Section 359 (Meaning of “community service obligations”)

- (a) to monitor the performance and outcomes of the review process under chapter 9 and of the medical assessment tribunals; and
- (b) to make recommendations to WorkCover's board on the performance and outcomes of the review process and of the medical assessment tribunals.

## **PART 2—MEMBERSHIP**

### **423C Membership**

The council consists of 5 members of whom—

- (a) 1 is to be the chairperson of WorkCover's board (or a director of the board nominated by the chairperson); and
- (b) 2 are to be representatives of employers appointed by the Governor in Council; and
- (c) 2 are to be representatives of workers appointed by the Governor in Council.

### **423D Chairperson**

The member of the council who is the chairperson of WorkCover's board (or the director of the board nominated by the chairperson) is the council's chairperson.

### **423E Term of appointment**

Each appointed member of the council holds office for a term of not more than 3 years.

### **423F Disqualification from office**

(1) A person can not become, or continue as, an appointed member of the council if the person—

- (a) is affected by bankruptcy action; or
- (b) is convicted of an offence against this Act; or

- (c) becomes incapable of discharging the duties of a member because of physical or mental incapacity.

(2) For subsection (1)(a), a person is affected by bankruptcy action if the person—

- (a) is bankrupt; or
- (b) has compounded with creditors; or
- (c) has otherwise taken, or applied to take, advantage of any law about bankruptcy.

### **423G Vacation of office**

An appointed member is taken to have vacated office if the member—

- (a) resigns the office by signed notice given to the Governor in Council; or
- (b) can not continue as an appointed member under section 423F.

### **423H Termination of appointment as member of council**

The Governor in Council may, at any time, end the appointment of an appointed member of the council for any reason or none.

### **423I Remuneration**

Appointed members of the council are to be paid by WorkCover the fees and allowances decided by the Governor in Council.

## **PART 3—COUNCIL BUSINESS**

### **423J Conduct of business**

Subject to this division, the council may conduct its business, including its meetings, in the way it considers appropriate.

**423K Time and place of meetings**

(1) Council meetings are to be held at the times and places the chairperson decides.

(2) However, the chairperson must call a meeting if asked, in writing, to do so by the Minister or at least the number of members forming a quorum for the council.

**423L Quorum**

(1) The quorum at a meeting of the council is 3.

(2) However, the quorum must include at least—

- (a) the chairperson; and
- (b) 1 representative of employers; and
- (c) 1 representative of workers.

**423M Presiding at meetings**

The chairperson is to preside at all meetings of the council.

**423N Voting at meetings**

(1) A question at a council meeting is decided by a majority of the votes of the members present.

(2) Each member present at the meeting has a vote on each question to be decided and, if the votes are equal, the member presiding also has a casting vote.

(3) A member present at the meeting who abstains from voting is taken to have voted for the negative.

**423O Council meetings without members being present**

(1) The council may hold meetings, or allow members to take part in its meetings, by using any technology allowing reasonably contemporaneous and continuous communication between members taking part in the meeting.

(2) A member who takes part in a council meeting under subsection (1) is taken to be present at the meeting.

**423P Resolution without meeting**

A resolution is validly made by the council, even if it is not passed at a council meeting, if—

- (a) a majority of the council members gives written agreement to the resolution; and
- (b) notice of the resolution is given under procedures approved by the council.

**423Q Minutes**

The council must keep minutes of its proceedings.

**PART 4—OTHER PROVISIONS ABOUT THE COUNCIL****423R Administrative support for council**

WorkCover must ensure the council has the administrative support services reasonably required for the council to carry out its functions effectively and efficiently.

**423S Giving information to council**

(1) This section applies if—

- (a) the council asks WorkCover for information the council reasonably believes it needs to perform its functions; and
- (b) the information is available to WorkCover; and
- (c) WorkCover may give the information to the council without contravening a provision of another Act.

(2) WorkCover must give the information to the council as soon as practicable.

**423T Quarterly report**

(1) The council must give WorkCover's board a written report about the performance of its functions for each quarter of a financial year.

(2) A quarterly report must be given to the board within 1 month after the end of the quarter.

## **CHAPTER 7—MEDICAL ASSESSMENT TRIBUNALS**

### **PART 1—OBJECT**

#### **424 Object of ch 7**

The object of this chapter is to provide for an independent system of medical review and assessment of injury and impairment sustained by workers.

### **PART 2—COMPOSITION AND PROCEEDINGS OF TRIBUNALS**

#### **425 Assessment tribunals to be maintained**

There are to be maintained for this Act a General Medical Assessment Tribunal and the following specialty medical assessment tribunals—

- (a) Cardiac Assessment Tribunal;
- (b) Orthopaedic Assessment Tribunal;
- (c) Dermatology Assessment Tribunal;
- (d) Ear, Nose and Throat Assessment Tribunal;
- (e) Neurology/Neurosurgical Assessment Tribunal;
- (f) Ophthalmology Assessment Tribunal;
- (g) Disfigurement Assessment Tribunal.

**426 General Medical Assessment Tribunal**

(1) The General Medical Assessment Tribunal consists of a chairperson and 2 other members appointed as prescribed.

(2) The Governor in Council, by gazette notice, may appoint, for a specified period of not more than 3 years, a panel of doctors who may be designated to the General Medical Assessment Tribunal.

(3) Every appointee must be a specialist in the speciality for which the appointment is made.

(4) The panel must consist of—

- (a) at least 3 physicians; and
- (b) at least 1 of each of the following specialists—
  - (i) vascular surgeon;
  - (ii) general surgeon;
  - (iii) urologist;
  - (iv) psychiatrist;
  - (v) gynaecologist;
  - (vi) thoracic physician;
  - (vii) rheumatologist.

**429 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) Until the contrary is proved, it is to be presumed that a deputy chairperson has acted with due authority on each occasion of the deputy chairperson's acting as chairperson of the tribunal.

(4) A deputy chairperson may act as a member of the General Medical Assessment Tribunal other than under subsection (2) only if the chairperson has designated the member for the purpose.

#### **430 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.

#### **431 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.

#### **432 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) It is to be presumed that a deputy chairperson has acted with proper authority each time the deputy chairperson has acted as chairperson of the tribunal, unless the contrary is proved.

### **433 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.

### **434 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 either WorkCover or a self-insurer.

(4) In this section—

“tribunal” means—

- (a) the General Medical Assessment Tribunal; or
- (b) a specialty medical assessment tribunal.

### **435 Proceedings of medical assessment tribunals**

(1) This section applies to the General Medical Assessment Tribunal and each specialty medical assessment tribunal.

(2) For each tribunal—

- (a) WorkCover may appoint a secretary; and
- (b) meetings are to be held at the place and time decided by the tribunal or, if there is no decision, as the secretary to the tribunal directs; and
- (c) if there is disagreement among the members of the tribunal, a decision of the tribunal is that of the majority of its members.

## **PART 3—JURISDICTION OF TRIBUNALS**

### **436 Definition for pt 3**

In this part—

“tribunal” means the General Medical Assessment Tribunal and each of the specialty medical assessment tribunals mentioned in section 425.<sup>200</sup>

### **437 Reference to tribunals**

WorkCover may refer the following matters to the appropriate tribunal for decision on the medical matters involved—

- (a) a worker’s application for compensation for an alleged injury;

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200 Section 425 (Assessment tribunals to be maintained)

- (b) a worker's capacity for work;
- (c) a worker's injury under section 261(3)(b), 273A(1)(a)(ii) or 273E(1)(b)(iii) or (iv);<sup>201</sup>
- (d) a worker's impairment under section 182;<sup>202</sup>
- (e) a worker's permanent impairment under section 197;<sup>203</sup>
- (f) a worker's level of dependency under section 211;<sup>204</sup>
- (g) a worker's permanent impairment reviewable under section 274;<sup>205</sup>
- (h) a worker's disfigurement as a result of injury.

### **438 Reference about application for compensation**

(1) This section applies on a reference to a tribunal under section 437(a).

(2) If WorkCover has not admitted that an injury was sustained by a worker, and the nature of the injury, the tribunal must decide—

- (a) whether the matters alleged in the application for compensation constitute an injury to the worker and, if so, the nature of the injury; and
- (b) whether an incapacity for work resulting from the injury—
  - (i) is total or partial; and
  - (ii) is permanent or temporary; and
- (c) if the tribunal decides that the worker has sustained an injury under the table of injuries resulting in permanent impairment and WorkCover asks—the nature and degree of the impairment.

(3) For section 157,<sup>206</sup> the tribunal must decide—

201 Section 261 (Claimant with more than 1 injury from an event), 273A (Access to damages if claimant has not lodged application for compensation) or 273E (Claimant may seek damages only in particular cases)

202 Section 182 (Total incapacity—reference about impairment to medical assessment tribunal)

203 Section 197 (Assessment of permanent impairment)

204 Section 211 (Additional lump sum compensation for gratuitous care)

205 Section 274 (Decision not to seek damages reviewable in certain circumstances)

206 Section 157 (Injuries caused by misconduct)

- (a) the degree of permanent impairment that could result from the injury; and
- (b) the nature and degree of the impairment.

(4) For section 158(4),<sup>207</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 WorkCover asks—the nature and degree of the impairment.

(6) The tribunal must assess the nature and degree of permanent impairment in the way prescribed under a regulation.

### **439 Reference about worker's capacity for work**

(1) This section applies on a reference to a tribunal under section 437(b).<sup>208</sup>

(2) A reference under section 437(b) may be made at any time and from time to time.

(3) The tribunal must decide—

- (a) whether, when it makes its decision, there exists in the worker an incapacity for work resulting from the injury for which the application for compensation was made; and
- (b) whether the incapacity is—
  - (i) total or partial; and
  - (ii) permanent or temporary; and

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207 Section 158 (Time for applying)

208 Section 437 (Reference to tribunals)

- (c) if the worker has sustained an injury under the table of injuries resulting in permanent impairment and WorkCover asks—the nature and degree of the impairment.

(4) A tribunal must assess the nature and degree of permanent impairment in the way prescribed under a regulation.

#### **440 Reference about worker's injury**

(1) This section applies on a reference to a tribunal under section 437(c).<sup>209</sup>

(2) If WorkCover has not admitted that an injury was sustained by a worker, and the nature of the injury, the tribunal must decide whether the matters alleged for the purpose of seeking damages constitute an injury to the worker and, if so, the nature of the injury.

(3) Also, if the reference relates to a worker's injury under section 273E(1)(b)(iii) or (iv), the tribunal must decide whether—

- (a) the deceased worker sustained an injury in the event; and
- (b) the injury caused the worker's death.

#### **441 Reference about worker's impairment**

(1) This section applies on a reference to a tribunal under section 437(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.

#### **442 Reference about worker's permanent impairment**

(1) This section applies on a reference to a tribunal under section 437(e).

(2) The tribunal must decide—

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<sup>209</sup> Section 437 (Reference to tribunals)

- (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.

#### **443 Reference about worker's level of dependency**

(1) On a reference to a tribunal under section 437(f),<sup>210</sup> the tribunal must decide the worker's level of dependency.

(2) The tribunal must decide the worker's level of dependency in the way prescribed under a regulation.

#### **445 Reference about review of worker's permanent impairment**

(1) This section applies on a reference to a tribunal under section 437(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.

#### **445A Assessment of additional compensation for prescribed disfigurement**

(1) This section applies on a reference to the Disfigurement Assessment Tribunal under section 437(h).

(2) The tribunal must assess, by personal examination of the worker—

- (a) whether the disfigurement is prescribed disfigurement; and

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210 Section 437 (Reference to tribunals)

- (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 the permanent impairment in the way prescribed under a regulation.

#### **446 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.

#### **447 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 7 days written notice by the secretary to the tribunal; or
- (b) having attended, refuses to be examined by the tribunal, a member of the tribunal, or the doctor; or
- (c) obstructs, or attempts to obstruct, the examination.

(3) Any entitlement the worker may have to compensation is suspended until—

- (a) the worker undergoes the examination; or
- (b) the tribunal, with the agreement of the secretary to the tribunal, exempts the worker from the examination.

## **PART 5—PROCEEDINGS FOR EXERCISE OF TRIBUNALS' JURISDICTION**

### **452 Definition for pt 5**

In this part—

**“tribunal”** means—

- (a) the General Medical Assessment Tribunal mentioned in section 425;<sup>211</sup> and
- (b) each of the specialty medical assessment tribunals mentioned in section 425.

### **453 Right to be heard before tribunals**

On a reference to a tribunal, the worker may be heard before the tribunal in person, or by counsel, solicitor or agent.

### **454 Further reference on fresh evidence**

(1) This section applies to any reference to a tribunal under any paragraph of section 437 relating to a worker's injury if the reference is not about a matter mentioned in section 274.<sup>212</sup>

(2) The worker may ask WorkCover to consider fresh medical evidence about the worker's injury within 12 months of the making of the original decision.

(3) WorkCover must refer the medical evidence to a review panel to decide if the medical evidence—

- (a) is relevant to the application so decided; and
- (b) is factual medical data not known about the worker at the time of the tribunal's decision.

(4) The review panel must consider the medical evidence produced by the worker and may accept or reject the evidence.

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211 Section 425 (Assessment tribunals to be maintained)

212 Section 274 (Decision not to seek damages reviewable in certain circumstances)

(5) A decision of the review panel is final and may not be appealed against.

(6) If the review panel accepts the medical evidence, WorkCover must refer the application to the appropriate tribunal for further decision.

(7) If practicable, the application under this section must be further decided by the original tribunal.

(8) If, as a result of the review, the worker is entitled to further lump sum compensation for an injury resulting in a WRI of the worker of less than 20%, the worker's entitlement does not extend to a further election under section 207<sup>213</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.

#### **455 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.

#### **455A Tribunal may refer non-medical matters back to WorkCover**

(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 WorkCover for a decision.

(2) To remove doubt, it is declared that if the tribunal decides a medical matter mentioned in subsection (1)(a), section 456 applies to that decision.

(3) Section 455 applies to a reference back to WorkCover under subsection (1).

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213 Section 207 (Worker's decision about lump sum compensation—WRI less than 20% or no WRI)

**456 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 454—

- (a) a decision on a medical matter referred to the tribunal under section 437;
- (b) a decision under section 455A(1).

(2) Subsection (1) has no effect on the *Judicial Review Act 1991*.

**457 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 WorkCover and to—

- (a) the worker; or
- (b) the worker's representative or agent.

**CHAPTER 8—ENFORCEMENT****PART 1—AUTHORISED PERSONS***Division 1—General***458 Function of authorised person**

An authorised person has the function of conducting investigations and inspections to monitor compliance with this Act.

**459 Authorised person subject to WorkCover's directions**

An authorised person is subject to WorkCover's directions in exercising powers of an authorised person.

#### **460 Powers of authorised persons**

An authorised person has the powers given to the person under this Act or another Act.

#### **461 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***

#### **462 Appointment of authorised persons**

(1) WorkCover may appoint a WorkCover employee as an authorised person.

(2) WorkCover may appoint an employee as an authorised person only if WorkCover considers the employee has the necessary expertise or experience to be an authorised person.

#### **463 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.

**464 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 the chief executive officer.

(3) A person who ceases to be an authorised person must return the person's identity card to WorkCover within 7 days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

**465 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.

**466 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.

***Division 3—Powers of authorised persons*****467 Entry to workplaces**

An authorised person may, at any reasonable time, enter a workplace to monitor or enforce compliance with this Act.

**468 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 avoid doubt, it is declared that under subsection (2), an authorised person may require the information to be given, or the documents to be produced immediately, at the place the requirement is made, if the requirement is reasonable in the circumstances.

(4) When making the requirement, the authorised person must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.

(5) The person must comply with the requirement, unless the person has a reasonable excuse for not complying with it.

Maximum penalty—50 penalty units.

(6) It is a reasonable excuse for a person to fail to give the information or produce the documents that the person would be entitled to refuse to give the information or produce the document in a court proceeding on the ground that giving the information or producing the documents would tend to incriminate the person.

(7) The person does not commit an offence against this section if the information or documents sought by the authorised person are not in fact relevant to a matter mentioned in subsection (1).

#### **469 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.

#### **471 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.

#### **472 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.

### **472A 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.

### **473 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.

### **474 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.

**475 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.

**476 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 4—Other enforcement matters*****477 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.

### **478 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 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.

### **479 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 WorkCover's reasonable costs of any investigation about the offence, including reasonable costs of preparing for the prosecution.

(3) This section does not limit the orders for costs the court may make on the conviction.

## ***Division 5—Obstructing or impersonating authorised persons***

### **480 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.

#### **481 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**

#### **482 Offences involving fraud**

(1) A person must not in any way defraud or attempt to defraud WorkCover or a self-insurer.

Maximum penalty—400 penalty units or 18 months imprisonment.

(2) If conduct that constitutes an offence defined in subsection (1) is recurrent so that, but for this subsection, each instance of the conduct would constitute a separate offence, 2 or more instances of the conduct are to be taken to constitute but 1 offence committed over a period specified in the complaint laid in relation to the conduct, and may be charged and be dealt with on 1 complaint.

#### **483 False or misleading information or documents**

(1) This section applies to a statement made or document given—

- (a) to WorkCover for the purpose of its functions under this Act; or
- (b) to an entity or person as a self-insurer; or
- (c) to a registered person for the purpose of an application for compensation or a claim for damages.

(2) A person must not state anything to WorkCover, a self-insurer or a registered person the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units or 1 year’s imprisonment.

(3) A person must not give WorkCover, a self-insurer, a self-rater or a registered person a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units or 1 year’s imprisonment.

