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Queensland

Workers' Compensation and Rehabilitation Act 2003

Current as at [Not applicable]

Indicative reprint note

This is an ***unofficial*** version of a reprint of this Act that incorporates all proposed amendments to the Act included in the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020. This indicative reprint has been prepared for information only—***it is not an authorised reprint of the Act***.

An enacted but uncommenced amendment included in the *Medicines and Poisons Act 2019* No. 26 has also been incorporated in this indicative reprint.

The point-in-time date for this indicative reprint is the introduction date for the Workers' Compensation and Rehabilitation and Other Legislation Amendment Bill 2020—[introduction date].

Detailed information about indicative reprints is available on the **Information** page of this website.

Queensland

Workers' Compensation and Rehabilitation Act 2003

Contents

Workers’ Compensation and Rehabilitation Act 2003

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

Chapter 1 Preliminary

Part 1 Introduction

1 Short title

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

2 Commencement

(1) Sections 613 to 618 and 621 are taken to have commenced on 1 April 2003.

(2) The remaining provisions of this Act, (other than sections 612, 619 and 620) commence on 1 July 2003.

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.

3A Notes in text

A note in the text of this Act is part of the Act.

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;

(aa) implementation of the national injury insurance scheme for serious personal injuries resulting from workplace incidents connected with Queensland;

(b) regulation of access to damages;

(c) employers' liability for compensation;

(d) employers' obligation to be covered against liability for compensation and damages either under a WorkCover insurance policy or under a licence as a self-insurer;

(e) management of compensation claims by insurers;

(f) injury management, emphasising rehabilitation of workers particularly for return to work;

(g) procedures for assessment of injuries by appropriately qualified persons or by independent medical assessment tribunals;

(h) rights of review of, and appeal against, decisions made under this Act.

(3) There is some scope for the application of this Act to injuries sustained by persons other than workers, for example—

(a) under arrangements for specified benefits for specified persons or treatment of specified persons in some respects as workers; and

(b) under procedures for assessment of injuries under other Acts by medical assessment tribunals established under this Act.

(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 cost levels for employers; and

(b) ensure that injured workers or dependants are treated fairly by insurers; and

(c) provide for the protection of employers' interests in relation to claims for damages for workers' injuries; and

(d) provide for employers and injured workers to participate in effective return to work programs; and

(da) provide for workers or prospective workers not to be prejudiced in employment because they have sustained injury to which this Act or a former Act applies; and

(e) provide for flexible insurance arrangements suited to the particular needs of industry.

(5) Because it is in the State's interests that industry remain locally, nationally and internationally competitive, it is intended that compulsory insurance against injury in

employment should not impose too heavy a burden on employers and the community.

6 Administration

This Act provides for the efficient administration of the scheme and of this Act through the establishment of the office of the Workers' Compensation Regulator and WorkCover.

Part 3 Definitions

7 Definitions

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

Part 4 Basic concepts

Division 1 Accident insurance, compensation and damages

8 Meaning of *accident insurance*

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

(a) compensation; and

(b) damages.

9 Meaning of *compensation*

Compensation is compensation under this Act, that is, amounts for a worker's injury payable under chapters 3, 4 and

4A by an insurer to a worker, a dependant of a deceased worker or anyone else, and includes compensation paid or payable under a former Act.

10 Meaning of *damages*

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

(a) the worker; or

(b) if the injury results in the worker's death—a dependant of the deceased worker.

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

(a) another Act; or

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

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

10A Meaning of *QOTE*

(1) ***QOTE***, for a financial year, is—

(a) the amount of Queensland full-time adult persons ordinary time earnings declared by the Australian Statistician in the original series of the statistician's average weekly earnings publication most recently published before the start of the financial year; or

(b) if the amount mentioned in paragraph (a) is less than QOTE for the previous financial year—the amount that is QOTE for the previous financial year.

(2) The Regulator must, before the start of a financial year, notify—

(a) QOTE for the financial year; and

(b) the percentage difference in QOTE for the financial year compared to QOTE for the previous financial year.

(3) The percentage difference under subsection (2)(b) may be rounded to the nearest second decimal place.

(4) The Regulator's notice is subordinate legislation.

Division 2 Workers

11 Who is a *worker*

(1) A ***worker*** is a person who—

(a) works under a contract; and

(b) in relation to the work, is an employee for the purpose of assessment for PAYG withholding under the *Taxation Administration Act 1953* (Cwlth), schedule 1, part 2-5.

(2) Also, schedule 2, part 1 sets out who is a ***worker*** in particular circumstances.

(3) However, schedule 2, part 2 sets out who is not a ***worker*** in particular circumstances.

(4) Only an individual can be a ***worker*** for this Act.

Division 3 Persons entitled to compensation other than workers

Subdivision 1A Preliminary

11A Compensation to which this division does not apply

In this division, a reference to an entitlement to compensation does not include an entitlement to compensation under chapter 4A.

Subdivision 1 Volunteers etc.

12 Entitlements of persons mentioned in sdiv 1

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

(a) an entitlement to weekly payments of compensation under chapter 3, part 9, division 4, subdivision 3 and division 5, subdivision 1; and

(b) for all other entitlements—the same entitlements to compensation as a worker.

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

(2A) However, the contract must cover the payment of damages if the person is a specified volunteer firefighter who sustains an injury that is a specified disease.

Note—

See also section 236A about the application of chapter 5 to specified volunteer firefighters.

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

(a) the activity covered by the contract is taken to be the person's employment; and

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

13 Particular persons under Disaster Management Act 2003

(1) WorkCover may enter into a contract of insurance for this subdivision with the commissioner under the *Fire and Emergency Services Act 1990*.

(2) The contract may cover—

(a) a member of the State Emergency Service or an emergency service unit under the *Fire and Emergency Services Act 1990*; or

(b) a person required to give reasonable help under section 77(1)(q), 107(2)(h) or 112(3)(g) of that Act; or

(c) another person performing a function or exercising a power under that Act.

(3) A person covered by the contract is entitled to compensation for injury sustained only while engaged in disaster operations or performing an emergency function, or participating in an activity arising out of, or in the course of, disaster operations or performing an emergency function, including training.

(4) In this section—

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

emergency function means a function of the State Emergency Service or an emergency service unit under the *Fire and Emergency Services Act 1990*.

14 Rural fire brigade member

(1) WorkCover may enter into a contract of insurance for this subdivision with the authority responsible for management of a rural fire brigade under the *Fire and Emergency Services 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.

(4) However, a person covered by the contract is also entitled to compensation if the person is a specified volunteer firefighter who sustains an injury that is a specified disease.

(5) Subsections (3) and (4) do not limit section 12(2A).

15 Volunteer firefighter 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 firefighter or a volunteer fire warden (***volunteer***).

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

(4) However, a person covered by the contract is also entitled to compensation if the person is a specified volunteer firefighter who sustains an injury that is a specified disease.

(5) Subsections (3) and (4) do not limit section 12(2A).

16 Local government, statutory or industrial body member

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

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

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

Note—

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

17 Honorary ambulance officers

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

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

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

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

(1) WorkCover may enter into a contract of insurance for this subdivision with a church, non-profit charitable organisation or benevolent institution (***institution***).

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

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

19 Person in voluntary or honorary position with non-profit organisation

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

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

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

Subdivision 2 Persons performing community service etc.

20 Entitlements of persons mentioned in sdiv 2

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

(a) an entitlement to weekly payments of compensation under chapter 3, part 9, division 4, subdivision 3 and division 5, subdivision 1; and

(b) for all other entitlements—the same entitlements to compensation as a worker.

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

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

(a) the activity covered by the contract is taken to be the person's employment; and

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

21 Persons performing community service or unpaid duties

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

(a) community service under a community service order or fine option order under the *Penalties and Sentences Act 1992*; or

(b) community service under a community service order under any other Act; or

(c) a work related activity or program as part of an order or program under the *Youth Justice Act 1992*, other than an activity or program performed while in the custody of the chief executive (corrective services).

Note—

For the definition *chief executive (corrective services)*, see the *Acts Interpretation Act 1954*, schedule 1.

(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 work related activity or program.

Subdivision 3 Students

22 Students

(1) WorkCover may enter into—

(a) a contract of insurance for this subdivision with the authority through which is administered the *Education (Work Experience) Act 1996* in relation to a State student; or

(b) a contract of insurance for this subdivision with the person having control of a non-State school in relation to a student enrolled at the school who is 14 or over; or

(c) a contract of insurance for this subdivision with a registered training organisation attended by a vocational placement student.

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

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

(4) In this section—

non-State school means an accredited school under the *Education (Accreditation of Non-State Schools) Act 2017*.

registered training organisation see the *National Vocational Education and Training Regulator Act 2011* (Cwlth), section 3.

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

Subdivision 4 Eligible persons

23 Meaning of *eligible person*

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

(a) a contractor; or

(b) a self-employed individual; or

(c) a director of a corporation; or

(d) a trustee; or

(e) a member of a partnership.