(4) Subsection (3) does not apply to a person who, when giving the document—

- (a) informs WorkCover, the self-insurer or the registered person, to the best of the person’s ability, how it is false or misleading; and
- (b) gives the correct information to WorkCover, the self-insurer 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.

#### **484 Particular acts taken to be fraud**

(1) This section applies if a person—

- (a) lodges an application for compensation; and
- (b) engages in a calling; and
- (c) without reasonable excuse, does not inform WorkCover or the self-insurer, in the way stated under section 163,<sup>214</sup> of the person’s engagement in the calling.

(2) If compensation is paid by WorkCover or the self-insurer under the application to the person or anyone else—

- (a) after the start of the engagement in the calling; and
- (b) before WorkCover or the self-insurer is informed in the way stated under section 163 of the engagement in the calling;

the person is taken to have defrauded WorkCover or the self-insurer of the payments under section 482.<sup>215</sup>

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214 Section 163 (Worker must notify return to work or engagement in a calling)

215 Section 482 (Offences involving fraud)

(3) If payments to which subsection (2) applies are not made, the person is taken to have attempted to defraud WorkCover or the self-insurer under section 482.

#### **485 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
- (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 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.

#### **486 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 WorkCover or a self-insurer in relation to an application for compensation or a claim for damages—

- (a) an offence under section 482;<sup>216</sup>
- (b) an offence or an attempt to commit an offence under the Criminal Code, section 123, 408C, 430, 488 or 494.<sup>217</sup>

(2) Any entitlement the person may have to compensation or damages for the injury, and any existing claim for compensation or damages, ends.

(3) If, in the proceeding for the offence, the prosecution proves the person obtained payment of compensation or damages by WorkCover or a self-insurer, by conduct that is the offence, then, whether or not a penalty is imposed, the court must on application by WorkCover or the self-insurer, order the person to repay WorkCover or the self-insurer all amounts of compensation or damages paid to or on account of the person as a result of the commission of the offence.

(4) An order made by a court under subsection (3) may be enforced as if it were an order made by a court in civil proceedings for a debt.

(5) Any costs incurred by WorkCover or the self-insurer in relation to a proceeding for damages to which subsection (3) applies are to be recovered on a solicitor and own client basis from the person convicted under section 482.

(6) Subsection (2) does not apply to a person only because the person is taken under section 484<sup>218</sup> to have—

- (a) attempted to defraud WorkCover or a self-insurer; or
- (b) defrauded WorkCover or a self-insurer of an amount not more than the equivalent of 1 week of the person's normal weekly earnings.

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216 Section 482 (Offences involving fraud)

217 Criminal Code, section 123 (Perjury), 408C (Fraud), 430 (Conspiracy to defraud), 488 (Forgery and uttering) or 494 (Making documents without authority)

218 Section 484 (Particular acts taken to be fraud)

## **CHAPTER 9—REVIEWS AND APPEALS**

### **PART 1—INTERNAL REVIEW OF PROPOSED DECISIONS**

#### **487 Internal review by WorkCover or self-insurer**

(1) Before WorkCover or a self-insurer makes a decision to reject an application for compensation or to terminate compensation, WorkCover or the self-insurer must undertake an internal review of the proposed decision.

(2) The review must be made by an officer or person who is in a more senior position than the officer or person who proposes to make the decision.

### **PART 2—REVIEW OF DECISIONS**

#### **488 Objects of pt 2**

The objects of this part are—

- (a) to provide for a review process separate from WorkCover's commercial insurance business; and
- (b) to provide a non-adversarial system for prompt resolution of disputes.

#### **489 Application of pt 2**

(1) This part applies to the following—

- (a) a decision by WorkCover—
  - (i) to set the premium payable under a policy under section 58;<sup>219</sup> or

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219 Section 58 (Setting of premium)

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- (ii) to issue a reassessment premium notice under section 60;<sup>220</sup> or
  - (iii) to refuse to waive or reduce a penalty under section 61, 70 or 246;<sup>221</sup> or
  - (iv) to refuse to reassess a default assessment under section 62;<sup>222</sup> or
  - (v) to refuse to waive or reduce additional premium under section 68;<sup>223</sup> or
  - (vi) under section 111<sup>224</sup> about the amount of the levy payable; or
  - (vii) to waive or not to waive section 158(1) or (2);<sup>225</sup> or
  - (viii) to allow or reject an application for compensation under chapter 3; or
  - (ix) to terminate, suspend, increase or decrease a weekly payment of compensation under chapter 3 or 4;<sup>226</sup> or
  - (x) to refuse to vary an entitlement under section 189, 190 or 191;<sup>227</sup> or
  - (xi) to apportion compensation under chapter 3, part 10;<sup>228</sup> or
  - (xii) to allow or refuse an entitlement under section 230, 234 or 237;<sup>229</sup> or

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220 Section 60 (Reassessment of premium for policy)

221 Section 61 (Recovery of compensation and unpaid premium), 70 (Employer's liability for excess period) or 246 (Employer's failure in relation to rehabilitation)

222 Section 62 (Default assessment on reasonable suspicion)

223 Section 68 (WorkCover may waive or reduce additional premium)

224 Section 111 (Annual levy payable)

225 Section 158 (Time for applying)

226 Chapter 3 (Compensation) or 4 (Injury management)

227 Section 189 (Redemption—worker receiving weekly payments for at least 2 years), 190 (Redemption—worker moves interstate) or 191 (Redemption—worker moves abroad)

228 Chapter 3 (Compensation), part 10 (Compensation on worker's death)

229 Section 230 (Extent of liability for prosthetic expenses), 234 (Extent of liability for period of hospitalisation) or 237 (Extent of liability for travelling expenses)

- (xiii) under section 261(3)(a) or (b), 273A(1)(a)(i) or (ii), or 273E(1)(b)(i), (ii), (iii) or (iv);
- (b) a decision by a self-insurer—
- (i) to waive or not to waive section 158(1) or (2); or
  - (ii) to reject an application for compensation under chapter 3; or
  - (iii) to terminate, suspend, increase or decrease a weekly payment of compensation under chapter 3 or 4; or
  - (iv) to refuse to vary an entitlement under section 189, 190 or 191; or
  - (v) to apportion compensation under chapter 3, part 10; or
  - (vi) to allow or refuse an entitlement under section 230, 234 or 237; or
  - (vii) under section 261(3)(a) or (b), 273A(1)(a)(i) or (ii), or 273E(1)(b)(i), (ii), (iii) or (iv); or
- (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 161; or
  - (ii) for the purpose of section 261(3)(a) or (b) within the time stated in section 261(4); or
  - (iii) for the purpose of section 273A(1)(a)(i) or (ii) within the time stated in section 273A(5); or
  - (iv) for the purpose of section 273E(1)(b)(i), (ii), (iii) or (iv) within the time stated in section 273E(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)(i) or (ii).

(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 review unit.

**490 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.

**491 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 WorkCover’s board to allow further time to apply for review.

(3) WorkCover’s board 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 28 days after receiving the notice; and
- (b) the decision-maker must give written reasons within 7 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 review unit; 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 review unit must, within 14 days after receiving the application, give the applicant and the decision-maker written notice that the application has been received.

#### **492 Right of appearance**

(1) The applicant may appear before the review unit 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 review unit by telephone or another form of communication.

#### **493 Decision-maker must give information to review unit**

(1) The review unit may, by written notice, require the decision-maker to give the unit—

- (a) within 7 days after receiving the notice, the information asked for by the review unit; or
- (b) within the period stated in the notice, any further information the review unit 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.

#### **494 Review of decision or failure to make a decision**

(1) The review unit must, within 35 days after receiving the application, review the decision and decide (the “**review decision**”) to—

- (a) confirm the decision; or
- (b) vary the decision; or
- (c) set aside the decision and substitute another decision.

(2) If an application is about the failure to make a decision, the review unit 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 review unit considers appropriate.

(3) The decision-maker to whom the directions are given must comply with the directions.

(4) The review unit may, with the applicant's consent, extend the time in subsection (1) to obtain information under section 493.

(5) If the review unit 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.

#### **495 Notice of review decision**

(1) Within 14 days after making a review decision, the review unit 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 489(1)(a)(viii) to (xiii) or (1)(b) or (1)(c), the review unit 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.

(4) If the review unit does not make a review decision within the time allowed under section 494(1) or (4), the applicant may appeal to an industrial magistrate against the review unit's failure to make the decision.

#### **496 Reimbursement of costs of examination and report**

(1) This section applies if the review unit sets aside or varies a decision by the decision-maker to reject an application for compensation by a worker or claimant under chapter 3.

(2) The decision-maker must reimburse the worker or claimant for the cost of an examination by, and report from, a registered person obtained by the worker or claimant if the review unit considers the examination and report substantially contributed to the setting aside or variation of the decision.

## PART 3—APPEALS

### *Division 1—Appeal to industrial magistrate or Industrial Court*

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

This division applies to the following decisions—

- (a) a review decision;
- (b) a decision by WorkCover or a self-insurer under chapter 3 or 4<sup>230</sup> that is not a decision mentioned in section 489(1)<sup>231</sup> (a **“non-reviewable decision”**).

#### **498 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 review unit, WorkCover or the self-insurer (the **“respondent”**).

(2) If the appellant is an employer, the claimant or worker may, if they wish, be a party to the appeal.

#### **499 Procedure for appeal**

(1) The appeal must be made—

- (a) if the appeal is about a review decision—within 28 days after the appellant receives the review decision; or
- (b) if the appeal is about a non-reviewable decision—within 28 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 28 days after receiving the notice.

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230 Chapter 3 (Compensation) or 4 (Injury management)

231 Section 489 (Application of pt 2)

(3) For subsections (1) and (2), the appellant may, within the 28 day 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 14 days after filing the notice of appeal, serve a copy of the notice on—

- (a) if the appeal is about a review decision—the review unit; or
- (b) if the appeal is about a non-reviewable decision—WorkCover or the self-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.

### **500 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.

**501 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 28 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.

**501A 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.

**502 Exchanging evidence before hearing**

(1) At least 7 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.

**503 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.

**504 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.

### **505 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.

### **506 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 WorkCover or the self-insurer.

(3) Costs of the hearing are in the magistrate's discretion, except to the extent provided under a regulation.

**507 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.

**508 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 of competent jurisdiction.

(3) On being filed, the order—

- (a) is taken to be an order properly made by the court; and
- (b) may be enforced as an order made by the court.

**509 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.

**510 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 WorkCover or the self-insurer.

**510A 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.

**510B 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 an equal 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.

**511 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.

**512 Decision about payment of compensation**

(1) This section applies if an industrial magistrate or the Industrial Court decides that WorkCover or a self-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 WorkCover or the self-insurer.

(3) Subsection (2) is subject to section 486.<sup>232</sup>

### *Division 2—Appeal to court of competent jurisdiction*

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

This division applies to the following decisions made by WorkCover—

- (a) a decision under section 107<sup>233</sup> relating to the issue of a self-insurer's licence;
- (b) a decision under section 110<sup>234</sup> relating to the renewal of a self-insurer's licence;
- (c) a decision under section 116(2)<sup>235</sup> relating to the procedures followed in calculating a self-insurer's outstanding liability;
- (d) a decision under section 123<sup>236</sup> relating to the cancellation of a self-insurer's licence;
- (e) a decision under section 130<sup>237</sup> to refuse to return all or part of a former self-insurer's bank guarantee or cash deposit.

#### **514 Who may appeal**

An employer or self-insurer aggrieved by the decision may appeal against the decision.

#### **515 Starting appeals**

(1) The appeal may be made to a court with jurisdiction in Brisbane.

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232 Section 486 (Fraud and related offences end entitlement to compensation and damages)

233 Section 107 (Decision on application for the issue of a licence)

234 Section 110 (Refusal of application for renewal of a licence)

235 Section 116 (Self-insurer replaces WorkCover in liability for injury)

236 Section 123 (Procedure for cancellation)

237 Section 130 (Return of bank guarantee or cash deposit after cancellation)

(2) The court that has jurisdiction must be decided according to the amount of—

- (a) for an appeal against a decision mentioned in section 513(a), (b), (c) or (d)—the employer or self-insurer’s deemed premium; or
- (b) for an appeal against a decision mentioned in section 513(e)—the bank guarantee or cash deposit in dispute.

(3) A court has jurisdiction if the court has jurisdiction for recovery of a debt of the amount.

(4) An appeal may only be made within 28 days after notice of the decision is given to the employer or self-insurer.

(5) The appeal may only be started by—

- (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 WorkCover.

### **516 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 WorkCover with the directions the court considers appropriate.

### **517 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 WorkCover’s decision.

## CHAPTER 10—MISCELLANEOUS

### PART 1—INFORMATION

#### 519 Worker or claimant entitled to obtain certain documents

(1) A person who is a worker or claimant for any provision of this Act may, by written notice, ask WorkCover or a self-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 worker or claimant a copy of the documents requested within 28 days after the worker or claimant gives the notice, unless the document holder has a reasonable excuse for not doing so.

(3) Without limiting subsection (2), it is a reasonable excuse for the document holder not to give the document or part of the document if—

- (a) the document or part is protected by legal professional privilege; or
- (b) the document or part would alert the claimant or worker to the document holder’s reasonable suspicion of fraud in relation to the application for compensation or claim for damages; or
- (c) the document holder believes the matter contained in the document would meet the requirements of the *Freedom of Information Act 1992*, part 3, division 2.<sup>238</sup>

#### 520 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 director, an inspector or another officer concerned in the administration of the *Workplace Health and Safety Act 1995*;

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

may disclose to WorkCover any information the person has relating to any matter under this Act or touching the administration of this Act.

(2) WorkCover may disclose to the commissioner of pay-roll tax, any information it has about anything under the *Pay-roll Tax Act 1971* or touching the administration of that Act.

(3) WorkCover may disclose, to the part of the department responsible for workplace health and safety, statistical or other information that would help in the performance of its administrative functions.

(4) 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) Subsections (1) to (4) apply despite a provision of this or another Act.

(6) If a person has information because the person is, or was, a WorkCover director or employee, the person must not disclose the information, unless the disclosure—

- (a) is for WorkCover or this Act; or
- (b) is required or authorised by this or another Act; or
- (c) is authorised by the chief executive officer, generally or in a particular case.

(7) In this section—

“**insurer**” means WorkCover or a self-insurer.

## **521 Information from Commissioner of Police Service**

(1) The Commissioner of the Police Service may, on the chief executive officer’s written request, give to WorkCover information in the possession of the Queensland Police Service that is mentioned in subsection (2) about a person WorkCover reasonably suspects to have committed an offence against this Act.

(2) The information that may be given is—

- (a) the person’s criminal history; and
- (b) any brief of evidence compiled by the Queensland Police Service on anything mentioned in the person’s criminal history; and
- (c) any document about any complaint made against the person.

(3) For this section, *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply.

(4) Information given to WorkCover by the Commissioner of the Police Service under this section must not be used for any purpose other than an investigation or prosecution under this Act.

## **522 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.

## **523 WorkCover’s 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 WorkCover or a self-insurer, or traceable to that possession.

(2) Action can not be brought against WorkCover or a self-insurer, or a person acting for either of them, by a person claiming to be aggrieved about the disclosure about a claimant’s—

- (a) physical or mental condition; or
- (b) capacity or incapacity for work; or
- (c) credibility.

(4) Subsections (1) and (2) apply to information in the possession of a self-insurer only to the extent the information came into the self-insurer’s possession under its powers and functions under section 119<sup>239</sup> or because of a disclosure by WorkCover or a self-insurer under section 520(4).

(5) In this section—

“**claimant**” means a person for whose injury, or purported injury, compensation or damages is sought, is being paid or has been paid.

“**information**” includes opinion and comment.

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239 Section 119 (Powers of self-insurers)

## PART 1A—AUDITS

### 523A Audit of wages and contracts

(1) WorkCover may engage the services of a person (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.

(2) For conducting the audit, an authorised auditor is entitled, at all reasonable times, to full and free access to the documents prescribed under a regulation for section 469(1) that—

- (a) are relevant to the audit; and
- (b) belong to, are in the custody of, or are under the control of, the employer.

## PART 2—PROCEEDINGS

### 524 Proceedings for offences against ch 6

(1) A proceeding for a prescribed offence may, at the election of the prosecution, be taken—

- (a) by way of summary proceedings under the *Justices Act 1886*; or
- (b) on indictment.

(2) A proceeding must be before a magistrate if it is a proceeding—

- (a) with a view to the summary conviction of a person on a charge of a prescribed offence; or
- (b) for an examination of witnesses in relation to a charge for a prescribed offence.

(3) However, if a proceeding for a prescribed offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a

procedural action or order under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(4) A proceeding for an offence by way of a summary proceeding under the *Justices Act 1886* must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the commission of the offence comes to the complainant's knowledge;

whichever is the later.

(5) If—

- (a) a person charged with a prescribed offence, in relation to which a proceeding is taken by way of a summary proceeding, asks, at the start of the proceeding, that the charge be prosecuted on indictment; or
- (b) the magistrate hearing and deciding a charge of a prescribed offence is of the opinion that the charge ought to be prosecuted on indictment;

the magistrate—

- (c) must not hear and decide the charge as a summary offence; but
- (d) must proceed by way of an examination of witnesses in relation to an indictable offence.

(6) If a magistrate acts under subsection (5)—

- (a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and
- (b) any evidence brought in the proceeding before the magistrate decided to act under subsection (7) is taken to be evidence in the proceeding with a view to the committal of the person for trial or sentence; and
- (c) before committing the person for trial or sentence, the magistrate must make a statement to the person under the *Justices Act 1886*, section 104(2)(b).<sup>240</sup>

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240 *Justices Act 1886*, section 104 (Proceedings upon an examination of witnesses in relation to an indictable offence)

(7) The maximum penalty that may be imposed on a summary conviction of a prescribed offence is 100 penalty units or 1 year's imprisonment.

(8) In this section—

**“prescribed offence”** means an offence against this Act for which the maximum penalty of imprisonment is 2 years imprisonment or more.

### **525 Summary proceedings for offences other than against ch 6**

(1) This section applies to a proceeding for an offence against this Act other than chapter 6.<sup>241</sup>

(2) Proceedings for the offence are to be taken in a summary way under the *Justices Act 1886* before an industrial magistrate on the complaint of—

- (a) the chief executive officer; or
- (b) a person authorised for the purpose by the chief executive officer; or
- (c) the Attorney-General.

(3) The proceeding must start—

- (a) within 1 year after the commission of the offence; or
- (b) within 6 months after the commission of the offence comes to the knowledge of the chief executive officer;

whichever is the later.

(4) All penalties recovered under the proceeding are to be paid to WorkCover.

### **526 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;

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241 Chapter 6 (WorkCover Queensland)

is a debt owed to WorkCover by the person liable to pay the premium, additional premium or charge, or from whom the amount is recoverable.

(2) WorkCover may recover a debt owed to it—

- (a) on the complaint of the chief executive officer under the *Justices Act 1886*, before an industrial magistrate; or
- (b) by action for debt.

(3) If, for a contravention of this Act, there exists—

- (a) a right to recover an amount as a debt; and
- (b) a right to proceed for a penalty as for an offence;

the amount may be recovered as a debt even though the proceeding for the penalty has not been taken.

(4) Payment of a penalty does not relieve a person from liability to be assessed and to pay a premium or from liability to pay another amount under this Act.

### **527 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 119<sup>242</sup>—

- (a) on the complaint of the self-insurer under the *Justices Act 1886*, before an industrial magistrate; or
- (b) by action for debt.

### **528 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.

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242 Section 119 (Powers of self-insurers)

(3) A regulation under subsection (2) prevails over any inconsistent rule of court or regulation mentioned in subsection (1).

## **529 Evidence**

(1) The chief executive officer may issue certificates for subsection (2).

(2) A certificate stating the following matters is evidence of the matters in any proceeding about anything arising under this Act—

- (a) that—
  - (i) notice of acceptance of a risk, or of assessment or reassessment of a premium, was duly sent on a specified date to a specified person; and
  - (ii) a specified amount of premium was demanded by the notice;
- (b) that—
  - (i) a default assessment, or a decision on an objection made to a default assessment, was duly made; and
  - (ii) notice of the assessment or decision was duly sent on a specified date to a specified person at an address that is the person's place of business, place of residence or postal address last known to WorkCover; and
  - (iii) a specified amount of premium was demanded by the notice of default assessment, or of decision on objection;
- (c) that commission of an offence against this Act came to the knowledge of the chief executive officer or delegate issuing the certificate on a specified date;
- (d) that an address to which any notice or other document was sent by post to any person is that person's place of business, place of residence or postal address last known to WorkCover or a self-insurer;
- (e) that a worker has a specified WRI;
- (f) that a worker has a specified WRI establishing the worker's access to damages;
- (g) that no objection has been received from a specified person against a default assessment within 21 days after notice of the assessment was given to the person;

- (h) that a specified amount is due and payable to WorkCover and unpaid by a specified person for a premium or a charge;
- (i) that a specified amount is due and payable to WorkCover or a self-insurer and unpaid by a specified person for an overpayment of compensation;
- (j) that a specified person who is stated in the certificate to be an employer has contravened section 52,<sup>243</sup> and how the person has contravened the section;
- (k) that a specified amount is due and payable to WorkCover and unpaid by a specified person who is stated in the certificate to be an employer who has contravened section 52 in relation to a specified person;
- (l) that a specified amount is due and payable on account of an amount paid by WorkCover or a self-insurer to, or on account of, a specified person;
- (m) that a specified amount was paid by WorkCover or a self-insurer to or on account of a specified person for a specified matter, date or purpose.

(3) A document purporting to be a certificate under this Act is admissible as the certificate it purports to be in any proceeding about anything arising under this Act.

(4) A statement in a complaint for an offence against this Act of any of the following is evidence of the matter stated—

- (a) that the person making the complaint is authorised to do so;
- (b) that the matter of the complaint came to the knowledge of the complainant or the chief executive officer on a specified day.

(5) Evidence that WorkCover or a self-insurer has received an application for compensation is evidence in any proceeding about anything arising under this Act that the application was lodged by the person named in the application as the applicant on the day it was received by WorkCover or the self-insurer.

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243 Section 52 (Employer's obligation to insure)

## PART 3—REGULATIONS

### 530 Regulation-making power

(1) The Governor in Council may make regulations under this Act.

(2) A regulation may make provision for anything specified in schedule 1.

## PART 4—OTHER PROVISIONS

### 531 Entitlements to compensation under industrial instrument prohibited and void

(1) The Industrial Relations Commission can not include in an industrial instrument made by it, or approve for an industrial instrument submitted to it, a provision for accident pay, or other payment, on account of a worker sustaining an injury.

(2) The registrar of the Industrial Relations Commission is not to register an industrial instrument submitted to the registrar that provides for payment of accident pay, or other payment, on account of a worker sustaining an injury.

(3) A provision of an industrial instrument is of no force or effect to the extent that it provides for payment of accident pay, or other payment on account of a worker sustaining an injury.

### 532 Approval of forms

The chief executive officer may approve forms for use under this Act.

### 533 Service of documents

For the *Acts Interpretation Act 1954*, section 39,<sup>244</sup> the address of a person's place of residence or business includes the person's postal address.

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244 *Acts Interpretation Act 1954*, section 39 (Service of documents)

## CHAPTER 11—TRANSITIONAL PROVISIONS FOR WORKCOVER QUEENSLAND ACT 1996

### PART 1—INTERPRETATION

#### 536 Definitions

In this chapter—

“**general manager**” means the general manager of the workers’ compensation board.

“**officer**” of the public service, includes a person employed under the Public Service Act other than as an officer.

“**repealed Act**” means the *Workers’ Compensation Act 1990*.

“**transferred person**” means a person transferred to WorkCover under this part.

“**workers’ compensation board**” means the Workers’ Compensation Board under the repealed Act.

#### 537 Other savings preserved

This chapter does not limit the *Acts Interpretation Act 1954*, section 20.<sup>245</sup>

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<sup>245</sup> *Acts Interpretation Act 1954*, section 20 (Saving of operation of repealed Act etc.)

## **PART 2—TRANSFER TO WORKCOVER**

### *Division 1—Staff*

#### **538 Transfer of staff to WorkCover**

(1) On the commencement of chapter 6,<sup>246</sup> persons who immediately before the commencement were officers of the public service in the Division of Workers' Compensation, Department of Training and Industrial Relations are transferred to WorkCover.

(2) On transfer every transferred person stops being a public service officer and becomes an employee of WorkCover.

(3) A transferred person may claim against WorkCover all entitlements accrued as a public service officer and not used.

(4) A transferred person's long service leave entitlements are to be calculated as if service as an officer of the public service and service with WorkCover were continuous service with WorkCover.

#### **539 Preserved employment conditions of transferred person**

(1) A transferred person is taken to be employed by WorkCover on the same conditions of employment, including salary, as applied to the person immediately before the transfer.

(2) The conditions are unaffected by any change to the conditions that would have happened if the person had not been transferred.

(3) Subsection (1) applies until the person's conditions are, under chapter 6, parts 6 and 7, decided—

- (a) under an employment contract between the person and WorkCover; or
- (b) under an industrial instrument; or
- (c) by WorkCover, subject to any applicable industrial instrument.

**540 Other preserved rights**

(1) This section applies to a transferred person for 3 years after the commencement of chapter 6.

(2) The person has the same appeal rights and entitlements as the person would have had if the person had continued as a public service officer—

- (a) to appeal against an appointment within the public service; or
- (b) to be transferred to a position within the public service; or
- (c) to be redeployed to a position within the public service.

**541 Public service officers' superannuation on becoming WorkCover employees**

(1) This section applies to a contributor or a member of a State superannuation scheme who is transferred to WorkCover under this part.

(2) If there is no superannuation scheme otherwise available under section 406<sup>247</sup> for WorkCover employees, the member may continue as a contributor or a member of the relevant State superannuation scheme.

(3) For subsection (2), the member is taken to be an officer, or taken to be eligible for membership, of the relevant State superannuation scheme under the Act under which the relevant State superannuation scheme was established.

(4) If—

- (a) a superannuation scheme is made available under section 406 for WorkCover employees after the member becomes a WorkCover employee; and
- (b) the employee has continued as a contributor or a member of the relevant State superannuation scheme;

the member may, under a regulation, stop being a contributor or a member of the relevant State superannuation scheme and become a member of the scheme made available for WorkCover employees.

(5) In this section—

**“State superannuation scheme”** means—

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247 Section 406 (Superannuation schemes)

- (a) the State Service Superannuation Fund under the *State Service Superannuation Act 1972*; or
- (b) the State Public Sector Superannuation Scheme under the *Superannuation (State Public Sector) Act 1990*; or
- (c) the Government Officers Superannuation Scheme under the *Superannuation (Government and Other Employees) Act 1988*.

### *Division 2—Legal succession*

#### **542 WorkCover is the legal successor**

(1) WorkCover is the successor in law to the body corporate constituted by the workers' compensation board.

(2) The other provisions of this chapter do not limit this section.

#### **543 First corporate plan and statement of corporate intent**

(1) The requirement for WorkCover to prepare, and submit to the Minister for the Minister's agreement, a draft corporate plan and a draft statement of corporate intent, for the first time after the day WorkCover is established may be complied with within 6 months of the day.

(2) If a draft corporate plan or a draft statement of corporate intent has not been agreed to by the Minister within 6 months from the day WorkCover is established, the Minister may, by written notice, direct the board—

- (a) to take specified steps in relation to the draft plan; or
- (b) to make specified changes to the draft plan.

(3) The board must immediately comply with the direction.

#### **544 Assets and liabilities etc.**

On the commencement of chapter 6—

- (a) the assets and liabilities of the workers' compensation board become the assets and liabilities of WorkCover; and
- (b) anything under the control of the workers' compensation board becomes under the control of WorkCover.

**545 Proceedings**

(1) A proceeding by or against the workers' compensation board that has not ended before the commencement of chapter 6 may, after the commencement, be continued by or against WorkCover.

(2) If a proceeding could have been taken by or against the workers' compensation board, if the board had continued to exist, the proceeding may be taken by or against WorkCover.

**546 References generally**

From the commencement of chapter 6, in an Act, instrument or document—

- (a) a reference to the body corporate constituted by the workers' compensation board under a former Act may, if the context permits, be taken as a reference to WorkCover; and
- (b) a reference to the workers' compensation board operating as a board under a former Act may, if the context permits, be taken as a reference to WorkCover's board; and
- (c) a reference to the insurance commissioner or the State Government Insurance Office (Queensland), so far as it relates to the carrying on of the business of accident insurance or other insurance under a former Act, may, if the context permits, be taken as a reference to WorkCover; and
- (d) a reference to the State Insurance Accident Fund or to the workers' compensation fund may, if the context permits, be taken as a reference to a fund established by WorkCover.

**PART 3—INSURANCE****547 Policies**

(1) On the commencement of chapter 6, each of the following is taken to be a policy issued by WorkCover—

- (a) a policy issued by the workers' compensation board;

- (b) a policy deemed, under the repealed Act, to have been issued by the workers' compensation board.

(2) Merit bonuses and demerit charges are applicable to policies entered into before the repeal of the repealed Act as if the repealed Act had not been repealed.

(3) In this section—

“**merit bonuses**” means merit bonuses under the repealed Act, section 52.<sup>248</sup>

“**demerit charges**” means demerit charges under the *Workers' Compensation Regulation 1992*, section 13A.<sup>249</sup>

#### **548 Other contracts of insurance**

On the commencement of chapter 6, the following are taken to be contracts of insurance issued by WorkCover—

- (a) a contract of insurance, other than a policy, issued under the repealed Act;
- (b) a contract of insurance, other than a policy, deemed under the repealed Act to have been issued by the workers' compensation board.

#### **549 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 Act, section 198,<sup>250</sup> if the repealed Act had not been repealed.

(2) The government entity must pay the amounts to WorkCover.

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248 *Workers' Compensation Act 1990*, section 52 (Discounting of premiums)

249 *Workers' Compensation Regulation 1992*, section 13A (Demerit charges)

250 *Workers' Compensation Act 1990*, section 198 (Recovery of amounts from State)

## **PART 4—INJURY BEFORE REPEAL OF REPEALED ACT**

### **551 Injury under repealed or other former Act**

(1) This section applies if a worker sustains an injury before the repeal of the repealed Act.

(2) The repealed Act applies in relation to the injury as if the repealed Act had not been repealed.

(3) However, a person entitled to lump sum compensation, weekly payments or dependant allowances under a former Act is entitled to the benefit of every increase in QOTE.

## **PART 5—INJURY MANAGEMENT**

### **552 Appointment of rehabilitation coordinator**

The employer must, unless the employer has a reasonable excuse, appoint the rehabilitation coordinator—

- (a) within 12 months after the commencement of chapter 4;<sup>251</sup> or
- (b) within a later period approved by WorkCover.

### **553 Workplace rehabilitation policy and procedures**

The employer must, unless the employer has a reasonable excuse, have workplace rehabilitation policy and procedures—

- (a) within 12 months after the commencement of chapter 4; or
- (b) within a later period approved by WorkCover.

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251 Chapter 4 (Injury management)

## PART 6—MEDICAL ASSESSMENT TRIBUNALS

### 554 Continuation of tribunals

Each tribunal mentioned in section 425<sup>252</sup> is a continuance in existence of the corresponding medical board and tribunal established under a former Act.

## PART 7—FINAL ACCOUNTS

### 555 Final accounts

(1) WorkCover must prepare the final accounts of the workers' compensation board under the *Financial Administration and Audit Act 1977*.

(2) The auditor-general must audit the accounts.

(3) The *Financial Administration and Audit Act 1977*, part 6<sup>253</sup> applies to the audit.

## PART 8—OFFENCES

### 556 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 525<sup>254</sup> applies as if the proceeding were for an offence under this Act.

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252 Section 425 (Assessment tribunals to be maintained)

253 *Financial Administration and Audit Act 1977*, part 6 (Audit of consolidated fund and public sector entities)

254 Section 525 (Summary proceedings for offences other than against ch 6)

## **PART 9—SAVING OF REPEALED ACT PROVISIONS**

### **557 Transitional application of repealed provisions**

(1) This section applies from the repeal of the repealed Act.

(2) Until the commencement of chapter 1, part 4, divisions 2 and 3,<sup>255</sup> a person is a worker, or to be treated as a worker, for the purposes of this Act, if the person would be, or be treated as, a worker under the repealed Act.

(3) Until the commencement of chapter 1, part 4, division 5,<sup>256</sup> a person is an employer, or to be treated as an employer, for the purposes of this Act, if the person would be, or be treated as, an employer under the repealed Act.

(4) Until the commencement of a particular provision of chapter 2, parts 1 to 3,<sup>257</sup> the corresponding provision of the repealed Act applies as if it were a provision of this Act in force.

(5) Until the commencement of chapter 3, part 2, division 2,<sup>258</sup> the repealed Act section 4, applies as if it were a provision of this Act in force.

(6) Until the commencement of chapter 9,<sup>259</sup> a person's right to review of or appeal against a decision is only that which the person would have if the repealed Act had not been repealed and, for this purpose, the provisions of the repealed Act apply as if they were provisions of this Act in force.

(7) For this section, a regulation may declare the provisions of the repealed Act that continue in force for any purpose and change the application of any of those provisions for the purpose of the transition to the operation of any uncommenced provision of this Act.

(8) A regulation for subsection (7)—

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255 Chapter 1 (Preliminary), part 4 (Basic concepts), divisions 2 (Workers) and 3 (Persons entitled to compensation other than workers)

256 Chapter 1 (Preliminary), part 4 (Basic concepts), division 5 (Employers)

257 Chapter 2 (Employer's obligations), parts 1 (Employer's legal liability), 2 (Employer's insurance requirements) and 3 (Insurance under WorkCover policies generally)

258 Chapter 3 (Compensation), part 2 (Compensation entitlements of workers generally), division 2 (Entitlement in relation to place where injury is sustained)

259 Chapter 9 (Reviews and appeals)

- (a) may only be made within 9 months after the date of assent of this Act; and
- (b) expires 9 months after the date of assent of this Act unless it has previously expired.

### **558 How to apply provisions of former Acts**

(1) This section applies if, after the commencement of this part, a provision of a former Act is to be applied for any purpose.

(2) A reference in the provision to the general manager may, if the context permits, be taken as a reference to WorkCover's chief executive officer.

(3) A reference in the provision to the body corporate constituted by the workers' compensation board under a former Act may, if the context permits, be taken as a reference to WorkCover.

(4) A reference in the provision to the workers' compensation board operating as a board under a former Act may, if the context permits, be taken as a reference to WorkCover's board.

(5) A reference in the provision to the Workers' Compensation Fund is taken to be a reference to the corresponding WorkCover fund.

## **CHAPTER 12—TRANSITIONAL PROVISIONS FOR WORKCOVER QUEENSLAND AMENDMENT ACT 1999**

### **PART 1—WORKERS, ELIGIBLE PERSONS AND EMPLOYERS**

#### **559 Workers and employers**

The provisions of chapter 1, part 4, divisions 2 and 5,<sup>260</sup> as in force immediately before 1 July 2000, continue to apply to—

- (a) an injury sustained by a worker before 1 July 2000; and
- (b) an assessment of premium for a period before 1 July 2000.