24 Eligible person may apply to be insured

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

25 Entitlements of eligible persons

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

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

(b) for all other entitlements—the same entitlements to compensation as a worker.

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

Subdivision 5 Other persons

26 Other persons

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

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

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

(a) compensation; or

(b) damages.

Division 4 Spouses, members of the family and dependants

27 Meaning of *dependant*

A ***dependant***, of a deceased worker, is a member of the deceased worker's family who was completely or partly dependent on the worker's earnings at the time of the worker's death or, but for the worker's death, would have been so dependent.

28 Meaning of *member of the family*

A person is a ***member of the family*** of a deceased worker, if the person is—

(a) the worker's—

(i) spouse; or

(ii) parent, grandparent or step-parent; or

(iii) child, grandchild or stepchild; or

(iv) brother, sister, half-brother or half-sister; or

(b) if the worker stands in the place of a parent to another person—the other person; or

(c) if another person stands in the place of a parent to the deceased worker—the other person.

29 Who is the *spouse* of a deceased worker

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

(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) In this section—

child of the relationship means a child of the worker and the de facto partner, and includes a child born after the worker's death.

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

Division 5 Employers

30 Who is an *employer*

(1) An ***employer*** is a person who engages a worker to perform work.

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

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

(4) In this section—

contract includes agreement and arrangement.

person includes—

(a) a government entity; and

(b) the legal personal representative of a deceased individual.

Division 6 Injuries, impairment and terminal condition

Subdivision 1 Event resulting in injury

31 Meaning of *event*

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

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

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

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

Subdivision 2 Injury

32 Meaning of *injury*

(1) An ***injury*** is personal injury arising out of, or in the course of, employment if the employment is a significant contributing factor to the injury.

(2) However, employment need not be a contributing factor to the injury if section 34(2) or 35(2) 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;

(b) an aggravation of the following, if the aggravation arises out of, or in the course of, employment and the employment is a significant contributing factor to the aggravation—

(i) a personal injury;

(ii) a disease;

(iii) a medical condition, if the condition becomes a personal injury or disease because of the aggravation;

(c) loss of hearing resulting in industrial deafness if the employment is a significant contributing factor to causing the loss of hearing;

(d) death from injury arising out of, or in the course of, employment if the employment is a significant contributing factor to causing the injury;

(e) death from a disease mentioned in paragraph (a), if the employment is a significant contributing factor to the disease;

(f) death from an aggravation mentioned in paragraph (b), if the employment is a significant contributing factor to the aggravation.

(4) For subsection (3)(b), to remove any doubt, it is declared that an aggravation mentioned in the provision is an injury only to the extent of the effects of the aggravation.

(5) Despite subsections (1) and (3), ***injury*** does not include a psychiatric or psychological disorder arising out of, or in the course of, any of the following circumstances—

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

(b) the worker's expectation or perception of reasonable management action being taken against the worker;

(c) action by the Regulator or an insurer in connection with the worker's application for compensation.

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

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

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

33 Application of sdiv 3

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

34 Injury while at or after worker attends place of employment

(1) An injury to a worker is taken to arise out of, or in the course of, the worker's employment if the event happens on a day on which the worker has attended at the place of employment as required under the terms of the worker's employment—

(a) while the worker is at the place of employment and is engaged in an activity for, or in connection with, the employer's trade or business; or

(b) while the worker is away from the place of employment in the course of the worker's employment; or

(c) while the worker is temporarily absent from the place of employment during an ordinary recess if the event is not due to the worker voluntarily subjecting themself to an abnormal risk of injury during the recess.

(2) For subsection (1)(c), employment need not be a contributing factor to the injury.

35 Other circumstances

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

(a) is on a journey between the worker's home and place of employment; or

(b) is on a journey between the worker's home or place of employment and a trade, technical or other training school—

(i) that the worker is required under the terms of the worker's employment to attend; or

(ii) that the employer expects the worker to attend; or

(c) for an existing injury for which compensation is payable to the worker—is on a journey between the worker's home or place of employment and a place—

(i) to obtain medical or hospital advice, attention or treatment; or

(ii) to undertake rehabilitation; or

(iii) to submit to examination by a registered person under a provision of this Act or to a requirement under this Act; or

(iv) to receive payment of compensation; or

(d) is on a journey between the worker's place of employment with 1 employer and the worker's place of employment with another employer; or

(e) is attending a school mentioned in paragraph (b) or a place mentioned in paragraph (c).

(2) For subsection (1), employment need not be a contributing factor to the injury.

(3) For subsection (1), a journey from or to a worker's home starts or ends at the boundary of the land on which the home is situated.

(4) In this section—

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

(a) temporarily resided before starting a journey mentioned in this section; or

(b) intended to temporarily reside after ending a journey mentioned in this section.

36 Injury that happens during particular journeys

(1) This section applies if a worker sustains an injury in an event that happens during a journey mentioned in section 35.

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

(a) while the worker is in control of a vehicle and contravenes—

(i) the *Transport Operations (Road Use Management) Act 1995*, section 79, or a corresponding law, if the contravention is the major significant factor causing the event; or

(ii) the Criminal Code, section 328A 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—

(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 3A When latent onset injuries arise

36A Date of injury

(1) This section applies if a person—

(a) is diagnosed by a doctor after the commencement of this section as having a latent onset injury; and

(b) applies for compensation for the latent onset injury.

(2) The following questions are to be decided under the relevant compensation Act as in force when the injury was sustained—

(a) whether the person was a worker under the Act when the injury was sustained;

(b) whether the injury was an injury under the Act when it was sustained.

(2A) However, subsection (2)(b) does not apply if the latent onset injury is a specified disease and section 36D applies to the person.

(3) Section 131 applies to the application for compensation as if the entitlement to compensation arose on the day of the doctor’s diagnosis.

(4) Subject to subsections (2) and (3), this Act applies in relation to the person’s claim as if the date on which the injury was sustained is the date of the doctor’s diagnosis.

(5) To remove any doubt, it is declared that nothing in subsection (4) limits section 236.

(6) Subsections (2) to (4) have effect despite section 603.

(7) In this section—

relevant compensation Act means this Act or a former Act.

Subdivision 3B Injuries sustained by firefighters

36B Definitions for sdiv 3B

In this subdivision—

employ includes engage.

firefighter means—

(a) a fire officer under the *Fire and Emergency Services Act 1990*; or

(b) a member of a rural fire brigade registered under the *Fire and Emergency Services Act 1990*, section 79; or

(c) a volunteer firefighter or volunteer fire warden engaged by the authority responsible for the management of the State’s fire services; or

(d) a person appointed or employed under the repealed *Fire Brigades Act 1964*, section 24; or

(e) a person appointed or employed under the repealed *Rural Fires Act 1946*, section 9.

specified disease means a disease mentioned in schedule 4A, column 1.

36D Presumption of injury

(1) This section applies to a person who—

(a) is diagnosed by a doctor for the first time as having a specified disease; and

(b) at any time before the diagnosis, was employed as a firefighter for at least the number of years mentioned in schedule 4A, column 2 opposite the specified disease.

(2) For the purposes of an entitlement to compensation, the specified disease is taken to be an injury.

(3) However, this section does not apply if it is proved that—

(a) the specified disease did not arise out of, or in the course of, the person's employment as a firefighter; or

(b) the person's employment as a firefighter is not a significant contributing factor to the specified disease.

36E Deciding number of years

(1) This section applies for deciding the number of years of the person's employment as a firefighter for section 36D(1)(b).

(2) A period of 12 months may be included only if, throughout the period, the person—

(a) was employed for the purpose of firefighting; and

(b) attended fires to the extent reasonably necessary to fulfil the purpose of the person's employment.

(3) However, the number of years may be made up by taking into account—

(a) more than 1 period of employment; or

(b) periods of employment as more than 1 type of firefighter.

Example—

A person was employed for firefighting and attended fires for 10 years before working in administrative and management roles for another 20 years. For section 36D(1)(b), the person was employed as a firefighter for 10 years.

(4) In this section—

firefighting means extinguishing, controlling or preventing the spread of fires.

Subdivision 3BA PTSD sustained by first responders and other particular persons

36EA Definitions for subdivision

In this subdivision—

eligible employee see section 36EC.

first responder see section 36EB.

relevant volunteer means a person mentioned in division 3, subdivision 1 who is covered under a contract of insurance entered into with WorkCover for that subdivision.

36EB Meaning of *first responder*

A person is employed as a ***first responder*** if—

(a) the person is a worker, or a relevant volunteer, employed in an occupation or profession prescribed by regulation; and

(b) the person’s employment requires the person to respond to incidents—

(i) that are life-threatening or otherwise traumatic; and

(ii) for which time may be critical to prevent actual or potential death or injury to persons, or to prevent or minimise damage to property or the environment.