#### **560 Eligible persons**

(1) This section applies—

- (a) if an eligible person's contract of insurance with WorkCover was issued before 1 July 1999; and
- (b) until the person's contract of insurance is renewed.

(2) The provisions of chapter 3, part 8, division 4, subdivision 3 and division 5,<sup>261</sup> as in force immediately before 1 July 1999, continue to apply to the payment of compensation to the eligible person as if the *WorkCover Queensland Amendment Act 1999*, sections 33 to 35 had not been enacted.

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260 Chapter 1 (Preliminary), part 4 (Basic concepts), divisions 2 (Workers) and 5 (Employers)

261 Chapter 3 (Compensation), part 8 (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)

## PART 2—INJURIES

### 561 Injury before 1 July 1999

The provisions of chapter 1, part 4, division 6,<sup>262</sup> as in force immediately before 1 July 1999, continue to apply to an injury sustained by a worker before 1 July 1999.

### 562 Ex gratia payments

(1) The board may make an ex gratia lump sum payment in relation to a person who sustains an injury, on or after 1 July 1999 but before 1 July 2000, that results 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 Act as in force immediately before the commencement of this section but would be a worker within the meaning of the Act as in force on the commencement of the *WorkCover Queensland Amendment Act 1999*, sections 5 and 50.

(3) A payment under this section must be in the amount decided by the board, but may not be more than the amount that would be payable if the person were a worker.

## PART 3—SELF-RATING

### *Division 1—Existing self-raters and applicants*

### 563 Application of div 1

This division applies if an employer—

- (a) was registered as a self-rater immediately before 3 March 1999;
- or

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<sup>262</sup> Chapter 1 (Preliminary), part 4 (Basic concepts), division 6 (Injuries and impairment)

- (b) lodged an application to be registered as a self-rater on or before 3 March 1999.

### **564 Registration continues until 30 June 1999**

Chapter 2, part 4<sup>263</sup> as in force immediately before its repeal, continues to apply to the employer until the end of 30 June 1999 as if the *WorkCover Queensland Amendment Act 1999*, section 14<sup>264</sup> and part 1 of the schedule to that Act, had not been enacted.

### **565 Premium for former self-rater**

WorkCover must set the premium payable by a former self-rater under chapter 2 part 3<sup>265</sup> under a policy for a period of insurance starting on 1 July 1999 as if the former self-rater had never been registered as a self-rater.

### **566 Return of bank guarantee or cash deposit**

WorkCover must return the unconditional bank guarantee or cash deposit lodged by a former self-rater within 90 days after the self-rater stops being a self-rater.

## ***Division 2—Self-rater applying to become self-insurer***

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

This division applies if—

- (a) an employer—
- (i) was registered as a self-rater immediately before 3 March 1999; or
  - (ii) lodged an application to be registered as a self-rater on or before 3 March 1999; and

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263 Chapter 2 (Employer's obligations), part 4 (Self-rating)

264 *WorkCover Queensland Amendment Act 1999*, section 14 (Omission of ch 2, pt 4)

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

- (b) the employer lodges an application to be licensed as a self-insurer before 31 December 1999.

### **568 Application to become self-insurer**

(1) The employer is taken to have lodged the application to be licensed as a self-insurer on or before 3 March 1999.

(2) Despite division 1 of this part, chapter 2, part 4<sup>266</sup> as in force immediately before its repeal, continues to apply to the employer until the end of 30 June 2000 as if the *WorkCover Queensland Amendment Act 1999*, section 14<sup>267</sup> and part 1 of the schedule to that Act, had not been enacted.

(3) Despite subsection (1), that subsection does not affect the day on which WorkCover received the application for the purposes of section 107(1).<sup>268</sup>

### **569 Premium for former self-rater**

(1) This section applies if an employer is registered as a self-rater and does not become licensed as a self-insurer on or before 1 July 2000.

(2) WorkCover must set the premium payable by the former self-rater under chapter 2, part 3<sup>269</sup> under a policy for a period of insurance starting on 1 July 2000 as if the former self-rater had never been registered as a self-rater.

### **570 Self-raters residual liability**

If WorkCover issues a licence to be a self-insurer to a self-rater on or before 1 July 2000, section 96,<sup>270</sup> as in force immediately before its repeal, applies to the self-rater as if the self-rater's registration had been cancelled.

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266 Chapter 2 (Employer's obligations), part 4 (Self-rating)

267 *WorkCover Queensland Amendment Act 1999*, section 14 (Omission of ch 2, pt 4)

268 Section 107 (Decision on application for the issue of a licence)

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

270 Section 96 (Assessing residual liability after cancellation)

**571 Return of bank guarantee or cash deposit**

(1) If WorkCover issues a licence to be a self-insurer to a self-rater on or before 1 July 2000, section 97,<sup>271</sup> as in force immediately before its repeal, applies to the self-rater as if the self-rater's registration had been cancelled.

(2) For section 97(4), chapter 9, as in force immediately before 1 July 1999, continues to apply as if the *WorkCover Queensland Amendment Act 1999*, section 45<sup>272</sup> had not been enacted.

**572 Powers of self-insurers**

Despite section 119(3) to (5), an employer to whom this division applies who is licensed as a self-insurer may engage WorkCover to exercise the employer's functions and powers as a self-insurer under section 119 until 30 June 2001.

**PART 4—SELF-INSURANCE****573 Number of full-time workers**

(1) Section 101(a) or 102(b),<sup>273</sup> as in force immediately before 3 March 1999, continues to apply to an employer if the employer—

- (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 an employer who is a self-insurer if the self-insurer's licence is subsequently cancelled.

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271 Section 97 (Return of bank guarantee or cash deposit after cancellation)

272 *WorkCover Queensland Amendment Act 1999*, section 45 (Replacement of ch 9)

273 Section 101 (Issue and renewal of licence to a single employer) or 102 (Issue or renewal of licence to a group employer)

**574 OHS report**

(1) This section applies if an employer—

- (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) Sections 101 and 102, as amended by the *WorkCover Queensland Amendment Act 1999*, sections 17(2) and (3) and 18(2) and (3),<sup>274</sup> only apply to an employer from the later of the following days—

- (a) 3 March 2002;
- (b) the day the employer's licence for self-insurance is first renewed after the commencement of this section.

**575 Outstanding liability on or before licence renewal**

(1) This section applies if an employer—

- (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) Despite the amendment of section 116<sup>275</sup> by the *WorkCover Queensland Amendment Act 1999*, an employer who is licensed as a self-insurer is not liable for compensation and damages for the self-insurer's outstanding liability until the earlier of the following—

- (a) if the self-insurer decides to assume the outstanding liability before lodging an application for renewal of the self-insurer's licence—the day WorkCover receives the self-insurer's written notice of the decision;
- (b) the day the self-insurer's licence is renewed.

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274 *WorkCover Queensland Amendment Act 1999*, sections 17 (Amendment of s 101 (Issue or renewal of licence to a single employer)) and 18 (Amendment of s 102 (Issue or renewal of licence to a group employer))

275 Section 116 (Self-insurer replaces WorkCover in liability for injury)

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

(1) This section applies despite the amendments of sections 116 and 118<sup>276</sup> by the *WorkCover Queensland Amendment Act 1999* if—

- (a) an employer—
  - (i) was licensed as a self-insurer immediately before 3 March 1999; or
  - (ii) lodged an application to be licensed as a self-insurer on or before 3 March 1999; and
- (b) an employer who is a self-insurer has not become liable for compensation and damages for the self-insurer's outstanding liability.

(2) 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 residual liability.

(3) For subsection (2), the other self-insurer is liable for compensation and damages for the member's residual liability from the day the member becomes part of the other self-insurer.

(4) 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 residual liability.

(5) For subsection (4), WorkCover is liable for compensation and damages for the member's residual liability from the day the member leaves the group employer.

(6) If an employer becomes part of a self-insurer, other than under subsection (2), WorkCover must pay the self-insurer an amount for the employer's residual liability.

(7) For subsection (6), the self-insurer is liable for compensation and damages for the member's residual liability from the day the member becomes part of the self-insurer.

(8) The residual liability mentioned in subsection (2), (4) or (6) must be—

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<sup>276</sup> Sections 116 (Self-insurer replaces WorkCover in liability for injury) and 118 (Change in self-insurer's membership)

- (a) calculated under a regulation by an actuary approved by WorkCover; and
- (b) paid within the time allowed under a regulation.

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

(1) This section applies if—

- (a) a self-insurer's licence is cancelled; and
- (b) the self-insurer had not become liable for compensation and damages for the self-insurer's outstanding liability before the cancellation.

(2) Section 128,<sup>277</sup> as in force immediately before 3 March 1999, applies to the recovery of costs from the former self-insurer as if the *WorkCover Queensland Amendment Act 1999*, section 25,<sup>278</sup> had not been enacted.

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

(1) This section applies if—

- (a) a self-insurer's licence is cancelled; and
- (b) the self-insurer had not become liable for compensation and damages for the self-insurer's outstanding liability before the cancellation.

(2) Section 129,<sup>279</sup> as in force immediately before 3 March 1999, applies to the assessment of the residual liability of the former self-insurer as if the *WorkCover Queensland Amendment Act 1999*, section 26,<sup>280</sup> had not been enacted.

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277 Section 128 (Recovery of ongoing costs from former self-insurer)

278 *WorkCover Queensland Amendment Act 1999*, section 25 (Amendment of s 128 (Recovery of ongoing costs from former self-insurer))

279 Section 129 (Assessing residual liability after cancellation)

280 *WorkCover Queensland Amendment Act 1999*, section 26 (Amendment of s 129 (Assessing residual liability after cancellation))

## **PART 5—REVIEWS AND APPEALS**

### **579 Decisions by WorkCover or self-insurer**

Chapter 9, 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>281</sup> had not been enacted.

## **CHAPTER 13—TRANSITIONAL PROVISIONS FOR WORKCOVER QUEENSLAND AND OTHER ACTS AMENDMENT ACT 2000**

### **PART 1—INJURIES**

#### **580 Injury before commencement of amending Act**

Section 119(1)(a)(ii) and chapter 3, 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 of this section as if the *WorkCover Queensland and Other Acts Amendment Act 2000*, sections 7(1) and 8 to 13 had not been enacted.

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281 *WorkCover Queensland Amendment Act 1999*, section 45 (Replacement of ch 9)

## **PART 2—SELF-INSURANCE**

### *Division 1—Bank guarantee*

#### **581 Self-insurer's bank guarantee**

(1) This section applies if a self-insurer makes an election under the *WorkCover Queensland Regulation 1997*, section 93<sup>282</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 becomes liable for compensation and damages for the outstanding liability.

(3) On and from the commencement of this section, the unconditional bank guarantee or cash deposit required to be lodged by the self-insurer under section 113(2)<sup>283</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 113(6), that is outstanding liability; and
  - (ii) 150% of the part of the self-insurer's estimated claims liability, as defined under section 113(6), that is residual liability.

(4) This division expires on 1 July 2006.

### *Division 2—Application by related bodies corporate group employer*

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

(1) This division applies if—

- (a) a self-insurer that is a related bodies corporate group employer—

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282 *WorkCover Queensland Regulation 1997*, section 93 (Election by current self-insurer or current applicant about payment for outstanding liability)

283 Section 113 (Bank guarantee or cash deposit)

- (i) was licensed as a self-insurer immediately before 3 March 1999; or
- (ii) lodged an application to be licensed as a self-insurer on or before 3 March 1999 and has subsequently been licensed as a self-insurer; and
- (b) the self-insurer applies to WorkCover under section 118(1) for a change in the group membership on the self-insurer's licence; and
- (c) members of the self-insurer that are a group employer apply before 3 March 2002, under section 99, to be a self-insurer as a related bodies corporate group employer (“**section 99 application**”).

(2) In subsection (1)—

“**members**”, of the self-insurer, means members that have continuously been part of the self-insurer since 3 March 1999 or, if the self-insurer was licensed on or after 3 March 1999, since the day the self-insurer was licensed.

### **583 Variation of s 102 for particular purposes**

(1) WorkCover must apply section 102(b),<sup>284</sup> as in force immediately before 3 March 1999—

- (a) to decide a section 99 application; and
- (b) if WorkCover approves the application and issues a licence, to decide each renewal of the licence.

(2) Also, section 102(1)(d) does not apply for the purposes of deciding the section 99 application.

(3) However, if the licence is issued, the licence is subject to a condition that the requirements of section 102(1)(d) must be met within 6 months after the licence is issued.

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284 Section 102 (Issue or renewal of licence to a group employer)

## PART 3—MEDICAL ASSESSMENT TRIBUNALS

### 584 General Medical Assessment Tribunal

(1) Subsection (2) applies if a person held an appointment to the panel or alternative panel of the General Medical Assessment Tribunal immediately before the commencement of this section.

(2) On the commencement of this section, the person becomes an appointee to the panel of the tribunal for the remainder of the person's term of appointment and on the conditions of the person's appointment.

(3) Subsection (4) applies if, immediately before the commencement of this section—

- (a) the General Medical Assessment Tribunal has started to consider a matter referred to it under section 437;<sup>285</sup> and
- (b) the tribunal has not made a decision in relation to the matter.

(4) Chapter 7,<sup>286</sup> as in force immediately before the commencement of this section, continues to apply to the matter as if the *WorkCover Queensland and Other Acts Amendment Act 2000*, sections 15 to 23 had not been enacted.

### 585 Specialty medical assessment tribunals

(1) This section applies if, immediately before the commencement of this section—

- (a) a specialty medical assessment tribunal has started to consider a matter referred to it under section 437<sup>287</sup>; and
- (b) the tribunal has not made a decision in relation to the matter.

(2) Chapter 7,<sup>288</sup> as in force immediately before the commencement of this section, continues to apply to the matter as if the *WorkCover Queensland and Other Acts Amendment Act 2000*, sections 15 to 23 had not been enacted.

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285 Section 437 (Reference to tribunals)

286 Chapter 7 (Medical Assessment Tribunals)

287 Section 437 (Reference to tribunals)

288 Chapter 7 (Medical Assessment Tribunals)

**586 Prescribed disfigurement assessment tribunal**

(1) This section applies if, immediately before the commencement of this section—

- (a) a prescribed disfigurement assessment tribunal has started to consider a matter referred to it under section 450;<sup>289</sup> and
- (b) the tribunal has not made a decision in relation to the matter.

(2) Chapter 7,<sup>290</sup> as in force immediately before the commencement of this section, continues to apply to the matter as if the *WorkCover Queensland and Other Acts Amendment Act 2000*, sections 15 to 23 had not been enacted.

## CHAPTER 14—TRANSITIONAL PROVISIONS FOR WORKCOVER QUEENSLAND AMENDMENT ACT 2001

**587 Definitions for ch 14**

In this chapter—

“**amended Act**” means this Act as amended by the amending Act.

“**amending Act**” means the *WorkCover Queensland Amendment Act 2001*.

**588 Injury before 1 July 2001**

The provisions of this Act, as in force immediately before 1 July 2001, continue to apply in relation to an injury resulting to a worker from an event happening before 1 July 2001 as if the amending Act had not been enacted.

**589 Reference to medical assessment tribunal**

(1) Despite section 2 of the amending Act, the amendments of this Act made by sections 44(1), 50(1), 51 and 52 of the amending Act do not apply

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289 Section 450 (Assessment of additional compensation for prescribed disfigurement)

290 Chapter 7 (Medical Assessment Tribunals)

to a decision of the tribunal made before the royal assent was given to the amending Act.

(2) A reference of a matter—

- (a) that relates to an injury arising after 30 June 2001; and
- (b) made to the tribunal under section 437 before the day of royal assent of the amending Act; and
- (c) pending before the tribunal immediately before the day of royal assent;

from the day of royal assent is taken to have been referred to the tribunal under the amended Act.

### **590 Formal revival of claim for loss of consortium**

To the extent that the Act as in force immediately before 30 June 2001 excluded an entitlement to seek damages for loss of consortium, on the commencement of this section that entitlement is revived in relation to an injury arising after 30 June 2001.

## **CHAPTER 15—TRANSITIONAL PROVISION FOR DISCRIMINATION LAW AMENDMENT ACT 2002**

### **591 Spouse of worker dying within 1 year**

(1) This section applies in relation to a death of a worker that happens in the period of 1 year after the commencement of this section.

(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.

**SCHEDULE 1****REGULATIONS**

section 530

**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 10.

**10.** The evidentiary value and if necessary, the admissibility into evidence, in a proceeding before a court, tribunal or person for this Act of a certificate, or copy of or extract from a document kept under this Act for anything under this Act, that is not provided for under chapter 10.

**11.** The management of a claim for which there is more than one defendant.

**12.** Costs, including costs before and after a proceeding is started, and the type and amount of costs that may be claimed by or awarded to a claimant during any stage before or after the start of a proceeding.

**13.** Imposing a penalty for a contravention of a regulation of not more than 20 penalty units.

## SCHEDULE 2

### WHO IS A WORKER

section 12

#### 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.
2. A person who works a farm as a 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 with the owner of the farm.
3. A salesperson, canvasser, collector or other person (“**salesperson**”) paid entirely or partly by commission, 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.
4. A contractor, other than a contractor mentioned in part 2, section 4 of this schedule, 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.
5. 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.

## SCHEDULE 2 (continued)

6. 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.
7. 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.

**PART 2—PERSONS WHO ARE NOT WORKERS**

1. A person who 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
  - (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 while—
  - (a) participating in a sporting or athletic activity as a contestant; or
  - (b) training or preparing for participation in a sporting or athletic activity as a contestant; or
  - (c) performing promotional activities offered to the person because of the person's standing as a sportsperson; or
  - (d) engaging on any daily or other periodic journey in connection with the participation, training, preparation or performance.
3. A member of the crew of a fishing vessel if—
  - (a) the member's entitlement to remuneration is contingent upon the working of the vessel producing gross earnings or profits; and
  - (b) the remuneration is wholly or mainly a share of the gross earnings or profits.

## SCHEDULE 2 (continued)

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.
5. A person participating in an approved program or work for unemployment payment under the *Social Security Act 1991* (Cwlth), section 601 or 606.<sup>291</sup>

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291 *Social Security Act 1991* (Cwlth), section 601 (Activity test) or 606 (Newstart Activity Agreements—terms)

## SCHEDULE 2A

### PERSONS WHO ARE EMPLOYERS

section 32

1. A person who lends or lets on hire the services of a worker who is party to 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 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 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 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—

## SCHEDULE 2A (continued)

- (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 3****DICTIONARY**

section 8

**“accident insurance”** see section 9.

**“accredited workplace”** see section 49.

**“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 132.

**“approved form”** see section 532.

**“arrangement”**, for schedules 2 and 2A, includes agreement, promise, scheme, transaction, understanding and undertaking (whether express or implied).

**“authorised auditor”** see section 523A.

**“authorised person”** means a person who is appointed as an authorised person.

**“bank guarantee”** includes a guarantee given by Queensland Treasury Corporation.

**“board”** means the board of WorkCover.

**“calling”** means any activity ordinarily giving rise to the receipt of remuneration or reward including self employment or the performance of an occupation, trade, profession, or carrying on of a business, whether or not the person performing the activity received remuneration.

**“chief executive officer”** means the chief executive officer of WorkCover appointed under section 399.

**“claimant”**, other than for chapter 5, means a person who lodges an application for compensation.

**“classification group employer”** means 2 or more employers that are in—

- (a) a pre-existing stable business relationship—

## SCHEDULE 3 (continued)

- (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.

“**coaster**” means a ship, wherever registered, that for the time being voyages only between 2 or more ports in the State.

“**community service obligations**”, of WorkCover, see section 359.

“**compensation**” see section 10.

“**complying notice of claim**” means a notice of claim that complies with section 280.

“**contract of service**” includes an apprenticeship contract or traineeship contract under the *Training and Employment Act 2000*.

“**contractor**” means a person who has contracted with someone else for the performance of work or provision of a service.

“**conviction**” means a finding of guilt, or the acceptance of a plea of guilty, by a court.

“**council**” means the WorkCover Review Council.

“**court**” means the court having jurisdiction in relation to the amount or matter referred to.

“**damages**” see section 11.

“**deemed premium**” means a premium calculated under a regulation.

“**dependant**” see section 29.

“**director**”, of a corporation, includes—

- (a) a person holding or acting in the position of a director (by whatever name called) of the corporation whether or not the person was validly appointed to hold, or is duly authorised to act in, the position; and
- (b) a person under whose directions or instructions the corporation is ordinarily controlled.

“**doctor**” means a registered medical practitioner.

## SCHEDULE 3 (continued)

“**due date**” means the day an amount becomes payable under this Act or under a premium notice.

“**elective hospitalisation**” see section 233.

“**eligible person**” see section 25.

“**employee**” of WorkCover means—

- (a) the chief executive officer; or
- (b) a senior executive of WorkCover; or
- (c) a person employed by WorkCover on wages or salary or under a contract of service.

“**employer**” see section 32.

“**employs 30 or more workers**”, for an employer, means that the employer during the current calendar year employed, or is likely to employ, 30 or more workers for a total of any 40 days during the year.

“**event**” see section 33.

“**excess period**” see section 69.

“**former Act**” means—

- (a) the *Workers’ Compensation Act 1916*; or
- (b) the *Workers’ Compensation Act 1990*.

“**fully funded**”, in relation to the workers’ compensation scheme, see section 5(5).

“**government entity**” means the State, a State agency or instrumentality or a GOC.

“**government worker**” means a worker employed by a government entity.

“**group employer**” means a classification group employer or related bodies corporate group employer.

“**group training organisation**” means a group training organisation under the *Training and Employment Act 2000*.

“**holding company**” see the Corporations Act, section 9.

“**hospitalisation**” means treatment provided to a person as an in-patient at a private hospital.

## SCHEDULE 3 (continued)

**“household worker”** means a person employed solely in and about, or in connection with, a private dwelling house or the grounds of the dwelling house.

**“impairment”** see section 39.

**“industrial deafness”** means loss of hearing (other than total loss of hearing in either ear) caused by excessive noise.

**“industrial instrument”** means—

- (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;
  - (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 34.

**“labour hire agency”**, for schedules 2 and 2A, means an entity, other than a holding company, that conducts a business that includes the supply of services of workers to others.

**“medical assessment tribunal”** see chapter 7.

**“medical condition”** means a condition of a medical nature that is not an injury under section 34.

**“medical treatment”** means—

- (a) treatment by a doctor, dentist, physiotherapist, occupational therapist, psychologist, chiropractor, osteopath, podiatrist or speech pathologist; or
- (b) assessment for industrial deafness by an audiologist; or
- (c) the provision of diagnostic procedures or skiagrams; or
- (d) the provision of nursing, medicines, medical or surgical supplies, curative apparatus, crutches or other assistive devices.

## SCHEDULE 3 (continued)

**“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 497.

**“normal weekly earnings”** see section 133.

**“notice of assessment”** means a notice of assessment of permanent impairment issued by WorkCover under section 203.

**“notice of claim”** means a notice under section 280 that a claimant intends to seek damages for an injury sustained by the claimant.

**“NWE”** means normal weekly earnings.

**“OHS report”**, for chapter 2, part 5, 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 116(1)(b).

**“payable amount”** means an amount due and payable.

**“period of insurance”** means the period of accident insurance cover specified in a policy, policy renewal certificate or premium notice.

**“permanent impairment”** see section 40.

**“personal injury”**, to a person, includes damage to or destruction of—

- (a) a prosthesis actually fitted to the person; or
- (b) an assistive device, being crutches, spectacles or medical aids, while in actual use by the person for a purpose for which the device is intended.

**“place of employment”** means the premises, works, plant, or place for the time being occupied by, or under the control or management of, the employer by whom a worker concerned is employed, and in, on, at, or in connection with which the worker was working when the worker sustained injury.

## SCHEDULE 3 (continued)

**“policy”** means a policy for a contract of accident insurance, and includes an existing policy of accident insurance that, under section 547, is taken to be a policy.

**“port”** includes harbour.

**“pre-existing stable business relationship”**, for a classification group employer, includes—

- (a) membership of a common representative organisation; and
- (b) common ownership or management; and
- (c) involvement in joint ventures or joint ownership of assets.

**“premium notice”** means a notice issued by WorkCover of an assessment of premium, a default assessment of premium, or a reassessment of premium.

**“prescribed disfigurement”** means severe facial disfigurement or severe bodily scarring.

**“private hospital”** see section 233.

**“public hospital”** see section 233.

**“Public Service Act”** means—

- (a) the *Public Service Management and Employment Act 1988*; or
- (b) the *Public Service Act 1996*.

**“QUOTE”** see section 134.

**“Queensland ship”** means a ship—

- (a) that is a State ship; or
- (b) that is a coaster; or
- (c) whose first port of clearance and whose destination are in the State; or
- (d) that, being engaged in fishing operations, discharges its catch at a port in the State, or to a mother ship that discharges its cargo at a port in the State, and does not engage in those operations within the territorial waters of a country other than Australia.

**“redemption payment”** means a payment under section 189, 190 or 191.

**“registered”** means—

## SCHEDULE 3 (continued)

- (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 44.

**“rehabilitation coordinator”** see section 45.

**“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 116(1)(a).

**“review decision”** see section 494.

**“review unit”** see section 403A.

**“seafarer”** see section 146.

**“self-insurer”** means a single employer or group employer licensed under chapter 2, part 5.

**“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.

**“self-rater”** means a single employer or group employer registered under chapter 2, part 4.

**“ship”** means a ship, boat, or vessel of any kind designed for use in or on water.

**“single employer”**—

- (a) includes persons in partnership that are employers; but

## SCHEDULE 3 (continued)

(b) does not include a limited partnership formed under the *Mercantile Act 1867* or the *Partnership (Limited Liability) Act 1988*.

**“single pension rate”**, for chapter 3, part 8, division 4, means the amount of the maximum single disability support pension payable from time to time under a Commonwealth law, but does not include an amount for allowances, for example, rent assistance or family payment.

**“specialist”** means a person registered as a specialist registrant under the *Medical Practitioners Registration Act 2001*.

**“spouse”**, of a deceased worker, see section 31.

**“State ship”** means a ship owned by, or in the possession (under charter) of, the State, on which seafarers are employed by a department of government or by or under the State.

**“statutory maximum compensation”**, means an amount equal to the amount of compensation payable under chapter 3, part 6.

**“student”** for chapter 3, part 10, see section 213.

**“suitable duties”** see section 46.

**“suspects”** includes believes.

**“table of costs”** means the table of costs for the provision of the relevant ambulance transportation, medical treatment or rehabilitation for the time being as decided by WorkCover to be acceptable for this Act.

**“table of injuries”** means the table of injuries prescribed under a regulation.

**“terminal condition”** see section 251.

**“this Act”** for chapter 5, includes a former Act.

**“total liability”** see section 118(2).

**“vehicle”** for section 38, means a motor vehicle, bicycle, aircraft, train, boat or anything else used to carry persons or goods from place to place, even if the vehicle is incapable of use because of mechanical defect or because a part has been removed.

**“wages”** means the total amount paid, or provided by, an employer to, or on account of, a worker as wages, salary or other earnings by way of money or entitlements having monetary value, but does not include—

## SCHEDULE 3 (continued)

- (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 70.

**“WorkCover”** means WorkCover Queensland.

**“WorkCover Queensland”** see section 330.

**“WorkCover Review Council”** see section 423A.

**“worker”** see section 12.

**“workplace”** means a place where work is, is to be, or is likely to be, performed by a worker or employer and is a place—

- (a) that is for the time being occupied by the employer or under the control or direction of the worker's employer; or
- (b) where the worker is under the control or direction of the worker's employer.

**“workplace rehabilitation”** see section 47.

**“workplace rehabilitation policy and procedures”** see section 48.

**“work related impairment”** see section 41.

**“WRI”** means work related impairment.

**“written final offer”**, for chapter 5, see section 250.

**ENDNOTES****1 Index to endnotes**

	Page
2 Date to which amendments incorporated . . . . .	329
3 Key . . . . .	330
4 Table of reprints . . . . .	330
5 Tables in earlier reprints . . . . .	331
6 List of legislation . . . . .	331
7 List of annotations . . . . .	334
8 List of forms notified or published in the gazette. . . . .	353
9 Provisions that have not commenced and are not incorporated into reprint . . . .	361

**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 9 May 2003. Future amendments of the WorkCover Queensland Act 1996 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

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.

#### TABLE OF REPRINTS

Reprint No.	Amendments included	Effective	Reprint date
1	to 1997 Act No. 9	1 July 1997	1 July 1997
2	to 1997 Act No. 81	5 December 1997	5 January 1998
2A	to 1998 Act No. 41	21 December 1998	26 March 1999
2B	to 1999 Act No. 17	1 July 1999	9 July 1999
2C	to 1999 Act No. 33	1 July 1999	13 August 1999
3	to 1999 Act No. 42	1 July 1999	29 September 1999
3A	to 1999 Act No. 42	1 December 1999	17 January 2000
4	to 2000 Act No. 23	1 July 2000	1 September 2000
4A	to 2000 Act No. 23	28 September 2000	28 September 2000
4B	to 2000 Act No. 46	25 October 2000	8 November 2000
4C	to 2000 Act No. 61	25 October 2000	2 January 2001
4D	to 2001 Act No. 45	15 July 2001	3 August 2001
4E	to 2001 Act No. 67	25 October 2001	2 November 2001
4F	to 2001 Act No. 73	3 December 2001	14 December 2001
5	to 2001 Act No. 73	1 January 2002	11 January 2002
5A	to 2001 Act No. 73	1 March 2002	8 March 2002

Reprint No.	Amendments included	Effective	Reprint date (Column discontinued) Notes
5B	to 2002 Act No. 67	28 November 2002	
5C	to 2002 Act No. 74	1 January 2003	
5D	to 2002 Act No. 74	1 April 2003	
5E	to 2003 Act No. 19	9 May 2003	

## 5 Tables in earlier reprints

### TABLES IN EARLIER REPRINTS

Name of table	Reprint No.
Corrected minor errors	4, 5

## 6 List of legislation

### **WorkCover Queensland Act 1996 No. 75**

date of assent 12 December 1996

ss 1–2 commenced on date of assent

ch 1 (other than pt 4 divs 2, 3, 5), ss 69–70, ch 3 (other than pt 2, div 2), 4–8, chs 10–11, schs 1, 2 (except amdts in relation to the Juvenile Justice Act 1992), 3 commenced 1 February 1997 (1996 SL No. 442)

sch 2 (in relation to amdts to the Juvenile Justice Act 1992) commenced 1 July 1997 (see 1997 No. 9 s 4(1) sch 2 exp 2 July 1997 (1997 No. 9 s 4(2)))

ch 1 pt 4 divs 2, 3, 5, ch 2 (other than ss 69–70), ch 3 pt 2 div 2, ch 9 commenced 1 July 1997 (1996 SL No. 442)

amending legislation—

### **Justice and Other Legislation (Miscellaneous Provisions) Act 1997 No. 9 ss 1, 2(3) pt 27**

date of assent 15 May 1997

ss 1, 2(3) commenced on date of assent

remaining provisions commenced 2 April 1997 (see s 2(3))

### **Statute Law (Miscellaneous Provisions) Act 1997 No. 81 ss 1–3, sch**

date of assent 5 December 1997

commenced on date of assent

### **Health and Other Legislation Amendment Act 1998 No. 41 ss 1, 2(2), 14(1) sch 1**

date of assent 27 November 1998

ss 1–2 commenced on date of assent

remaining provisions commenced 21 December 1998 (1998 SL No. 346)

**Corrective Services Legislation Amendment Act 1999 No. 9 pt 1 sch**

date of assent 30 March 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 May 1999 (1999 SL No. 72)

**WorkCover Queensland Amendment Act 1999 No. 17**

date of assent 22 April 1999

ss 1–2 commenced on date of assent

ss 3, 14–19, 21–26, 49 (so far as it ins ch 12 pts 3–4), 51(2), pt 1 sch commenced 3 March 1999 (see s 2(1))

ss 5, 7, 49 (so far as it ins ch 12 pt 1), 50, 51(1) and (4) commenced 1 July 2000 (see s 2(2))

remaining provisions commenced 1 July 1999 (see s 2(3))

**Industrial Relations Act 1999 No. 33 ss 1, 2(2), 747 sch 3**

date of assent 18 June 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 1999 (1999 SL No. 159)

**Road Transport Reform Act 1999 No. 42 ss 1–2(1), 54(3) sch pt 3**

date of assent 2 September 1999

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 1999 (see s 2(1))

**Training and Employment Act 2000 No. 23 ss 1, 2(3), 293 sch 2**

date of assent 27 June 2000

ss 1–2 commenced on date of assent

remaining provisions commenced 28 September 2000 (2000 SL No. 248)

**Statute Law (Miscellaneous Provisions) Act 2000 No. 46 ss 1, 3 sch**

date of assent 25 October 2000

commenced on date of assent

**WorkCover Queensland and Other Acts Amendment Act 2000 No. 61 ss 1, 2(2)–(4), pt 2, s 3 sch 1**

date of assent 24 November 2000

ss 1–2 commenced on date of assent

s 5 commenced 1 July 2001 (see s 2(2))

ss 6, 28 (to the extent it ins ch 13, pt 2, div 2) commenced 17 October 2000 (see s 2(3))

ss 7(2), 15, 20 (to the extent it ins ss 431–433), 21(2), 22–23, 28 (to the extent it ins ss 585–586), sch 1 item 4 commenced 1 July 2001 (2001 SL No. 80)

remaining provisions commenced on date of assent

**Medical Practitioners Registration Act 2001 No. 7 ss 1–2, 302 sch 2**

date of assent 11 May 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 30)

**Corporations (Ancillary Provisions) Act 2001 No. 45 ss 1–2, 29 sch 3**

date of assent 28 June 2001

ss 1–2 commenced on date of assent

sch 3 commenced 15 July 2001 (see s 2(2) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

remaining provision commenced immediately before 15 July 2001 (see s 2(1) of Act 2001 No. 45 (Qld) and Corporations Act 2001 No. 50 (Cwlth) and proc pubd Cwlth of Australia gaz 13 July 2001, No. S285)

**Education (Accreditation of Non-State Schools) Act 2001 No. 60 ss 1, 2(2), 218 sch 1**

date of assent 21 September 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (see s 2(2))

**WorkCover Queensland Amendment Act 2001 No. 67**

date of assent 25 October 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2001 (see s 2)

**Crime and Misconduct Act 2001 No. 69 ss 1–2, 378 sch 1**

date of assent 8 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2002 (2001 SL No. 221)

**Duties Act 2001 No. 71 ss 1–2(1), 551 sch 1**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 1 March 2002 (2002 SL No. 10)

**Ombudsman Act 2001 No. 73 ss 1–2, 96 sch 1**

date of assent 13 November 2001

ss 1–2 commenced on date of assent

remaining provisions commenced 3 December 2001 (2001 SL No. 224)