36EC Meaning of *eligible employee*

(1) A person is employed as an ***eligible employee*** if—

(a) the person is a worker, or a relevant volunteer, employed by or in an entity prescribed by regulation; and

(b) the person's employment requires the person to experience repeated or extreme exposure to the graphic details of traumatic incidents by—

(i) attending the scenes of traumatic incidents; or

Example of a person for subparagraph (i)—

a person whose employment requires the person to recover human remains

(ii) experiencing traumatic incidents as they happen to other persons; or

Example of a person for subparagraph (ii)—

a fire communications officer whose employment requires the officer to respond to calls for information and advice in emergency situations

(iii) investigating, reviewing or assessing traumatic incidents that have happened to other persons.

Example of a person for subparagraph (iii)—

a person whose employment requires the person to investigate complaints of child sexual abuse

(2) In this section—

traumatic incident includes an incident that exposes a person to, or to the threat of, any of the following—

(a) death;

(b) serious injury;

(c) sexual violence.

36ED Presumption of injury

(1) This section applies in relation to a person who—

(a) is diagnosed by a psychiatrist, in the way prescribed by regulation, as having post-traumatic stress disorder; and

(b) at any time before the diagnosis, was employed as a first responder or an eligible employee.

(2) For the purposes of an entitlement to compensation, the post-traumatic stress disorder is taken to be an injury.

(3) Subsection (2) applies despite any evidence that the post-traumatic stress disorder arose out of, or in the course of, a circumstance mentioned in section 32(5)(a), (b) or (c).

(4) However, subsection (2) does not apply if it is proved that—

(a) the post-traumatic stress disorder did not arise out of, or in the course of, the person's employment as a first responder or an eligible employee; or

(b) the person's employment as a first responder or an eligible employee was not a significant contributing factor to the disorder.

Subdivision 3C Pneumoconiosis

36F Meaning of *pneumoconiosis score*

A ***pneumoconiosis score*** is a score that—

(a) grades an injury that is pneumoconiosis; and

(b) is worked out using a chest image in the way prescribed by regulation.

Subdivision 4 Impairment from injury

37 Meaning of *impairment*

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

38 Meaning of *permanent impairment*

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

Subdivision 5 Terminal condition

39A 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.

(2) A condition is a terminal condition only if the insurer accepts the doctor's diagnosis of the terminal nature of the condition.

Division 7 Rehabilitation

40 Meaning of *rehabilitation*

(1) ***Rehabilitation***, of a worker, is a process designed to—

(a) ensure the worker's earliest possible return to work; or

(b) maximise the worker's independent functioning.

(2) ***Rehabilitation*** includes—

(a) necessary and reasonable—

(i) suitable duties programs; or

(ii) services provided by a registered person; or

(iii) services approved by an insurer; or

(b) the provision of necessary and reasonable aids or equipment to the worker.

(3) The purpose of ***rehabilitation*** is—

(a) to return the worker to the worker's pre-injury duties; or

(b) if it is not feasible to return the worker to the worker's pre-injury duties—to return the worker, either temporarily or permanently, to other suitable duties with the worker's pre-injury employer; or

(c) if paragraph (b) is not feasible—to return the worker, either temporarily or permanently, to other suitable duties with another employer; or

(d) if paragraphs (a), (b) and (c) are not feasible—to maximise the worker's independent functioning.

41 Meaning of *rehabilitation and return to work coordinator*

(1) A ***rehabilitation and return to work coordinator*** is a person who—

(a) is appropriately qualified to perform the functions of a rehabilitation and return to work coordinator under this Act; and

(b) has the functions prescribed under a regulation.

(2) A person is taken to be appropriately qualified to perform the functions of a rehabilitation and return to work coordinator under this Act if the person has completed a training course approved by the Regulator.

42 Meaning of *suitable duties*

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

(a) the nature of the worker's incapacity and pre-injury employment;

(b) relevant medical information;

(c) the rehabilitation and return to work plan for the worker as developed under section 220(5);

(d) the provisions of the employer's workplace rehabilitation policy and procedures;

(e) the worker's age, education, skills and work experience;

(f) if duties are available at a location (the ***other location***) other than the location in which the worker was injured—whether it is reasonable to expect the worker to attend the other location;

(g) any other relevant matters.

43 Meaning of *workplace rehabilitation*

Workplace rehabilitation is a system of rehabilitation that is initiated or managed by an employer.

44 Meaning of *workplace rehabilitation policy and procedures*

Workplace rehabilitation policy and procedures are written policy and procedures for workplace rehabilitation.

45 Meaning of *accredited workplace*

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

Chapter 2 Employer's obligations

Part 1 Employer's legal liability

46 Employer's legal liability

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

(2) This Act does not impose any legal liability on an employer for damages for injuries sustained by a worker employed by the employer, though chapter 5 regulates access to damages.

47 WorkCover's liability confined to compensation

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

Part 2 Employer's insurance requirements

Division 1 General obligations

48 Employer's obligation to insure

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

(a) the employer's legal liability for compensation; and

(b) the employer's legal liability for damages.

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

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

(a) under a licence as a self-insurer under part 4; or

(b) under a WorkCover policy.

(4) WorkCover must not issue more than 1 policy for each employer.

(5) However, if the employer is the State, WorkCover may issue 1 policy for each department of government.

49 Exemption if employer has other insurance

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

(2) To exempt an employer, WorkCover must—

(a) be satisfied that the employer's workers will not be disadvantaged; and

(b) obtain advice from the Regulator that the exemption will not adversely affect the workers' compensation scheme.

(3) If an employer is aggrieved by WorkCover's decision, the employer may have the decision reviewed under chapter 13.

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

50 When an employer contravenes the general obligation to insure

An employer who is not a self-insurer contravenes section 48 if—

(a) within 5 business days 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 48; or

(b) having taken out a policy required under section 48, the employer does not maintain it in force at all times while being an employer by doing both of the following—

(i) making at the time and in the way required every annual or other periodic return required for all workers employed by the employer;

(ii) paying at the time and in the way required every premium payable for the policy or for its renewal for any year.

51 Offence of contravening general obligation to insure

(1) An employer must not contravene section 48.

Maximum penalty—275 penalty units.

(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 113 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 113.

(3) In subsection (2)—

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

52 Offence to charge worker for compensation or damages for injury

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

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

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

Maximum penalty—20 penalty units.

53 Recovery of unlawful charge for compensation or damages for injury

(1) An amount taken or received from a worker in contravention of section 52 with or without the worker's consent, may be recovered by the worker as a debt from—

(a) the person who took or received the amount; and

(b) if that person was acting for the worker's employer in taking or receiving the money—the worker's employer.

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

Part 3 Insurance under WorkCover policies generally

Division 1 Premium setting generally

54 Setting of premium

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

(2) The premium payable for the policy for a period of insurance must be assessed according to the method (the ***method***) and at the rate (the ***rate***) specified by WorkCover by 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.

(3A) Without limiting subsection (2), the gazette notice may state a method or rate that provides for a premium payable by an employer in the event that the employer's premium rate repeatedly exceeds the relevant industry rate.

(4) Before WorkCover publishes the 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 481.

(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 have the decision reviewed under chapter 13.

(10) In this section—

employer's premium rate means the premium rate calculated for the employer by using a formula that takes into account the number and cost of claims made against the employer's policy during previous financial years.

relevant industry rate, in relation to an employer, means the industry or business classification rate applying to the industry or business classification—

(a) stated in the gazette notice under subsection (2) for the employer's industry or business; or

(b) as decided by WorkCover under subsection (3)—for the industry or business that most closely describes the employer's industry or business.

55 Setting premium on change of ownership of business

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

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

(3) In deciding whether to have regard to the claims experience of the business under a former employer, WorkCover may consider any relevant matter, including the following—

(a) if the new employer is an individual, whether the new employer is or was—

(i) a partner of the former employer; or

(ii) an officer or shareholder of the former employer; or

(iii) an officer or shareholder of a related body corporate of the former employer;

(b) if the new employer is a partnership, whether any of the partners of the new employer is or was—

(i) an individual who was the former employer; or

(ii) a partner of the former employer; or

(iii) an officer or shareholder of the former employer; or

(iv) an officer or shareholder of a related body corporate of the former employer;

(c) if the new employer is a body corporate, whether the new employer is or was a related body corporate of the former employer;

(d) if the new employer is a body corporate, whether any of the officers or shareholders of the new employer is or was—

(i) an individual who was the former employer; or

(ii) a partner of the former employer; or

(iii) an officer or shareholder of the former employer; or

(iv) an officer or shareholder of a related body corporate of the former employer.

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

(5) In this section—

officer has the meaning given by the Corporations Act.

56 Reassessment of premium for policy

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

(a) WorkCover has made an assessment for an employer's policy for the period of insurance; and

(b) WorkCover considers that the assessment does not accurately reflect the employer's liability under the Act for the period.