**WorkCover Queensland Amendment Act 2002 No. 67**

date of assent 28 November 2002

ss 1–2 commenced on date of assent

ss 4–5, 7–11, 14–17 commence 1 July 2003 (see s 2)

remaining provisions commenced on date of assent

**Criminal Proceeds Confiscation Act 2002 No. 68 ss 1–2(1), 339 sch 4**

date of assent 29 November 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 January 2003 (see s 2(1))

**Discrimination Law Amendment Act 2002 No. 74 pts 1, 13**

date of assent 13 December 2002

ss 1–2 commenced on date of assent

remaining provisions commenced 1 April 2003 (2003 SL No. 51)

**Workplace Health and Safety and Other Acts Amendment Act 2003 No. 18 ss 1–2(1), pt 2A**

date of assent 9 May 2003

ss 1–2 commenced on date of assent

remaining provisions commence 1 July 2003 (see s 2(1))

**Statute Law (Miscellaneous Provisions) Act 2003 No. 19 ss 1–3 sch**

date of assent 9 May 2003

ss 1–2 commenced on date of assent

amdt 5 commenced 1 July 2001 (see s 2(6))

remaining amendments commenced on date of assent

**7 List of annotations****CHAPTER 1—PRELIMINARY****Workers' compensation scheme**

s 5 amd 1999 No. 17 ss 4, 3 sch pt 1; 2000 No. 61 s 4; 2001 No. 67 s 4

**Protection of employers in relation to damages**

s 6 om 2001 No. 67 s 5

**PART 4—BASIC CONCEPTS****Meaning of “damages”**

s 11 amd 2001 No. 67 s 6

**Who is a “worker”**

s 12 sub 1999 No. 17 s 5

**Meaning of “PAYE taxpayer”**

s 13 om 1999 No. 17 s 5

**Rural fire brigade member**

s 16 amd 2000 No. 46 s 3 sch; 2003 No. 19 s 3 sch

**Persons performing community service or unpaid duties**

s 23 amd 1999 No. 9 s 3 sch; 1999 No. 17 s 6

**Students**

s 24 amd 2000 No. 23 s 293 sch 2; 2001 No. 60 s 218 sch 1; 2001 No. 67 s 3 sch

**Entitlements of eligible persons**

s 27 amd 1999 No. 17 s 3 sch pt 2

**Who is the “spouse” of a deceased worker**

s 31 sub 2002 No. 74 s 87

**Who is an “employer”**

prov hdg sub 1999 No. 17 s 7(1)

s 32 amd 1999 No. 17 s 7(2)–(3)

**Division 6—Injuries and impairment****Meaning of “injury”**

s 34 amd 1999 No. 17 s 8

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

prov hdg sub 1999 No. 17 s 9(1)

s 36 amd 1999 No. 17 s 9(2)

**Other circumstances**

s 37 amd 1999 No. 17 s 10

**Injury that happens during particular journeys**

s 38            amd 1999 No. 17 s 11; 1999 No. 42 s 54(3) sch pt 3

**Subdivision 5—Certificate injury**

sdiv 5 (s 42) om 2001 No. 67 s 7

**Subdivision 6—Non-certificate injury**

sdiv 6 (s 43) om 2001 No. 67 s 7

**CHAPTER 2—EMPLOYER'S OBLIGATIONS****Employer's obligation to insure**

s 52            amd 1999 No. 17 s 12; 2002 No. 67 s 4

**Offence of contravening general obligation to insure**

s 55            amd 2002 No. 67 s 5

**Setting of premium**

s 58            amd 1999 No. 17 ss 13, 3 sch pt 1; 2001 No. 45 s 29 sch 3

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

s 59            amd 2002 No. 67 s 6

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

s 66            amd 1999 No. 17 s 3 sch pt 2; 2001 No. 67 s 3 sch

**PART 4—SELF-RATING**

pt 4 (ss 72–97) om 1999 No. 17 s 14

**PART 5—EMPLOYER'S SELF-INSURANCE****What is self-insurance**

s 98            amd 1999 No. 17 s 15

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

s 99            amd 1999 No. 17 s 16

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

s 101          amd 1999 No. 17 s 17

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

s 102          amd 1999 No. 17 s 18

**Calculation of the number of fulltime workers**

s 103          amd 2000 No. 46 s 3 sch

**Audit of self-insurer**

s 106          amd 1999 No. 17 s 19

**Annual levy payable**

prov hdg    sub 1999 No. 17 s 20(1)

s 111          amd 1999 No. 17 s 20(2)–(3)

sub 2000 No. 61 s 5

**Bank guarantee or cash deposit**

s 113          amd 1999 No. 17 s 21

**Reinsurance**

s 115          amd 1999 No. 17 s 3 sch pt 2; 2000 No. 61 s 3 sch 1

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

s 116 sub 1999 No. 17 s 22

**Division 2A—Change to membership of self-insurer**

div hdg ins 2000 No. 61 s 6

**Change in self-insurer's membership**s 118 amd 1999 No. 17 s 23  
sub 2000 No. 61 s 6**Consequences of change in self-insurer's membership**

s 118A ins 2000 No. 61 s 6

**Continuation of membership in particular circumstances**

s 118B ins 2000 No. 61 s 6

**Powers of self-insurers**s 119 sub 1999 No. 17 s 24  
amd 2000 No. 61 s 7**Recovery of ongoing costs from former self-insurer**

s 128 amd 1999 No. 17 s 25

**Assessing liability after cancellation**

prov hdg amd 1999 No. 17 s 26(1)

s 129 amd 1999 No. 17 s 26(2)–(4)

**CHAPTER 3—COMPENSATION****PART 2—COMPENSATION ENTITLEMENTS OF WORKERS GENERALLY****Compensation entitlement**

s 135 sub 1999 No. 17 s 27

**Who must pay compensation**

s 135A ins 1999 No. 17 s 27

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

div hdg sub 2002 No. 67 s 7

**Entitlement depends on where injury sustained**

s 139 sub 2002 No. 67 s 8

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

s 139A ins 2002 No. 67 s 8

**Division 2A—Overseas arrangements**

div hdg ins 2002 No. 67 s 9

**Interstate and overseas arrangements**

prov hdg sub 2002 No. 67 s 10(1)

s 140 amd 2002 No. 67 s 10(2)–(3)

**PART 3—COMPENSATION ENTITLEMENTS OF PARTICULAR WORKERS****Division 1—Seafarers**

div hdg sub 2002 No. 67 s 11

**Application of div 1**

s 145 sub 2002 No. 67 s 11

**Meaning of “seafarer”**

s 146      sub 2002 No. 67 s 11

**Entitlements of seafarers**

s 147      amd 1999 No. 17 s 28; 2000 No. 61 s 8  
             om 2002 No. 67 s 11

**Payment on account of seafarers**

s 148      om 2002 No. 67 s 11

**Entitlements for industrial deafness**

s 152      amd 1997 No. 81 s 3 sch; 1999 No. 17 s 29; 2000 No. 61 s 9

**Further application for compensation for industrial deafness**

s 153      amd 1999 No. 17 s 30

**Time for applying**

s 158      amd 1999 No. 17 s 31

**Decision about application for compensation**

s 161      amd 1999 No. 17 s 32

**Examination by registered person**

s 162      amd 1999 No. 17 s 3 sch pt 2

**Maximum entitlement**

s 167      amd 2000 No. 61 s 10; 2001 No. 67 s 8

**Time from which compensation payable**

s 168      amd 2000 No. 61 s 11

**PART 7A—COMPENSATION FOR DAY OF INJURY**

pt hdg     ins 2000 No. 61 s 12

**Application of pt 7A**

s 168A     ins 2000 No. 61 s 12

**Definition for pt 7A**

s 168B     ins 2000 No. 61 s 12

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

s 168C     ins 2000 No. 61 s 12

**PART 8—WEEKLY PAYMENT OF COMPENSATION****Division 4—Entitlement for total incapacity****Subdivision 1—Application of div 4**

sdiv hdg   amd 1999 No. 17 s 3 sch pt 2

**Entitlement to weekly payments**

s 173      amd 1999 No. 17 s 3 sch pt 2

**Subdivision 3—Persons entitled to compensation other than workers, students and eligible persons**

sdiv hdg   amd 1999 No. 17 s 3 sch pt 2

**Application of sdiv 3**

s 180      amd 1999 No. 17 s 3 sch pt 2

**Total incapacity**

s 181      amd 1997 No. 81 s 3 sch

**Subdivision 3A—Eligible persons**

sdiv hdg   ins 1999 No. 17 s 33

**Application of sdiv 3A**

s 181A     ins 1999 No. 17 s 33

**Total incapacity**

s 181B     ins 1999 No. 17 s 33

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

s 182      amd 1999 No. 17 s 3 sch pt 2

**Division 5—Entitlement for partial incapacity****Subdivision 1—Persons entitled to compensation other than eligible persons**

sdiv hdg   ins 1999 No. 17 s 34

**Application of sdiv 1**

s 182A     ins 1999 No. 17 s 34

**Definitions for sdiv 1**

prov hdg   amd 1999 No. 17 s 3 sch pt 2

s 183      amd 1999 No. 17 s 3 sch pt 2

**Partial incapacity**

s 184      amd 1999 No. 17 s 3 sch pt 2

**Subdivision 2—Eligible persons**

sdiv hdg   ins 1999 No. 17 s 35

**Application of sdiv 2**

s 184A     ins 1999 No. 17 s 35

**Definitions for sdiv 2**

s 184B     ins 1999 No. 17 s 35

**Partial incapacity**

s 184C     ins 1999 No. 17 s 35

**Subdivision 3—Requiring information**

sdiv hdg   ins 1999 No. 17 s 35

**WorkCover may require information from partially incapacitated worker or person**

prov hdg   amd 1999 No. 17 s 3 sch pt 2

s 185      amd 1999 No. 17 s 3 sch pt 2

**Calculation of WRI**

s 201      amd 2001 No. 67 s 9

**WorkCover to give notice of assessment of permanent impairment**

s 203      amd 2001 No. 67 s 10

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

prov hdg   sub 2001 No. 67 s 11(1)

s 206      amd 2001 No. 67 s 11(2)

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

**prov hdg** sub 2001 No. 67 s 12(1)  
**s 207** amd 2001 No. 67 s 12(2)–(3)

**Additional lump sum compensation for certain workers**

**s 210** amd 2001 No. 67 s 13

**Additional lump sum compensation for gratuitous care**

**s 211** amd 2001 No. 67 s 14

**Total dependency**

**s 218** amd 2001 No. 67 s 15

**WorkCover’s liability for medical treatment and hospitalisation**

**s 228** amd 1999 No. 17 s 36

**Extent of liability for travelling expenses**

**s 237** amd 2000 No. 61 s 13

**Liability for rehabilitation fees and costs**

**s 239** amd 1999 No. 17 s 37

**Employer’s obligation to appoint rehabilitation coordinator**

**s 243** amd 2000 No. 61 s 14

**Worker must mitigate loss**

**s 248** amd 2001 No. 67 s 16

**CHAPTER 5—ACCESS TO DAMAGES****Definitions for ch 5**

**s 250** def “**damages certificate**” amd 1997 No. 81 s 3 sch  
om 2001 No. 67 s 17(1)  
def “**written final offer**” ins 2001 No. 67 s 17(2)

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

**s 252A** ins 2002 No. 67 s 12

**PART 2—ENTITLEMENT CONDITIONS****General limitation on persons entitled to seek damages**

**s 253** amd 2001 No. 67 s 18

**Worker with terminal condition**

**s 254** amd 2001 No. 67 s 19

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

**s 255** sub 2001 No. 67 s 20

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

**div hdg** sub 2001 No. 67 s 20

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

**s 256** sub 2001 No. 67 s 20

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

**div hdg** sub 2001 No. 67 s 20

**Subdivision 1—Application of division 3**

**sdiv hdg** ins 2001 No. 67 s 20

**Application of div 3**

s 257 sub 2001 No. 67 s 20

**Subdivision 2—Claimant mentioned in s 253(1)(a)(i)**

sdiv hdg ins 2001 No. 67 s 20

**Application of subdiv 2**

s 258 sub 2001 No. 67 s 20

**Need for urgent proceedings**

s 259 sub 2001 No. 67 s 20

**Subdivision 3—Claimant mentioned in s 253(1)(a)(ii)**

sdiv hdg ins 2001 No. 67 s 20

**Application of subdiv 3**

s 260 sub 2001 No. 67 s 20

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

s 261 sub 2001 No. 67 s 20

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

s 262 sub 2001 No. 67 s 20

**Need for urgent proceedings**

s 263 sub 2001 No. 67 s 20

**When urgent proceeding must be discontinued**

s 264 sub 2001 No. 67 s 20

**Division 4—Claimant mentioned in s 253(1)(b)**

div hdg sub 2001 No. 67 s 20

**Application of div 4**

s 265 sub 2001 No. 67 s 20

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

s 266 sub 2001 No. 67 s 20

**Need for urgent proceedings**

s 267 sub 2001 No. 67 s 20

**When urgent proceeding must be discontinued**

s 268 sub 2001 No. 67 s 20

**Division 5—Claimant mentioned in s 253(1)(c)**

div hdg sub 2001 No. 67 s 20

**Application of div 5**

s 269 sub 2001 No. 67 s 20

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

s 270 sub 2001 No. 67 s 20

**Need for urgent proceedings**

s 271 sub 2001 No. 67 s 20

**When urgent proceedings must be discontinued**

s 272 sub 2001 No. 67 s 20

**Division 6—Claimant mentioned in s 253(1)(d)**

div hdg sub 2001 No. 67 s 20

**Application of div 6**

s 273 sub 2001 No. 67 s 20

**Access to damages if claimant has not lodged application for compensation**s 273A ins 2001 No. 67 s 20  
amd 2003 No. 19 s 3 sch**Need for urgent proceedings**

s 273B ins 2001 No. 67 s 20

**When proceedings must be discontinued**

s 273C ins 2001 No. 67 s 20

**Division 7—Person mentioned in s 253(1)(e)**

div hdg sub 2001 No. 67 s 20

**Application of div 7**

s 273D ins 2001 No. 67 s 20

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

s 273E ins 2001 No. 67 s 20

**Need for urgent proceedings**

s 273F ins 2001 No. 67 s 20

**When proceedings must be discontinued**

s 273G ins 2001 No. 67 s 20

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

div hdg ins 2001 No. 67 s 20

**Application of div 8**

s 273H ins 2001 No. 67 s 20

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

s 274 amd 2001 No. 67 s 21

**PART 3—MITIGATION OF LOSS AND REHABILITATION**

pt hdg sub 2001 No. 67 s 22

**Mitigation of loss**

s 275 sub 2001 No. 67 s 22

**Provision of rehabilitation**

s 275A ins 2001 No. 67 s 22

**Costs of rehabilitation**

s 275B ins 2001 No. 67 s 22

**Object of pt 5**

s 279 sub 2001 No. 67 s 23

**Overriding obligations of parties**

s 279A ins 2001 No. 67 s 23

**Notice of claim for damages**

s 280 amd 2000 No. 61 s 3 sch 1; 2001 No. 67 s 24

**Noncompliance with s 280 and urgent proceedings**

s 280A ins 2001 No. 67 s 25

**Claimant to tell WorkCover of change to information in notice of claim**

s 281 amd 2001 No. 67 s 26

**Response to notice of claim**

s 282 amd 2001 No. 67 s 27

**Claimant and WorkCover to cooperate**

s 283 sub 2001 No. 67 s 28

**WorkCover and claimant to attempt to resolve claim**

s 285 amd 2001 No. 67 s 29

**Non-disclosure of certain material**

s 288 amd 1999 No. 17 s 38; 2001 No. 67 s 30

**PART 6—SETTLEMENT OF CLAIMS****Compulsory conference**s 293 amd 2000 No. 46 s 3 sch  
sub 2001 No. 67 s 31**Procedure at conference**

s 293A ins 2001 No. 67 s 31

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

s 293B ins 2001 No. 67 s 31

**Division 2—Financial information to be given to claimant**

div 2 (ss 295–299) om 2001 No. 67 s 32

**Compliance necessary before starting proceeding**

s 302 amd 2001 No. 67 s 33

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

s 303 amd 2001 No. 67 s 34

**Other provision for urgent proceedings**

s 305A ins 2001 No. 67 s 35

**Alteration of period of limitation**

s 308 amd 2001 No. 67 s 36

**PART 7A—STRUCTURED SETTLEMENTS**

pt 7A (s 310A) ins 2002 No. 67 s 13

**Contributory negligence**

s 312 sub 2001 No. 67 s 37

**Worker's breach of instructions**

s 313 om 2001 No. 67 s 37

**Reduction of damages because of contributory negligence**

s 314 om 2001 No. 67 s 37

**Damages other than to claimant**

s 316 om 2001 No. 67 s 38

**PART 10—EXEMPLARY DAMAGES**

pt hdg sub 2001 No. 67 s 39

**Division 1—Future economic loss**

div hdg om 2001 No. 67 s 40

**Future economic loss**s 317 amd 1999 No. 17 s 39  
om 2001 No. 67 s 40**Division 2—Interest**

div 2 (s 318) om 2001 No. 67 s 40

**Division 3—Exemplary damages**

div hdg om 2001 No. 67 s 40

**PART 11—COSTS****Division 1—Costs applying to worker with WRI of 20% or more or dependant**

div hdg sub 2001 No. 67 s 41

**Application of div 1**

s 320 sub 2001 No. 67 s 41

**Principles about orders as to costs**

s 321 sub 2001 No. 67 s 41

**Costs if written final offer by claimant**

s 322 sub 2001 No. 67 s 41

**Costs if written final offer by WorkCover**

s 323 sub 2001 No. 67 s 41

**Interest after service of written final offer**

s 323A ins 2001 No. 67 s 41

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

div hdg sub 2001 No. 67 s 41

**Application of div 2**

s 324 amd 2001 No. 67 s 42

**Principles about orders as to costs**

s 325 amd 2001 No. 67 s 43

**Application of pt 12**

s 328 amd 2000 No. 46 s 3 sch

**CHAPTER 5A—CHOICE OF LAW FOR DAMAGES**

ch 5A (ss 329A–329E) ins 2002 No. 67 s 14

**CHAPTER 6—WORKCOVER QUEENSLAND****Quarterly reports**

s 361      amd 1999 No. 17 s 40

**Duty and liability of certain officers of WorkCover**

s 367      amd 2002 No. 68 s 339 sch 4

**Minister not director etc.**

s 379      amd 2001 No. 45 s 29 sch 3

**Regard to particular ability in appointment of directors**

s 383      amd 2000 No. 46 s 3 sch; 2001 No. 45 s 29 sch 3

**WorkCover's chief executive officer**

s 399      amd 1999 No. 33 s 747 sch 3

**PART 6A—REVIEW UNIT**

pt hdg    ins 1999 No. 17 s 41

**WorkCover must establish review unit**

s 403A    ins 1999 No. 17 s 41

**Function of review unit**

s 403B    ins 1999 No. 17 s 41

**Appointment of senior executives**

s 404      amd 1999 No. 33 s 747 sch 3

**Liability for State taxes**

s 411      amd 2001 No. 71 s 551 sch 1

**Amounts payable by WorkCover on Minister's instruction**

s 416      amd 1999 No. 17 s 42

**Application of various other Acts**

s 423      amd 2001 No. 45 s 29 sch 3; 2001 No. 69 s 378 sch 1; 2001 No. 73 s 96 sch 1