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

(3) WorkCover must reassess the premium—

(a) for any period starting on or after 1 July 2003—under this division; or

(b) for any period between 1 July 1997 and 30 June 2003—under the repealed *WorkCover Queensland Act 1996*; or

(c) for a period before 1 July 1997—under the repealed *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 have the decision reviewed under chapter 13.

(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

57 Recovery of compensation and unpaid premium

(1) This section applies if an employer contravenes section 48.

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

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

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

(5) WorkCover must consider the application and may—

(a) waive or reduce the penalty; or

(b) refuse to waive or reduce the penalty.

(6) If the employer is aggrieved by WorkCover's decision, the employer may have the decision reviewed under chapter 13.

(7) In this section—

worker means a worker employed by the employer.

58 Default assessment on reasonable suspicion

(1) This section applies if WorkCover suspects on reasonable grounds that an employer has contravened section 48.

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

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

(a) the probable wages paid or to be paid by the employer during the period of insurance for which the default assessment is made; and

(b) the nature of the employer's industry or business.

(4) The amount of premium to be paid by the employer under the default assessment must be calculated according to the method and at the rate mentioned in section 54.

(5) As soon as practicable after a default assessment is made, WorkCover must give the employer written notice of the assessment and of the amount of premium.

(6) The employer may, by written notice given to WorkCover, object to the default assessment within 15 business days of receiving the premium notice.

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

(8) WorkCover must consider the objection and may—

(a) reassess the default assessment; or

(b) refuse to reassess the default assessment.

(9) If the employer is aggrieved by WorkCover's decision under subsection (8), the employer may have the decision reviewed under chapter 13.

(10) If the employer does not object to the default assessment within 15 business days of receiving the premium notice, the amount of premium assessed and notified to the employer becomes payable immediately at the end of the 15 business days.

(11) WorkCover may act under this section even if WorkCover knows the employer has contravened section 48.

59 Further assessment and recovery after payment of default assessment

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

(a) if WorkCover considers that the assessment does not accurately reflect the employer's liability under the Act for the period—reassessing the default assessment; and

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

60 Employer's separate liabilities for 1 period of default

For any period an employer contravenes section 48, the employer is liable—

(a) to a proceeding for an offence under section 51; and

(b) to a proceeding to recover an amount of premium or another amount under section 57 or 58 with or without a charge imposed by WorkCover, whether or not a proceeding is taken for an offence under section 51.

Division 3 Additional premiums

61 Additional premium payable if premium not paid

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

(a) the employer is given a premium notice; and

(b) the employer does not pay WorkCover the amount specified in the notice on or before the due date.

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

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

62 Further additional premium payable after appeal to industrial magistrate

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

(a) the employer's liability in relation to an assessment has been decided by an industrial magistrate or the industrial court; and

(b) the employer fails to pay WorkCover the amount by which the assessment is more than the amount of premium paid under section 551(4) as a condition of the appeal to an industrial magistrate within 15 business days after the day the decision is made.

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

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

63 Additional premium for out-of-State workers

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

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

(a) providing for compensation or damages payable for injury to the worker; and

(b) covering the cost of administration of this Act in relation to the worker.

63A Additional premium for ch 6A

(1) This section applies in relation to an employer who, before 1 January 2017, engaged a former coal worker to work in an industry that involved mining, loading, transporting or otherwise dealing with coal.

(2) WorkCover may charge an additional premium on a policy issued to the employer in an amount WorkCover considers necessary towards covering the cost of administering chapter 6A in relation to the former coal worker.

63B Additional premium for interns

(1) This section applies if an employer has an intern.

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

(a) providing for compensation or damages payable for injury to the intern; and

(b) covering the cost of administration of this Act in relation to the intern.

64 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.

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

(4) WorkCover must consider the application and may—

(a) waive or reduce the additional premium; or

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

(5) If the employer is aggrieved by WorkCover’s decision, the employer may have the decision reviewed under chapter 13.

Division 4 Employer’s liability for excess period

65 What is the *excess period*

(1) The ***excess period***, in relation to a worker who sustains an injury for which compensation is payable, is the period that starts on the day that the worker’s entitlement to compensation arises under chapter 3, part 7.

(2) The ***excess period*** ends at the end of the day that the amount of weekly compensation paid to the worker exceeds an amount prescribed under a regulation.

66 Employer's liability for excess period

(1) This section applies to—

(a) an employer who has, or is required to have, accident insurance; 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 weekly payment of compensation that, if this section did not apply, would be payable to the worker by the insurer for the excess period.

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

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

(a) must be paid by the employer in whose employment the injury was sustained; and

(b) is the amount that relates to the amount payable to the worker under a contract with that employer.

(5) If the employer fails to pay the amount to the worker within 10 business days after receiving notice from the insurer that the worker's application for compensation has been allowed, the insurer must make the payment to the worker on the employer's behalf.

(6) WorkCover may recover from the employer the amount of a payment made by it under subsection (5) together with a penalty equal to 50% of the payment—

(a) as a debt under section 580; 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 have the decision reviewed under chapter 13.

(11) This section does not limit section 50.

(12) In this section—

household worker means a person employed solely in and about, or in connection with, a private dwelling house or the grounds of the dwelling house.

67 Employer may not insure against payment for the excess period

An employer may not insure with WorkCover against the employer's liability to pay for the excess period.

Part 4 Employer's self-insurance

Division 1 Preliminary

68 What is self-insurance

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

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

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

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

Division 1A Local government self-insurers

68A Self-insurance for local governments

(1) A local government self-insurer may, under the self-insurer's licence, also cover councillors of a local government.

(2) If councillors of a local government are covered under a local government self-insurer's licence, each councillor of the local government is covered under the licence.

(3) A local government self-insurer must, when advising councillors of its decision to cover them, also advise the Regulator of the decision.

68B Entitlements of local government councillors

(1) A councillor covered under a local government's self-insurer's licence is entitled under the licence to compensation from the local government to which the councillor is elected or appointed for injury sustained by the councillor while—

(a) attending meetings of the local government; or

(b) performing any other duty of office as a councillor.

(2) The councillor has, subject to this section—

(a) an entitlement to weekly payments of compensation under chapter 3, part 9, division 4, subdivision 3 and division 5, subdivision 1; and

(b) for all other entitlements—the same entitlements to compensation as a worker.

(3) The councillor is not covered for payment of damages for injury sustained by the councillor.

(4) In the application of the definition *injury* to the councillor—

(a) the activity mentioned in subsection (1)(a) or (b) is taken to be the councillor’s employment; and

(b) the local government to which the councillor is elected or appointed is taken to be the councillor’s employer.

68C Local government self-insurer’s liability for injury to councillors

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

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

69 Who may apply to be a self-insurer

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

(a) a single employer;

(b) a group employer.

(2) A body corporate may only apply as a single employer if no other related bodies corporate to which it is related 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) The Regulator may issue a licence to an employer only if the employer can satisfy the requirements stated in this part.

70 How the application is made

The application must—

(a) be made to the Regulator in the approved form; and

(b) for a group employer—be made by all the members of the group wanting to be licensed; and

(c) be accompanied by the fee prescribed under a regulation.

71 Issue or renewal of licence to a single employer

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

(a) the number of full-time workers employed in Queensland by the employer is at least 2,000; and

(c) the employer's occupational health and safety performance is satisfactory; and

(d) the licence will cover all workers, employed in Queensland, of the employer; and

(e) the employer has given the Regulator the security required under section 84; and

(f) the employer has the reinsurance cover required under section 86; and

(g) all workplaces of the employer—

(i) are accredited workplaces; or

(ii) if not accredited workplaces—

(A) are adequately serviced by a rehabilitation and return to work coordinator who is in Queensland and employed by the employer under a contract (regardless of whether the contract is a contract of service); and

(B) have workplace rehabilitation policies and procedures; and

(h) the employer is fit and proper to be a self-insurer.

(2) However, if the Regulator is not satisfied of 1 or more matters mentioned in subsection (1)(a) to (g), the Regulator may still issue or renew a licence to be a self-insurer to a single employer if the Regulator is satisfied that, despite the Regulator not being satisfied of the matters—

(a) special circumstances justify the issue or renewal of the licence; and

(b) the employer can appropriately—

(i) perform the functions and exercise the powers of a self-insurer; and

(ii) meet the obligations of a self-insurer.

(3) Without limiting subsection (2)(a), special circumstances that may justify the issue or renewal of a licence to be a self-insurer to a single employer who fails to satisfy the Regulator only of the matter mentioned in subsection (1)(a) include the following—

(a) the employer—

(i) holds a current licence to be a self-insurer under the laws of 2 or more other jurisdictions; and

(ii) has demonstrated a history of compliance with those laws and the conditions of those licences, and of acting reasonably in the performance of functions and exercise of powers under those laws or licences;

(b) for a renewal of a licence—the employer has demonstrated a history of compliance with this Act and the conditions of the licence, and of acting reasonably in the performance of functions and exercise of powers under this Act or the licence.