**CHAPTER 6A—WORKCOVER REVIEW COUNCIL**

ch hdg    ins 1999 No. 17 s 43

**PART 1—ESTABLISHMENT AND FUNCTIONS**

pt hdg    ins 1999 No. 17 s 43

**WorkCover Review Council is established**

s 423A    ins 1999 No. 17 s 43

**Functions of council**

s 423B    ins 1999 No. 17 s 43

**PART 2—MEMBERSHIP**

pt hdg    ins 1999 No. 17 s 43

**Membership**

s 423C    ins 1999 No. 17 s 43

**Chairperson**

s 423D    ins 1999 No. 17 s 43

**Term of appointment**

s 423E ins 1999 No. 17 s 43

**Disqualification from office**

s 423F ins 1999 No. 17 s 43

**Vacation of office**

s 423G ins 1999 No. 17 s 43

**Termination of appointment as member of council**

s 423H ins 1999 No. 17 s 43

**Remuneration**

s 423I ins 1999 No. 17 s 43

**PART 3—COUNCIL BUSINESS**

pt hdg ins 1999 No. 17 s 43

**Conduct of business**

s 423J ins 1999 No. 17 s 43

**Time and place of meetings**

s 423K ins 1999 No. 17 s 43

**Quorum**

s 423L ins 1999 No. 17 s 43

**Presiding at meetings**

s 423M ins 1999 No. 17 s 43

**Voting at meetings**

s 423N ins 1999 No. 17 s 43

**Council meetings without members being present**

s 423O ins 1999 No. 17 s 43

**Resolution without meeting**

s 423P ins 1999 No. 17 s 43

**Minutes**

s 423Q ins 1999 No. 17 s 43

**PART 4—OTHER PROVISIONS ABOUT THE COUNCIL**

pt hdg ins 1999 No. 17 s 43

**Administrative support for council**

s 423R ins 1999 No. 17 s 43

**Giving information to council**

s 423S ins 1999 No. 17 s 43

**Quarterly report**

s 423T ins 1999 No. 17 s 43

**Assessment tribunals to be maintained**

s 425 amd 2000 No. 61 s 15

**General Medical Assessment Tribunal**

s 426      amd 2000 No. 61 s 16

**Alternative panel**

s 427      om 2000 No. 61 s 17

**Conditions of appointment to panels**

s 428      om 2000 No. 61 s 17

**Chairperson and deputy chairperson of General Medical Assessment Tribunal**

s 429      amd 2000 No. 61 s 18

**Constitution of General Medical Assessment Tribunal for reference**

s 430      amd 2000 No. 61 s 19; 2001 No. 7 s 302 sch 2

**Panel for specialty medical assessment tribunal**

s 431      sub 2000 No. 61 s 20

**Chairperson and deputy chairperson of specialty medical assessment tribunal**

s 432      sub 2000 No. 61 s 20

**Specialty medical assessment tribunal**

s 433      sub 2000 No. 61 s 20

**Conditions of appointment to tribunal**

s 434      sub 2000 No. 61 s 20

**Reference to tribunals**

s 437      amd 2000 No. 61 s 21; 2001 No. 67 s 44

**Reference about worker's capacity for work**

s 439      amd 2000 No. 46 s 3 sch

**Reference about worker's injury**

s 440      amd 2001 No. 67 s 45

**Reference about worker's permanent impairment**

s 442      amd 2000 No. 61 s 3 sch 1; 2001 No. 67 s 46

**Reference about application for damages certificate by dependant**

s 444      om 2001 No. 67 s 47

**Reference about review of worker's permanent impairment**

s 445      amd 2001 No. 67 s 48

**Assessment of additional compensation for prescribed disfigurement**s 445A    ins 2000 No. 61 s 22  
amd 2001 No. 67 s 49**Power of tribunal to examine worker**

s 447      amd 1999 No. 17 s 3 sch pt 2

**PART 4—PRESCRIBED DISFIGUREMENT ASSESSMENT TRIBUNAL**

pt hdg    om 2000 No. 61 s 23

**Tribunal to be constituted**s 448      amd 1998 No. 41 s 14(1) sch 1  
om 2000 No. 61 s 23

**Proceedings of tribunal**

s 449 om 2000 No. 61 s 23

**Assessment of additional compensation for prescribed disfigurement**

s 450 om 2000 No. 61 s 23

**When entitlement to additional compensation for prescribed disfigurement is not paid**s 451 amd 1999 No. 17 s 3 sch pt 2  
om 2000 No. 61 s 23**Definition for pt 5**

s 452 amd 2000 No. 61 s 3 sch 1

**Further reference on fresh evidence**

s 454 amd 2001 No. 67 s 50

**Tribunal may refer non-medical matters back to WorkCover**

s 455A ins 2001 No. 67 s 51

**Finality of tribunal's decision**

s 456 sub 2001 No. 67 s 51

**Decisions of tribunal**

s 457 amd 2001 No. 67 s 52

**Entry to workplaces**

s 467 sub 2000 No. 61 s 24

**General powers after entering places**

s 472A ins 2000 No. 61 s 25

**False or misleading information or documents**

s 483 amd 1999 No. 17 s 3 sch pt 1

**Particular acts taken to be fraud**

s 484 amd 2000 No. 61 s 26

**Duty to report fraud or false or misleading information or documents**s 485 amd 1999 No. 17 s 3 sch pt 1  
sub 2000 No. 61 s 27**Fraud and related offences end entitlement to compensation and damages**

s 486 amd 2000 No. 61 s 3 sch 1

**CHAPTER 9—REVIEWS AND APPEALS**

ch 9 hdg sub 1999 No. 17 s 45

**PART 1—INTERNAL REVIEW OF PROPOSED DECISIONS**

pt hdg sub 1999 No. 17 s 45

**Division 1—Internal review of decisions**

div hdg om 1999 No. 17 s 45

**Internal review by WorkCover or self-insurer**

s 487 sub 1999 No. 17 s 45

**Division 2—Appeals****div hdg** om 1999 No. 17 s 45**PART 2—REVIEW OF DECISIONS****pt hdg** sub 1999 No. 17 s 45**Objects of pt 2****s 488** sub 1999 No. 17 s 45**Application of pt 2****s 489** sub 1999 No. 17 s 45

amd 2000 No. 61 s 3 sch 1; 2001 No. 67 s 53

**Who may apply for review****s 490** sub 1999 No. 17 s 45**Applying for review****s 491** sub 1999 No. 17 s 45**Right of appearance****s 492** sub 1999 No. 17 s 45**Decision-maker must give information to review unit****s 493** sub 1999 No. 17 s 45**Division 1—Internal review of decisions****div hdg** om 1999 No. 17 s 45**Review of decision or failure to make a decision****s 494** sub 1999 No. 17 s 45**Division 2—Appeal to industrial magistrate****div hdg** om 1999 No. 17 s 45**Notice of review decision****s 495** sub 1999 No. 17 s 45**Division 3—Appeal to court****div hdg** om 1999 No. 17 s 45**Reimbursement of costs of examination and report****s 496** sub 1999 No. 17 s 45**PART 3—APPEALS****pt hdg** ins 1999 No. 17 s 45**Division 1—Appeal to industrial magistrate or Industrial Court****div hdg** ins 1999 No. 17 s 45**Application of div 1****s 497** sub 1999 No. 17 s 45**Who may appeal****s 498** sub 1999 No. 17 s 45

amd 2001 No. 67 s 54

**Procedure for appeal**

s 499 sub 1999 No. 17 s 45  
amd 2001 No. 67 s 55

**Appeal about amount of premium**

s 500 sub 1999 No. 17 s 45

**Notice of time and place for hearing**

s 501 sub 1999 No. 17 s 45

**Application of Uniform Civil Procedure Rules and Industrial Relations (Tribunals) Rules**

s 501A ins 2001 No. 67 s 56

**Exchanging evidence before hearing**

s 502 sub 1999 No. 17 s 45

**Adjourning hearing**

s 503 sub 1999 No. 17 s 45

**Additional medical evidence**

s 504 sub 1999 No. 17 s 45

**Correcting defects in proceedings**

s 505 sub 1999 No. 17 s 45

**Powers of industrial magistrate**

s 506 sub 1999 No. 17 s 45

**Decision of industrial magistrate**

s 507 sub 1999 No. 17 s 45

**Recovery of costs**

s 508 sub 1999 No. 17 s 45

**Appeal from industrial magistrate to Industrial Court**

s 509 sub 1999 No. 17 s 45  
amd 2001 No. 67 s 3 sch

**Powers of Industrial Court**

s 510 sub 1999 No. 17 s 45

**Costs of appeal to Industrial Court**

s 510A ins 2001 No. 67 s 57

**Recovery of costs**

s 510B ins 2001 No. 67 s 57

**Decision about amount of premium**

s 511 sub 1999 No. 17 s 45

**Decision about payment of compensation**

s 512 sub 1999 No. 17 s 45

**Division 2—Appeal to court of competent jurisdiction**

div hdg ins 1999 No. 17 s 45

**Application of div 2**

s 513 sub 1999 No. 17 s 45

**Who may appeal**

s 514 sub 1999 No. 17 s 45

**Starting appeals**

s 515 sub 1999 No. 17 s 45

**Powers of court on appeal**

s 516 sub 1999 No. 17 s 45

**Effect of decision of court on appeal**

s 517 sub 1999 No. 17 s 45

**PART 4—COMPENSATION AND ENTITLEMENTS**

pt hdg om 1999 No. 17 s 45

**Division 1—Internal review of decisions**

div hdg om 1999 No. 17 s 45

**Division 2—Hearing by industrial magistrate**

div hdg om 1999 No. 17 s 45

**Appeal from industrial magistrate to industrial court**

s 518 om 1999 No. 17 s 45

**Worker or claimant entitled to obtain certain documents**

s 519 amd 1999 No. 17 s 3 sch pt 1

**Disclosure of information**

s 520 amd 1999 No. 17 s 46

**WorkCover's information not actionable**

s 523 amd 1999 No. 17 ss 47, 3 sch pt 1

**CHAPTER 10—MISCELLANEOUS****PART 1A—AUDITS**

pt hdg ins 1999 No. 17 s 3 sch pt 2

**Audit of wages and contracts**s 523A (prev s 470) amd 1999 No. 17 ss 44(1)–(2), 3 sch  
renum and reloc 1999 No. 17 s 44(3)**Powers of industrial magistrate**

s 528 amd 1999 No. 33 s 747 sch 3

**Repeal**

s 534 om R1 (see RA s 40)

**Consequential amendments in sch 2**

s 535 om R1 (see RA s 7(1)(k))

**CHAPTER 11—TRANSITIONAL PROVISIONS FOR WORKCOVER  
QUEENSLAND ACT 1996**

ch hdg sub 1999 No. 17 s 3 sch pt 1

**References to self-raters and self-insurers**

s 550 om 1999 No. 17 s 3 sch pt 1

**Injury under repealed or other former Act**

s 551 amd 1999 No. 17 s 48

**CHAPTER 12—TRANSITIONAL PROVISIONS FOR WORKCOVER  
QUEENSLAND AMENDMENT ACT 1999**

ch hdg ins 1999 No. 17 s 49

**PART 1—WORKERS, ELIGIBLE PERSONS AND EMPLOYERS**

pt 1 (ss 559–560) ins 1999 No. 17 s 49

**PART 2—INJURIES**

pt 2 (ss 561–562) ins 1999 No. 17 s 49

**PART 3—SELF-RATING**

pt 3 (ss 563–572) ins 1999 No. 17 s 49

**PART 4—SELF-INSURANCE**

pt 4 (ss 573–578) ins 1999 No. 17 s 49

**PART 5—REVIEWS AND APPEALS**

pt 5 (s 579) ins 1999 No. 17 s 49

**CHAPTER 13—TRANSITIONAL PROVISIONS FOR WORKCOVER  
QUEENSLAND AND OTHER ACTS AMENDMENT ACT 2000**

ch hdg ins 2000 No. 61 s 28

**PART 1—INJURIES**

pt hdg ins 2000 No. 61 s 28

**Injury before commencement of amending Act**

s 580 ins 2000 No. 61 s 28

**PART 2—SELF-INSURANCE**

pt hdg ins 2000 No. 61 s 28

**Division 1—Bank guarantee**

div hdg ins 2000 No. 61 s 28

exp 1 July 2006 (see s 581(4))**Self-insurer's bank guarantee**

s 581 ins 2000 No. 61 s 28

exp 1 July 2006 (see s 581(4))**Division 2—Application by related bodies corporate group employer**

div hdg ins 2000 No. 61 s 28

**Application of div 2**

s 582 ins 2000 No. 61 s 28

**Variation of s 102 for particular purposes**

s 583 ins 2000 No. 61 s 28

**PART 3—MEDICAL ASSESSMENT TRIBUNALS**

pt hdg ins 2000 No. 61 s 28

**General Medical Assessment Tribunal**

s 584 ins 2000 No. 61 s 28

**Specialty medical assessment tribunals**

s 585 ins 2000 No. 61 s 28

**Prescribed disfigurement assessment tribunal**

s 586 ins 2000 No. 61 s 28

**CHAPTER 14—TRANSITIONAL PROVISIONS FOR WORKCOVER  
QUEENSLAND AMENDMENT ACT 2001**

ch hdg ins 2001 No. 67 s 58

**Definitions for ch 14**

s 587 ins 2001 No. 67 s 58

**Injury before 1 July 2001**

s 588 ins 2001 No. 67 s 58

**Reference to medical assessment tribunal**s 589 ins 2001 No. 67 s 58  
amd 2003 No. 19 s 3 sch**Formal revival of claim for loss of consortium**s 590 ins 2001 No. 67 s 58  
amd 2003 No. 19 s 3 sch (retro)**CHAPTER 15—TRANSITIONAL PROVISION FOR DISCRIMINATION LAW  
AMENDMENT ACT 2002**

ch 15 (s 591) ins 2002 No. 74 s 88

**CHAPTER 16—TRANSITIONAL PROVISION FOR WORKCOVER  
QUEENSLAND AMENDMENT ACT 2002**

ch 16 (s 592) ins 2002 No. 67 s 15

**SCHEDULE 1—REGULATIONS**

amd 1999 No. 17 s 3 sch pt 2

**SCHEDULE 2—WHO IS A WORKER**prev sch 2 amd 1997 No. 9 s 102  
om R1 (see RA s 40)  
pres sch 2 ins 1999 No. 17 s 50  
amd 2000 No. 23 s 293 sch 2**SCHEDULE 2A—PERSONS WHO ARE EMPLOYERS**ins 1999 No. 17 s 50  
amd 2000 No. 23 s 293 sch 2; 2001 No. 45 s 29 sch 3**SCHEDULE 2B—ADJACENT AREAS**

ins 2002 No. 67 s 16

**SCHEDULE 3—DICTIONARY**sch hdg sub 2000 No. 61 s 3 sch 1  
def “**arrangement**” ins 1999 No. 17 s 51(4)  
def “**authorised auditor**” ins 1999 No. 17 s 51(3)  
def “**bank guarantee**” ins 1999 No. 17 s 51(3)

- def “**certificate injury**” om 2001 No. 67 s 59(1)  
 def “**coaster**” om 2002 No. 67 s 17(1)  
 def “**complying notice of claim**” sub 2001 No. 67 s 59  
 def “**contract of service**” amd 2000 No. 23 s 293 sch 2  
 def “**council**” ins 1999 No. 17 s 51(3)  
 def “**damages certificate**” om 2001 No. 67 s 59(1)  
 def “**group training organisation**” ins 2000 No. 23 s 293 sch 2  
 def “**group training scheme**” ins 1999 No. 17 s 51(4)  
 om 2000 No. 23 s 293 sch 2  
 def “**holding company**” ins 1999 No. 17 s 51(4)  
 amd 2001 No. 45 s 29 sch 3  
 def “**industrial instrument**” sub 2000 No. 46 s 3 sch  
 amd 2000 No. 61 s 3 sch 1  
 def “**Industrial Relations Act**” om 2000 No. 46 s 3 sch  
 def “**Insurance and Superannuation Commission**” om 2000 No. 61 s 29(1)  
 def “**labour hire agency**” ins 1999 No. 17 s 51(4)  
 def “**medical condition**” ins 1999 No. 17 s 51(3)  
 def “**non-certificate injury**” om 2001 No. 67 s 59(1)  
 def “**non-reviewable decision**” ins 1999 No. 17 s 51(3)  
 def “**OHS report**” ins 1999 No. 17 s 51(2)  
 def “**outstanding liability**” ins 1999 No. 17 s 51(2)  
 def “**PAYE taxpayer**” om 1999 No. 17 s 51(1)  
 def “**port**” om 2002 No. 67 s 17(1)  
 def “**Queensland ship**” om 2002 No. 67 s 17(1)  
 def “**registered**” amd 1999 No. 17 s 3 sch pt 1  
 def “**related bodies corporate**” om 2001 No. 45 s 29 sch 3  
 def “**related body corporate**” ins 2001 No. 45 s 29 sch 3  
 def “**residual liability**” ins 1999 No. 17 s 51(2)  
 def “**review decision**” ins 1999 No. 17 s 51(3)  
 def “**review unit**” ins 1999 No. 17 s 51(3)  
 def “**seafarer**” om 2002 No. 67 s 17(1)  
 def “**self-insurer’s workers**” ins 1999 No. 17 s 51(2)  
 def “**self-rater**” om 1999 No. 17 s 3 sch pt 1  
 def “**ship**” sub 2002 No. 67 s 17  
 def “**specialist**” sub 2001 No. 7 s 302 sch 2  
 def “**spouse**” sub 2002 No. 74 s 89  
 def “**State ship**” om 2002 No. 67 s 17(1)  
 def “**substantive law**” ins 2002 No. 67 s 17(2)  
 def “**table of costs**” amd 2000 No. 61 s 29(2)  
 def “**total liability**” ins 1999 No. 17 s 51(2)  
 def “**WorkCover Review Council**” ins 1999 No. 17 s 51(3)  
 def “**written final offer**” ins 2001 No. 67 s 59(2)

## 8 List of forms notified or published in the gazette

Form 32R Version 1—18 September 2001—Self-insurance Declaration of Wages  
 Form

pubd gaz 12 October 2001 pp 482–6

- Form 50R Version 1—10 September 2001—Declaration (Where no medical certificate)**  
pubd gaz 12 October 2001 pp 482–6
- Form 63R Version 1—14 June 2001—Application for Workplace Rehabilitation Re-accreditation**  
pubd gaz 31 August 2001 pp 1610–11
- Form 100.1 Version 1—10 September 2001—Application for a Single Employer Self-Insurance Licence**  
pubd gaz 12 October 2001 pp 482–6
- Form 100.2 Version 1—10 September 2001—Application for a Group Employer Self-Insurance Licence**  
pubd gaz 12 October 2001 pp 482–6
- Form 109.1 Version 1—10 September 2001—Application for Renewal of a Single Employer Self-Insurance Licence**  
pubd gaz 12 October 2001 pp 482–6
- Form 109.2 Version 1—10 September 2001—Application for Renewal of a Group Employer Self-Insurance Licence**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.WC Version 1—30 July 2001—Application for Compensation (WorkCover Queensland)**  
pubd gaz 31 August 2001 pp 1610–11
- Form 159.AMH Version 1—10 September 2001—Application for Compensation Form (Australia Meat Holdings Pty Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.ARN Version 1—10 September 2001—Application for Workers Compensation (Arnott’s Biscuits Campbell’s Soups (Queensland))**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.CC Version 1—10 September 2001—Compensation Application (Brisbane City Council)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.CBA Version 1—10 September 2001—Commonwealth Bank of Australia Group Application for Workers Compensation**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.CMG Version 1—10 September 2001—Application for Compensation Form for Workers (Consolidated Meat Group)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.GCCC Version 1—10 September 2001—Application for Compensation Form for Workers (Gold Coast City Council)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.GCL Version 1—10 September 2001—Compensation Application Form for Workers (Golden Circle Limited)**  
pubd gaz 12 October 2001 pp 482–6

- Form 159.JL Version 1—21 June 2002—Application for Compensation Form for Injured Workers (Jupiters Limited)**  
pubd gaz 28 June 2002 pp 868–9
- Form 159.LGW Version 1—10 September 2001—Application for Compensation (Local Government Association of Queensland)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.MNL Version 1—10 September 2001—Application for Compensation (Mayne Nickless Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.MIM Version 1—10 September 2001—Application for Compensation Form for Workers (M.I.M. Holdings Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.QF Version 1—10 September 2001—Workers Compensation Claim (Qantas Airways Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.RWC Version 1—10 September 2001—Application for Compensation Form for Workers (Redland Shire Council)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.TCC Version 1—10 September 2001—Application for Compensation Form for Workers (Townsville City Council)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.UQ Version 1—10 September 2001—Application for Workers Compensation (University of Queensland)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.WBC Version 1—10 September 2001—Application for Compensation (Westpac Banking Corporation)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.WW Version 1—10 September 2001—Application for Compensation Form for Workers (Woolworths Limited—Queensland)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.AMH Version 1—10 September 2001—Application for Compensation—Fatal Injury (Australia Meat Holdings Pty Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.ARN Version 1—10 September 2001—Application for Workers Compensation—Fatal Injury (Arnott’s Biscuits Campbell’s Soups (Queensland))**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.CC Version 1—10 September 2001—Compensation Application—Fatal Injury (Brisbane City Council)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.CBA Version 1—10 September 2001—Commonwealth Bank of Australia Group Application for Compensation—Fatal Injury**  
pubd gaz 12 October 2001 pp 482–6

- Form 159.48R.CMG Version 1—10 September 2001—Application for Compensation Fatal Injury (Consolidated Meat Group)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.CSR Version 1—10 September 2001—Application for Compensation Fatal Injury (CSR Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.GCCC Version 1—10 September 2001—Application for Compensation Fatal Injury (Gold Coast City Council)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.GCL Version 1—10 September 2001—Compensation Application Form—Fatal Injury (Golden Circle Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.JL Version 1—21 June 2002—Application for Compensation – Fatal Injury (Jupiters Limited)**  
pubd gaz 28 June 2002 pp 868–9
- Form 159.48R.LGW Version 1—10 September 2001—Application for Compensation—Fatal (Local Government Association of Queensland)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.MNL Version 1—10 September 2001—Application for Workers Compensation Fatal Injury (Mayne Nickless Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.MIM Version 1—10 September 2001—Application for Compensation Fatal Injury (M.I.M. Holdings Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.QF Version 1—10 September 2001—Application for Compensation Fatal Injury (Qantas Airways Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48QR Version 1—10 September 2001—Application for Workers Compensation—Fatal Injury (Queensland Rail)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.RWC Version 1—10 September 2001—Application for Compensation Fatal Injury (Redland Shire Council)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.TCC Version 1—10 September 2001—Compensation Application Form Fatal Injury (Townsville City Council)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.UQ Version 1—10 September 2001—Application for Compensation Fatal Injury (University of Queensland)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.WBC Version 1—10 September 2001—Application for Compensation—Fatal Injury (Westpac Banking Corporation)**  
pubd gaz 12 October 2001 pp 482–6

- Form 159.48R.WW Version 1—10 September 2001—Application for Workers Compensation—Fatal (Woolworths Limited—Queensland)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.WC Version 1—10 September 2001—Application for Compensation—Fatal Injury (WorkCover Queensland)**  
pubd gaz 12 October 2001 pp 482–6
- Form 160F.WC Version 1—10 September 2001—Employer’s Report—Fatal Injury (WorkCover Queensland)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.BHP Version 1—11 September 2001—Application for Compensation Form (BHP Billiton)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.BHP Version 1—11 September 2001—Application for Compensation Form—Fatal Injury (BHP Billiton)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.CML Version 1—11 September 2001—Employee’s Application for Compensation (Coles Myer Ltd)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.CML Version 1—12 September 2001—Application for Compensation Fatal Injury (Coles Myer Ltd)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.BAL Version 1—17 September 2001—Application for Compensation Form for Workers (Brambles Australia Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.BAL Version 1—17 September 2001—Application for Compensation Fatal Injury (Brambles Australia Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.ANZ Version 1—24 September 2001—Application for Compensation (ANZ Banking Group Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.ANZ Version 1—24 September 2001—Application for Compensation Fatal Injury (ANZ Banking Group Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.OS Version 1—24 September 2001—Application for Compensation (OneSteel Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.48R.OS Version 1—24 September 2001—Application for Compensation Fatal Injury (OneSteel Limited)**  
pubd gaz 12 October 2001 pp 482–6
- Form 159.CSR Version 1—28 September 2001—Application for Compensation (CSR Limited)**  
pubd gaz 12 October 2001 pp 482–6

- Form 159.QR Version 1—5 October 2001—Application for Workers Compensation (Queensland Rail)**  
pubd gaz 12 October 2001 pp 482–6
- Form 160.WC Version 1—30 July 2001—Employer’s Report (WorkCover Queensland)**  
pubd gaz 31 August 2001 pp 1610–11
- Form 203.1 Version 1—27 November 2001—Notice of Assessment (No permanent impairment for injury pre-1 July 2001 and injury on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.2 Version 1—27 November 2001—Notice of Assessment (Work related impairment of <50%, certificate and non-certificate injury, physical or psychiatric / psychological injury, pre-1 July 2001) Workplace Health and Safety Act 1995**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.3 Version 1—27 November 2001—Notice of Assessment (Work related impairment of <50%, certificate and non-certificate injury, physical and psychiatric / psychological injury, pre-1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.4 Version 1—27 November 2001—Notice of Assessment (Work related impairment of 50% or more, physical or psychiatric / psychological injury, pre- 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.5 Version 1—27 November 2001—Notice of Assessment (Work related impairment of 50% or more, physical and psychiatric / psychological injury, pre- 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.6 Version 1—27 November 2001—Notice of Assessment (Work related impairment of 50% or more, physical or psychiatric / psychological injury additional lump sum compensation for gratuitous care, pre- 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.7 Version 1—27 November 2001—Notice of Assessment (Work related impairment of 50% or more, physical and psychiatric / psychological injury, additional lump sum compensation for gratuitous care, pre- 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.8 Version 1—27 November 2001—Notice of Assessment (Industrial deafness – no entitlement to lump sum compensation, pre- 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.9 Version 1—27 November 2001—Notice of Assessment (Work related impairment of <50%, physical or psychiatric / psychological injury on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9

- Form 203.9A Version 1—22 March 2002—Notice of Assessment (Work related impairment of <50%, physical or psychiatric / psychological injury, additional lump sum for gratuitous care on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.10 Version 1—27 November 2001—Notice of Assessment (Work related impairment of <50%, physical and psychiatric / psychological injury on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.10A Version 1—22 March 2002—Notice of Assessment (Work related impairment of <50%, physical and psychiatric / psychological injury, additional lump sum for gratuitous care on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.11 Version 1—27 November 2001—Notice of Assessment (Work related impairment of 50% or more, physical or psychiatric / psychological injury on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.12 Version 1—27 November 2001—Notice of Assessment (Work related impairment of 50% or more, physical and psychiatric / psychological injury on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.13 Version 1—27 November 2001—Notice of Assessment (Work related impairment of 50% or more, physical or psychiatric / psychological injury, additional lump sum compensation for gratuitous care on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.14 Version 1—27 November 2001—Notice of Assessment (Work related impairment of 50% or more, physical and psychiatric / psychological injury, additional lump sum compensation for gratuitous care on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.15 Version 1—27 November 2001—Notice of Assessment (Industrial deafness – no entitlement to lump sum compensation on or after 1 July 2001)gratuitous care on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.16 Version 1—27 November 2001—Notice of Assessment (No claim for compensation, physical or psychiatric / psychological injury on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9
- Form 203.17 Version 1—27 November 2001—Notice of Assessment (No claim for compensation, physical and psychiatric / psychological injury on or after 1 July 2001)**  
pubd gaz 28 June 2002 pp 868–9

- Form 265.270 Version 1—10 September 2001—Application for Damages Certificate (WorkCover Queensland Act 1996)**  
pubd gaz 12 October 2001 pp 482–6
- Form 280 Version 2—21 June 2002—Notice of Claim for Damages (for injuries sustained on or after 1 February 1997)**  
pubd gaz 28 June 2002 pp 868–9
- Form 491.1 Version 1—22 June 2001—Application for Review Policies, Premiums and Levies**  
pubd gaz 31 August 2001 pp 1610–11
- Form 491.2 Version 1—Application for Review Statutory Claims**  
pubd gaz 31 August 2001 pp 1610–11
- Form 1990.182D Version 1—18 September 2001—Application for Damages Certificate (Workers’ Compensation Act 1990)**  
pubd gaz 12 October 2001 pp 482–6
- Form 1990.182B Version 1—18 September 2001—Response to Lump Sum Offer (Workers’ Compensation Act 1990)**  
pubd gaz 12 October 2001 pp 482–6
- Form DW01A Version 1—29 May 2001—Declaration of Wages**  
pubd gaz 31 August 2001 pp 1610–11
- Form DW01B Version 1—29 May 2001—Declaration of Wages (Exception for clerical workers)**  
pubd gaz 31 August 2001 pp 1610–11
- Form FR.49 Version 1—8 June 2001—Workers’ Compensation Medical Certificate**  
pubd gaz 31 August 2001 pp 1610–11
- Form FR.49 Fatal Version 1—8 June 2001—Workers’ Compensation Medical Certificate Fatal Injury**  
pubd gaz 31 August 2001 pp 1610–11
- Form PN01 Version 1—3 July 2001—Workers’ Compensation Policy**  
pubd gaz 31 August 2001 pp 1610–11

## **9 Provisions that have not commenced and are not incorporated into reprint**

The following provisions are not incorporated in this reprint because they had not commenced before the reprint date (see Reprints Act 1992, s 5(c)).

**WorkCover Queensland Amendment Act 2002 No. 67 ss 4–5, 7–11, 14–17 read as follows—**

### **4 Amendment of s 52 (Employer’s obligation to insure)**

Section 52(6)—

omit.

### **5 Amendment of s 55 (Offence of contravening general obligation to insure)**

Section 55—

*insert—*

‘(2) It is a defence to prove that at the time of the alleged contravention—

- (a) the employer believed on reasonable grounds that the employer could not be liable under this Act in relation to the worker because under section 139 the worker’s employment was not connected with this State; and
- (b) the employer had workers’ compensation cover in relation to the worker’s employment under the law of the State with which the employer believed on reasonable grounds the worker’s employment was connected under section 139.

‘(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.’.

### **7 Replacement of ch 3, pt 2, div 2 hdg**

Chapter 3, part, 2 division 2, heading—

*omit, insert—*

***‘Division 2—Entitlement according to jurisdiction’.***

**8 Replacement of s 139 (Entitlement depends on where injury is sustained)**

Section 139—

*omit, insert—*

**‘139 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 2B.

### **‘139A 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 139 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 139 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 139.

“**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.’.

## **9 Insertion of new ch 3, pt 2, div 2A hdg**

Before section 140—

*insert—*

***‘Division 2A—Overseas arrangements’.***

## **10 Amendment of s 140 (Interstate and overseas arrangements)**

(1) Section 140, heading—

*omit, insert—*

### **‘140 Overseas arrangements’.**

(2) Section 140, ‘State or’—

*omit.*

(3) Section 140(5), ‘continuous’—

*omit.*

## **11 Replacement of ch 3, pt 3, div 1**

Chapter 3, part 3, division 1—

*omit, insert—*

***‘Division 1—Workers on ships***

### **‘145 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.

### **‘146 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 141.<sup>292</sup>’.

## **14 Insertion of new ch 5A**

After section 329—

*insert—*

# **‘CHAPTER 5A—CHOICE OF LAW FOR DAMAGES**

## **‘PART 1—APPLICATION OF CHAPTER 5A**

### **‘329A 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**

### **‘329B Meaning of “substantive law”**

‘(1) In this chapter, “substantive law” includes—

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<sup>292</sup> Section 141 (Entitlement ends if compensated under corresponding laws)

- (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.

### **‘329C 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**

#### **‘329D 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.

#### **‘329E 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.’.

## **15 Insertion of new ch 16**

Before schedule 1—

*insert—*

# **‘CHAPTER 16—TRANSITIONAL PROVISION FOR WORKCOVER QUEENSLAND AMENDMENT ACT 2002**

## **‘592 Cross border rules**

‘(1) This section applies to the amendments to the Act made by the *WorkCover Queensland Amendment Act 2002*, sections 4 and 5, 7 to 11 and 14 to 17 (the “**amending provisions**”).

‘(2) The provisions of this Act, as in force immediately before 1 July 2003, continue to apply in relation to an injury sustained by a worker before 1 July 2003 as if the amending provisions had not been enacted.’.

## **16 Insertion of new sch 2B**

After schedule 2A—

*insert—*

# **‘SCHEDULE 2B**

## **‘ADJACENT AREAS**

section 139(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* (Cwth).

## **‘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* (Cwth), section 7; and
- (d) the space above and below the areas described in paragraphs (a), (b) and (c).

(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.’.

### 17 Amendment of sch 3 (Dictionary)

(1) Schedule 3, definitions “**coaster**”, “**port**”, “**Queensland ship**”, “**seafarer**”, “**ship**” and “**State ship**”—

*omit.*

(2) Schedule 3—

*insert—*

‘ “**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.

“**substantive law**”, for chapter 5A, see section 329B.’.