(4) If, for a single employer, the Regulator is not satisfied of the matter mentioned in subsection (1)(a) only, the Regulator may still issue a licence to be a self-insurer to the employer if—

(a) the employer held a licence (the ***former licence***) to be a self-insurer under this section within the previous 5 years; and

(b) the former licence was not cancelled under this Act; and

(c) after the former licence ended, the employer was not at any time a related body corporate with another employer for the purpose of the grant of a licence to be a self-insurer under section 72; and

(d) the Regulator is satisfied the number of full-time workers employed in Queensland by the employer is at least the number of full-time workers that were required under subsection (1)(a) as in force when the former licence was granted.

(5) Also, the Regulator may renew a licence to be a self-insurer issued to a single employer under subsection (4) who fails to satisfy the Regulator only of the matter mentioned in subsection (1)(a) if the Regulator is still satisfied of the matter mentioned in subsection (4)(d).

(6) For subsection (1)(c), the Regulator must ask the chief executive of the department within which the *Work Health and Safety Act 2011* is administered to prepare an OHS report about the employer's occupational health and safety performance.

(7) In this section—

jurisdiction means the Commonwealth or a State.

72 Issue or renewal of licence to a group employer

(1) The Regulator 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 full-time workers employed in Queensland by all members of the group is at least 2,000; and

(d) the group employer’s occupational health and safety performance is satisfactory; and

(e) the licence will cover all workers, employed in Queensland, of the group employer; and

(f) the group employer has given the Regulator the security required under section 84; and

(g) the group employer has the reinsurance cover required under section 86; 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 and return to work coordinator who is in Queensland and employed by the group employer or a member of the group under a contract (regardless of whether the contract is a contract of service); and

(B) have workplace rehabilitation policies and procedures; and

(i) the group employer is fit and proper to be a self-insurer.

(2) However, if the Regulator is not satisfied of 1 or more matters mentioned in subsection (1)(a) to (h), the Regulator may still issue or renew a licence to be a self-insurer to a group employer if the Regulator is satisfied that, despite the Regulator not being satisfied of the matters—

(a) special circumstances justify the issue or renewal of the licence; and

(b) the employer can appropriately—

(i) perform the functions and exercise the powers of a self-insurer; and

(ii) meet the obligations of a self-insurer.

(3) Without limiting subsection (2)(a), special circumstances that may justify the issue or renewal of a licence to be a self-insurer to a group employer who fails to satisfy the Regulator only of the matter mentioned in subsection (1)(b) include the following—

(a) the employer—

(i) holds a current licence to be a self-insurer under the laws of 2 or more other jurisdictions; and

(ii) has demonstrated a history of compliance with those laws and the conditions of those licences, and of acting reasonably in the performance of functions and exercise of powers under those laws or licences;

(b) for a renewal of a licence—the employer has demonstrated a history of compliance with this Act and the conditions of the licence, and of acting reasonably in the performance of functions and exercise of powers under this Act or the licence.

(4) For subsection (1)(d), the Regulator must ask the chief executive of the department within which the *Work Health and Safety Act 2011* is administered to prepare an OHS report about the group employer's occupational health and safety performance.

(5) In this section—

jurisdiction means the Commonwealth or a State.

73 Calculation of the number of full-time workers

(1) For sections 71(1)(a), 71(4)(d) and 72(1)(b), the number of full-time workers is calculated by—

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

(b) dividing the number of hours by 910.

(2) The whole number resulting from the division is the number of full-time workers.

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

73A Calculation of the number of full-time workers for local government self-insurers

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

74 Workers employed in Queensland

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

75 Whether applicant fit and proper

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

(2) The Regulator 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 the Regulator may require in the way the Regulator may require;

(e) for an application for renewal of a licence—whether the self-insurer has performed the functions, or exercised the powers, under section 92 or 92A reasonably.

76 Audit of self-insurer

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

(a) satisfies section 71 (other than subsection (1)(c)) or 72 (other than subsection (1)(d)); and

(b) is fit and proper under section 75; and

(c) satisfies the conditions of the licence.

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

77 Decision on application for the issue of a licence

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

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

(a) it has refused the application; and

(b) the reasons for the refusal; and

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

(3) The applicant may make a submission within 20 business days after the notice of refusal is given.

(4) The Regulator must consider the submission within 60 business days of receiving it and decide whether to confirm or change the decision to refuse the application.

(5) The Regulator must advise the applicant of its decision under subsection (4) within 5 business days after the decision is made.

(6) If the Regulator does not change its decision, it must advise the applicant that the applicant may appeal against the refusal under chapter 13.

78 Duration of licence

(1) A licence is issued for a period of 2 years.

(2) However, on an application for the renewal of a licence, the licence may be issued for a period of not more than 4 years.

(3) The period of the licence must be stated in the licence.

79 Renewal of licence

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

(2) The self-insurer must apply to the Regulator at least 60 business days before the current licence period ends.

(3) If the self-insurer does not intend to renew the licence, the self-insurer must advise the Regulator of that fact at least 60 business days before the current licence period ends.

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

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

(b) acted reasonably in relation to the functions and powers under section 92 or 92A.

80 Refusal of application for renewal of a licence

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

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

(a) it proposes to refuse the application; and

(b) the reasons for the refusal; and

(c) the applicant may make a written submission to the Regulator in further support of the application; and

(d) a period, of at least 30 business days, at the end of which the refusal is to take effect (the ***review period***).

(3) The applicant may make a submission within 15 business days after the notice is given.

(4) If a submission is made, the Regulator must—

(a) consider it; and

(b) decide whether to accept or refuse the application.

(5) The Regulator 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 the Regulator refuses the application, it must advise the applicant that the applicant may appeal against the refusal under chapter 13.

(8) Despite section 78, if the period stated on the licence expires before the end of the review period, the licence period is taken to be extended to the end of the review period.

81 Annual levy payable

(1) A self-insurer must pay a levy for each financial year or part of a financial year of a licence.

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

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

(4) The Regulator must recommend the rate for each financial year to the Minister.

(5) The Regulator must consult with the Minister before giving the recommendation.

(6) The Regulator must publish the rate approved by the Minister in the gazette.

(7) The Regulator must give a self-insurer written notice of the amount of the levy.

(8) The self-insurer must pay the levy on or before the due date shown in the notice.

(9) If a self-insurer is aggrieved by the Regulator's decision about the amount of levy payable, the self-insurer may appeal against the decision under chapter 13.

82 Additional amount payable if levy not paid

(1) A self-insurer must pay the Regulator an additional amount calculated as prescribed under a regulation if—

(a) the self-insurer is given written notice of the amount of the levy; and

(b) the self-insurer does not pay the amount of levy specified in the notice on or before the due date.

(2) The Regulator may recover the amount of levy and the additional amount payable to it by the self-insurer.

83 Conditions of licence

(1) A licence may be subject to—

(a) the conditions prescribed under a regulation; and

(b) any conditions, not inconsistent with this Act, imposed by the Regulator—

(i) on the issue or renewal of a licence; or

(ii) at any time during the period of the licence.

Note—

See also section 232ZI(3).

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

(a) impose conditions on the licence; or

(b) impose further conditions on the licence; or

(c) vary conditions imposed on the licence.

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

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

84 Security

(1) A self-insurer must lodge a security with the Regulator before the issue or renewal of a licence.

(2) The security must be—

(a) in favour of WorkCover; and

(b) 150% of the self-insurer's estimated claims liability.

(3) Also, if the security is a bank guarantee or financial guarantee, the security—

(a) must be irrevocable and unconditional, including not being conditional on—

(i) another right or obligation contained in another document; or

(ii) WorkCover proving that a demand has been made; and

(b) must be payable immediately on demand; and

(c) must not be given by an entity that is a related body corporate to the self-insurer; and

(d) must be satisfactory to the Regulator.

(4) The estimated claims liability—

(a) must be assessed annually by an actuary approved by the Regulator; and

(b) must be calculated in the way prescribed under a regulation.

(5) The security must remain in force or, if it is a cash deposit, the Regulator must hold the cash deposit—

(a) at all times during the period of the licence; and

(b) after cancellation of the licence, as required by section 102.

(6) The security 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.

(7) If a self-insurer lodges a financial guarantee under subsection (1) and the insurance company that gave the guarantee stops being an approved security provider, the self-insurer must—

(a) notify the Regulator of the matter without delay; and

(b) lodge another security under this section within 20 business days after the date of the notice given under paragraph (a).

(8) In this section—

approved security provider means an approved security provider as defined under the *Financial and Performance Management Standard 2009*, section 36.

bank guarantee means a guarantee given by a bank or the Queensland Treasury Corporation.

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 68C or 87; less

(b) the total amount expected to be paid in the 12 months after the assessment.

financial guarantee means a security given by an insurance company that is an approved security provider.

security means—

(a) a bank guarantee; or

(b) a financial guarantee; or

(c) a cash deposit.

85 Investing cash deposit

(1) The Regulator may invest a cash deposit in an authorised investment decided by the Regulator.

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

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

(4) In this section—

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

86 Reinsurance

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

(a) effect, with an approved insurer, a contract of reinsurance of liabilities approved by the Regulator; and

(b) give the Regulator 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 the set limit.

(3) The approved insurer's liability under 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 the Regulator's consent.

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

(6) In this section—

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

set limit means an amount of $1m or more set by the Regulator on application in the approved form by the self-insurer.

87 Self-insurer replaces WorkCover in liability for injury

(1) A self-insurer is liable, to the exclusion of WorkCover's or another self-insurer's liability—

(a) for compensation and damages for the total of the accrued, continuing, future and contingent liabilities for all injuries sustained by a worker employed by the self-insurer that arise from an event happening during the period of the self-insurer's licence (***residual liability***); and

(b) for the following (***outstanding liability***)—

(i) compensation for the total of the accrued, continuing, future and contingent liabilities for all injuries sustained by a worker that arise from an event happening or ending during the worker's employment with the self-insurer before the self-insurer became licensed as a self-insurer;

(ii) compensation for the total of the accrued, continuing, future and contingent liabilities for all injuries, other than injuries mentioned in paragraph (a), sustained by a worker arising from an event ending during the worker's employment with the self-insurer;

(iii) damages for the total of the accrued, continuing, future and contingent liabilities for all injuries, other than injuries mentioned in paragraph (a), sustained by a worker arising from an event starting or happening during the worker's employment with the self-insurer before the self-insurer became licensed as a self-insurer.

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

88 Liability of group employers

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

Division 3 Change to membership of self-insurer

89 Change in self-insurer's membership

(1) If a self-insurer that is a group employer intends to change the membership of the group, the self-insurer must, before the change, apply to the Regulator in writing for the change in the group membership on the licence.

(2) The Regulator must approve the application if it is satisfied that—

(a) the self-insurer, after the change, meets the requirements for a licence for a group employer; and

(b) satisfactory arrangements have been made in relation to the total liability of the member or members leaving.

(3) However, subsection (4) applies if—

(a) the application is made by a self-insurer that is a related bodies corporate group employer; and

(b) within 2 months after the application, members of the self-insurer that are a group employer apply, under section 69 (the ***section 69 application***), to be a self-insurer as a related bodies corporate group employer.

(4) The Regulator must approve the application if it is satisfied that the self-insurer, after the change, meets the requirements for a licence for a group employer and—

(a) the Regulator has decided to approve the section 69 application; or

(b) if the Regulator has decided not to approve the section 69 application, it is satisfied that satisfactory arrangements have been made in relation to the total liability of the applicants for the section 69 application.

90 Consequences of change in self-insurer’s membership

(1) If a member leaves a self-insurer that is a group employer and becomes part of another self-insurer (the ***other self-insurer***), the self-insurer must pay the other self-insurer an amount for the member’s total liability.

(2) For subsection (1), the other self-insurer is liable for compensation and damages for the member’s total liability from the day the Regulator approves the application from the other self-insurer for a change in its group membership.

(3) If members leave a self-insurer that is a related bodies corporate group employer and become a self-insurer that is a related bodies corporate group employer (the ***new self-insurer***), the self-insurer must pay the new self-insurer an amount for the members’ total liability.

(4) For subsection (3), the new self-insurer is liable for compensation and damages for its total liability from the day the Regulator approves the new self-insurer's application to be a self-insurer.

(5) If a member leaves a self-insurer that is a group employer and does not become part of another self-insurer, the self-insurer must pay WorkCover an amount for the member's total liability.

(6) For subsection (5), WorkCover is liable for compensation and damages for the member's total liability from the day the Regulator approves the application for a change in the group membership.

(7) If an employer becomes part of a self-insurer, other than under subsection (1), WorkCover must pay the self-insurer an amount for the employer's total liability.

(8) For subsection (7), the self-insurer is liable for compensation and damages for the employer's total liability from the day the Regulator approves the application for a change in the group membership.

(9) The total liability mentioned in subsection (1), (3), (5) or (7) must be—

(a) calculated in the way prescribed under a regulation by an actuary approved by the Regulator; and

(b) paid within the time allowed under a regulation.

91 Continuation of membership in particular circumstances

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

Division 4 Powers, functions and obligations of self-insurers

92 Powers of self-insurers

(1) A self-insurer has, in relation to the self-insurer's workers—

(a) for an injury sustained during the operation of this Act—the functions and powers set out under the following provisions—

(i) chapter 3 (other than sections 110(5), 133, 136 and 170(3), and part 12);

(ii) chapter 4 (other than part 4);

(iii) chapter 4A;

(iv) chapter 5 (other than sections 280, 300 and 306B);

(v) chapter 11, parts 3 and 4; and

(b) for an injury sustained during the operation of the *WorkCover Queensland Act 1996*—the functions and powers that WorkCover had under the following provisions of that Act—

(i) chapter 3 (other than sections 136(5), 160, 163 and 188(3), and part 11);

(ii) chapter 4 (other than sections 235(3)(a), 237(2) and 238, and part 4);

(iii) chapter 5 (other than sections 284, 306 and 319);

(iv) chapter 7, parts 3 and 5; and

(c) for an injury sustained during the operation of the *Workers' Compensation Act 1990*—the functions and powers that the Workers' Compensation Board of Queensland had under the following provisions of that Act—

(i) part 6;

(ii) part 7 (other than sections 102 and 105);

(iii) part 11 (other than sections 186 and 187); and

(d) for an injury sustained during the operation of the *Workers' Compensation Act 1916*—the functions and powers that the Workers' Compensation Board of Queensland had under the following provisions of that Act—

(i) section 9;

(ii) section 9A;

(iii) section 10;

(iv) section 11;

(v) section 13A;

(vi) section 14(2);

(vii) section 14B (other than subsections (2) to (9));

(viii) section 14D;

(ix) section 16;

(x) schedule, sections 4, 6, 23 and 25.

(2) To apply the provisions mentioned in subsection (1)(b), (c) or (d), a reference to WorkCover or the Workers' Compensation Board of Queensland in the provisions is taken to be a reference to the self-insurer.

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

(4) A self-insurer may engage a person who is in Queensland, and who is employed by the self-insurer under a contract (regardless of whether the contract is a contract of service), to perform the self-insurer's functions or exercise the self-insurer's powers, other than the functions and powers set out under the following provisions—

(a) for an injury sustained during the operation of this Act—sections 109, 199, 210 to 212, 216 to 219, 220(1) and 222 to 224 of this Act;

(b) for an injury sustained during the operation of the *WorkCover Queensland Act 1996*—sections 135, 217, 228 to 230, 234, 235 and 237 to 241 of that Act;

(c) for an injury sustained during the operation of the *Workers' Compensation Act 1990*—sections 144, 145, 148 and 150 to 152 of that Act;

(d) for an injury sustained during the operation of the *Workers' Compensation Act 1916*—section 14D of that Act.

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

(6) If a single employer or group employer stops being a self-insurer, the employer no longer has the functions and powers, except to the extent stated in section 100.

92A Powers of local government self-insurers

(1) If a local government self-insurer's licence covers councillors, the self-insurer has, in relation to councillors, the functions and powers set out in section 92(1)(a)(i), (ii), (iii) and (v).

(2) Section 92(4) to (6) also applies to the self-insurer.

93 Documents that must be kept by self-insurer

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

(a) documents relating to all claims made, including, for example, documents about—

(i) a worker's application for compensation; or

(ii) compensation paid for injury sustained by a worker; or

(iii) medical management of an injured worker; or

(iv) rehabilitation of an injured worker;

(b) documents that may assist in assessing the quality and timeliness of the claims and rehabilitation management;

(c) documents that may assist in assessing the self-insurer's financial situation;

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

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

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

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

94 Documents must be given to Regulator on request

(1) The Regulator may, by written notice, ask a self-insurer to give the Regulator the documents, copies of the documents or details from the documents, mentioned in section 93.

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

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

Division 5 Cancellation of self-insurer's licence

95 When licence may be cancelled

The Regulator may cancel a licence if—

(a) any of the following persons contravenes this Act or a condition of the licence—

(i) the self-insurer;

(ii) for a group employer—

(A) a member employer of the group; or

(B) if the group employer is made up of related bodies corporate—1 of the related bodies corporate; or

(b) the licence was issued because of a materially false or misleading representation or declaration (made either orally or in writing); or

(c) the self-insurer decides not to renew the self-insurer's licence.

96 Procedure for cancellation

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

(a) stating the grounds for the cancellation and outlining the facts and circumstances forming the basis for the grounds; and

(b) inviting the self-insurer to show, within a stated time of at least 20 business days, why the licence should not be cancelled.

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

(3) The Regulator must give the self-insurer written notice of the decision to cancel the self-insurer's licence within 8 business days after making the decision.

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

(a) the reasons for the decision; and

(b) that the self-insurer may appeal against the cancellation under chapter 13.

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

(6) The Regulator must record particulars of the cancellation.

97 Self-insurer may ask for cancellation

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

(2) The notice must specify a date from which the cancellation is requested, being not less than 20 business days after the date the notice is given to the Regulator.

(3) Cancellation takes effect—

(a) from the day specified in the self-insurer's notice; or

(b) if another day is decided by the Regulator—from the other day.

98 Premium payable after cancellation

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

99 Transfer to WorkCover after cancellation

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

(a) the self-insurer's functions and powers under section 92 or 92A 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 claimant or worker against, or by, the self-insurer as an insurer in relation to the claimant or worker; and

(e) WorkCover has the rights, and assumes the obligations, of the self-insurer under the contract of reinsurance.

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

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

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

(2) If the Regulator considers it appropriate, the Regulator may, at the request of a former self-insurer, allow the former self-insurer to continue to have functions and powers previously had by the former self-insurer under section 92 or 92A.

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

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

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

101 Recovery of ongoing costs from former self-insurer

(1) This section applies if—

(a) a licence is cancelled; and

(b) after the cancellation, WorkCover—

(i) pays compensation or damages for which a self-insurer is liable under section 68C or 87; or

(ii) incurs management costs in managing compensation applications or damages actions for the compensation or damages mentioned in subparagraph (i).

(2) The compensation or damages payments and management costs—

(a) are a debt due to WorkCover by the former self-insurer; and

(b) are payable within 20 business days after WorkCover's written demand for payment, or a further period allowed by WorkCover.

(3) WorkCover may recover the debt from the former self-insurer's section 84 security if the former self-insurer—

(a) fails to pay the debt within the period; or

(b) authorises WorkCover to do so in writing.

(4) If subsection (3) applies, WorkCover may, by written notice, ask the Regulator to authorise the release of the amount of the debt to WorkCover from the section 84 security.

(5) The Regulator must make a decision about the release of the amount within 20 business days after being given the request.

(6) In this section—

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

102 Assessing liability after cancellation

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

(2) WorkCover must appoint an actuary to assess the former self-insurer's liability under sections 68C and 87(1).

(3) The amount of liability is the amount calculated under a regulation.

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

(a) are a debt due to WorkCover by the former self-insurer; and

(b) are payable within 20 business days after the date of assessment, or a further period allowed by WorkCover.

(5) Without limiting subsection (4), if the former self-insurer fails to pay the debt within the period, WorkCover may recover the debt from the former self-insurer's section 84 security.

(6) The Regulator must retain the section 84 security until it is satisfied that the former self-insurer's liability under sections 68C and 87(1) has been discharged or adequately provided for.

(7) In this section—

management costs means the reasonable costs of—

(a) administering the former self-insurer's claims; and

(b) the actuarial assessment of liability.

103 Return of section 84 security after cancellation

(1) This section applies if—

(a) a self-insurer's licence is cancelled; and

(b) the former self-insurer considers that all accrued, continuing, future and contingent liabilities of the self-insurer have been discharged or adequately provided for.

(2) The former self-insurer may, by written notice, ask the Regulator to return the balance of the section 84 security.

(3) The Regulator must, within 60 business days after being given the request—

(a) return the balance; or

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

(4) If the Regulator refuses to return the balance, the former self-insurer may appeal under chapter 13.

(5) In this section—

return includes relinquish.

104 Contingency account

(1) The Regulator 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 former self-insurer's section 84 security is exhausted or has been returned; and

(c) WorkCover is unable to recover claims costs from the former self-insurer.

Division 6 Self-insurers who become non-scheme employers

105 Application of div 6

This division applies if a self-insurer becomes a non-scheme employer.

105A Non-scheme employer must give notice to Regulator

(1) The non-scheme employer must, by written notice, tell the Regulator that the non-scheme employer has become a non-scheme employer.

(2) The non-scheme employer must give the notice to the Regulator within 5 business days after receiving notice that it has been granted a licence under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), part VIII.

(3) The non-scheme employer must also tell the Regulator the exit date.

105B Non-scheme employer continues to be self-insurer for 12 months

(1) The non-scheme employer is taken to continue to be a self-insurer for 12 months from the exit date for the purposes of the injuries mentioned in subsection (3).

(2) For subsection (1), the self-insurer's licence of the non-scheme employer (the ***continued licence***) continues until it is cancelled under section 105E.

(3) The non-scheme employer is liable 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 non-scheme employer that arise from an event happening or ending during the period the non-scheme employer was licensed as a self-insurer but before the exit date.

(4) The non-scheme employer continues to have the functions and powers of a self-insurer under section 92 or 92A for the injuries mentioned in subsection (3) for the period of 12 months after the exit date.

105C Non-scheme employer continues to have obligation for rehabilitation

Sections 228 and 229 continue to apply to the non-scheme employer after the exit date for the injuries mentioned in section 105B(3).

105D Regulator may impose conditions on continued licence

(1) The Regulator may, by written notice to the non-scheme employer, during the period of 12 months after the exit date—

(a) impose conditions on the continued licence; or

(b) vary conditions imposed on the continued licence.

(2) The non-scheme employer must comply with the conditions imposed on the continued licence.

Maximum penalty for subsection (2)—1,000 penalty units.

105E Cancellation of continued licence

The continued licence is cancelled on the day that is 12 months after the exit date.

105F Transfer to WorkCover after cancellation

Other than as provided by section 105G, on cancellation of the continued licence—

(a) the non-scheme employer's functions and powers as a self-insurer under section 92 or 92A end; and

(b) for all applications for compensation held by the non-scheme employer immediately before the cancellation—

(i) the non-scheme employer 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 non-scheme employer as a self-insurer, must be lodged with WorkCover; and

(d) WorkCover replaces the non-scheme employer, for any proceeding being taken, or that may be taken, by a claimant or worker against or by the non-scheme employer as a self-insurer, as an insurer in relation to the claimant or worker; and

(e) WorkCover has the rights, and assumes the obligations, of the non-scheme employer as a self-insurer under the contract of reinsurance.

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

105G Particular functions and powers may be held by non-scheme employer after cancellation

(1) The purpose of this section is to authorise the non-scheme employer to perform functions and exercise powers as a self-insurer to manage claims arising during the period when the non-scheme employer was a self-insurer but before the exit date.

(2) If the Regulator considers it appropriate, the Regulator may, at the request of the non-scheme employer, allow the non-scheme employer to continue to have functions and powers as a self-insurer previously had by the non-scheme employer as a self-insurer under section 92 or 92A.

(3) The Regulator must give the non-scheme employer written notice of the functions and powers continued.

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

(5) The non-scheme employer has the functions and powers of a self-insurer as stated in the notice.

105H Recovery of ongoing costs from non-scheme employer

(1) This section applies if, after the continued licence is cancelled, WorkCover—

(a) pays compensation or damages for which the non-scheme employer is liable under section 68C or 87; or

(b) incurs management costs in managing compensation applications or damages actions for the compensation or damages mentioned in paragraph (a).

(2) The compensation or damages payments and management costs—

(a) are a debt due to WorkCover by the non-scheme employer; and

(b) are payable within 20 business days after WorkCover's written demand for payment, or a further period allowed by WorkCover.

(3) WorkCover may recover the debt from the non-scheme employer's section 84 security if the non-scheme employer—

(a) fails to pay the debt within the period; or

(b) authorises WorkCover to do so in writing.

(4) If subsection (3) applies, WorkCover may, by written notice, ask the Regulator to authorise the release of the amount of the debt to WorkCover from the section 84 security.

(5) The Regulator must make a decision about the release of the amount within 20 business days after being given the request.

(6) In this section—

management costs means the reasonable costs of administering the claims for which the non-scheme employer is liable.

105I Assessing liability after cancellation

(1) WorkCover must appoint an actuary to assess the non-scheme employer's liability under section 105B(3).

(2) The amount of liability is the amount calculated under a regulation.

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

(a) are a debt due to WorkCover by the non-scheme employer; and

(b) are payable within 20 business days after the date of assessment, or a further period allowed by WorkCover.

(4) Without limiting subsection (3), if the non-scheme employer fails to pay the debt within the period, WorkCover may recover the debt from the non-scheme employer's section 84 security.

(5) The Regulator must retain the section 84 security until the non-scheme employer's liability under section 105B(3) has been finalised as provided for under a regulation.

(6) In this section—

management costs means the reasonable costs of—

(a) administering the claims for which the non-scheme employer is liable; and

(b) the actuarial assessment of liability.

105J Return of section 84 security after cancellation

(1) This section applies if the non-scheme employer considers that all accrued, continuing, future and contingent liabilities of the non-scheme employer as a self-insurer have been discharged or adequately provided for.

(2) The non-scheme employer may, by written notice, ask the Regulator to return the balance of the non-scheme employer's section 84 security.

(3) The Regulator must, within 60 business days after being given the request—

(a) return the balance; or

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

(4) If the Regulator refuses to return the balance, the non-scheme employer may appeal under chapter 13.

(5) In this section—

return includes relinquish.

Division 7 Member of a group who becomes non-scheme employer

105K Application of div 7

This division applies if a member of a group employer that is a self-insurer becomes a non-scheme employer (the ***non-scheme member***).

105L Self-insurer must give notice to Regulator

(1) The self-insurer of which the non-scheme member is a member must, by written notice, tell the Regulator that the non-scheme member has become a non-scheme employer.

(2) The notice must be given within 5 business days after the non-scheme member receives notice that the non-scheme member has been granted a licence under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), part VIII.

(3) The self-insurer must tell the Regulator the exit date of the non-scheme member.

(4) The Regulator must consider whether the self-insurer, after the change, meets the requirements for a self-insurer's licence for a group employer.

105M Non-scheme member continues as member of self-insurer for 12 months

(1) The non-scheme member is taken to continue to be a member of the self-insurer for 12 months from the exit date for the purposes of the injuries mentioned in subsection (2).

(2) The self-insurer is liable 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 non-scheme member that arise from an event happening or ending during the period the non-scheme member was a member of the self-insurer but before the exit date.

105N Non-scheme member continues to have obligation for rehabilitation

Sections 228 and 229 continue to apply to the non-scheme member after the exit date for the injuries mentioned in section 105M(2).

105O Consequences of member becoming non-scheme member

(1) At the end of 12 months after the exit date, the self-insurer must pay WorkCover an amount for the non-scheme member's total liability.

(2) For subsection (1), WorkCover is liable for compensation and damages for the non-scheme member's total liability for all injuries sustained by a worker employed by the non-scheme member that arise from an event happening or ending during the period the non-scheme member was a member of the self-insurer but before the exit date.

(3) The total liability must be—

(a) calculated in the way prescribed under a regulation by an actuary approved by the Regulator; and

(b) paid within the time allowed under a regulation.

Chapter 3 Compensation

Part 1 Interpretation

106 Meaning of *normal weekly earnings*

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

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

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

Part 1A Entitlements to compensation under industrial instruments

107A Definitions for pt 1A

In this part—

amount includes rate.

Industrial Act means—

(a) the *Industrial Relations Act 2016*; or

(b) the *Fair Work Act 2009* (Cwlth).

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

(1) An ***amount payable***, under an industrial instrument, to a worker is—

(a) if an amount has been approved by the Regulator under section 107E—the amount applying immediately before the worker became incapacitated; or

(b) if paragraph (a) does not apply—an amount equal to the weekly rate of wages (however described) under the industrial instrument that the worker was entitled to be paid in the worker's usual employment immediately before the worker became incapacitated.

(2) If the industrial instrument provides for a change in the amount mentioned in subsection (1)(a) after the amount is approved, or there is a change in the rate of wages under the industrial instrument at any time after the worker became incapacitated, the amount payable to the worker changes accordingly.

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

107C Meaning of *usual employment*

(1) A worker's ***usual employment*** is the worker's permanent position or classification of employment.

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

Example of usual employment for subsection (2)—

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

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

(1) The industrial commission can not include in an industrial instrument made by it, or approve for an industrial instrument submitted to it, a provision for accident pay, or other payment, on account of a worker sustaining an injury.

(2) The registrar of the industrial commission is not to register an industrial instrument submitted to the registrar that provides for payment of accident pay, or other payment, on account of a worker sustaining an injury.

(3) Despite subsections (1) and (2), an industrial instrument, other than an award under an Industrial Act, may provide for

an amount to be payable as a weekly rate of wages (however described) to a worker if the worker becomes incapacitated.

(4) A provision of an industrial instrument, other than a provision mentioned in subsection (3) that contains an amount that has been approved by the Regulator under section 107E, is of no force or effect to the extent that it provides for payment of accident pay, or other payment, on account of a worker sustaining an injury.

107E Regulator may approve amount payable under industrial instrument

(1) This section applies if an industrial instrument, other than an award under an Industrial Act, provides for an amount to be payable as a weekly rate of wages (however described) to a worker if the worker becomes incapacitated.

(2) An employer may, by written notice, ask the Regulator to approve the amount provided for in the industrial instrument for the purposes of section 107B.

(3) The Regulator can approve the amount provided for in the industrial instrument only if the amount was contained in the industrial instrument as approved or certified under an Industrial Act.

(4) In deciding whether or not to approve the amount, the Regulator must have regard to—

(a) if the industrial instrument is a workplace agreement or if an employee organisation is not a party to the industrial instrument—the entitlements of a worker to weekly payment of compensation under section 150(1)(a)(i); or

(b) in all other cases—whether the amount is consistent with the compensation entitlements of a worker under previous industrial instruments agreed to by the parties to the industrial instrument.

(5) The Regulator must make a decision within 25 business days after it receives the request.

(6) If the Regulator refuses to approve the amount, the employer may appeal under chapter 13.

(7) In this section—

workplace agreement means—

(a) an Australian workplace agreement or preserved individual State agreement under the *Workplace Relations Act 1996* (Cwlth) given continuing effect under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth), schedule 3, part 2; or

(b) an individual division 2B state employment agreement under the *Fair Work (Transitional Provisions and Consequential Amendments) Act 2009* (Cwlth).

Part 2 Compensation entitlements of workers generally

Division 1 General statement of entitlement

108 Compensation entitlement

(1) Compensation is payable under this Act for an injury sustained by a worker.

(2) However, if a worker's injury is an aggravation mentioned in section 32(3)(b) or (ba), the worker is entitled to compensation for the injury only to the extent of the effects of the aggravation.

Note—

See also division 5 in relation to the effect of compensation on a worker's leave entitlements.

109 Who must pay compensation

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

(2) Otherwise, WorkCover must pay the compensation.

(3) An employer who is not a self-insurer can not pay a worker an amount, either in compensation or instead of compensation, that is payable under the Act by WorkCover for an injury sustained by the worker.

(4) An employer who is a self-insurer can not pay a worker an amount, either in compensation or instead of compensation, that is payable under the Act by the employer as a self-insurer for an injury sustained by the worker.

(5) However, an employer may pay a worker an amount, either in compensation or instead of compensation, that is payable under the Act by the employer as a self-insurer or WorkCover for an injury sustained by the worker if—

(a) the worker has made an application for compensation under section 132; and

(b) the employer has complied with section 133A.

(6) Subsection (5) applies only until the insurer has allowed a claimant's application for compensation under section 134.

(7) Subsections (2) and (3) are subject to section 66.

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

(1) This section applies if an employer contravenes section 109(3).

(2) WorkCover may require the employer to pay WorkCover an amount by way of penalty equal to 50% of the employer's premium for the period of insurance.

(3) WorkCover may recover the amount from the employer—

(a) as a debt; or

(b) as an addition to a premium payable by the employer.

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

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

(6) WorkCover must consider the application and may—

(a) waive or reduce the penalty; or

(b) refuse to waive or reduce the penalty.

(7) If the employer is aggrieved by WorkCover's decision, the employer may have the decision reviewed under chapter 13.

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

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

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

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

(4) Subsection (3) is subject to subsection (5) and section 170(2)(b).

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

111 Public trustee may act for claimant

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

112 Public trustee may receive payments for minors

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

(2) The insurer liable to pay the compensation may pay the amount of the lump sum compensation or redemption payment to the public trustee.

Division 2 Entitlement according to jurisdiction

113 Employment must be connected with State

(1) Compensation under this Act is only payable in relation to employment that is connected with this State.

(2) The fact that a worker is outside this State when the injury is sustained does not prevent compensation being payable under this Act in relation to employment that is connected with this State.

(3) A worker's employment is connected with—

(a) the State in which the worker usually works in that employment; or

(b) if no State or no 1 State is identified by paragraph (a), the State in which the worker is usually based for the purposes of that employment; or

(c) if no State or no 1 State is identified by paragraph (a) or (b), the State in which the employer's principal place of business in Australia is located.

(4) In the case of a worker on a ship, if no State or no 1 State is identified by subsection (3), a worker's employment is, while on a ship, connected with the State in which the ship is registered or (if the ship is registered in more than 1 State) the State in which the ship most recently became registered.

(5) If no State is identified by subsection (3) or (if applicable) (4), a worker's employment is connected with this State if—

(a) the worker is in this State when the injury is sustained; and

(b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.

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

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

(8) Compensation under this Act does not apply in relation to the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* (Cwlth) applies to the worker's employment.

(9) In this section—

State, in a geographical sense, includes a State's relevant adjacent area as described in schedule 4.

114 Recognition of determination of State of connection in another State

(1) If a designated court makes a determination of the State with which a worker's employment is connected for the purposes of a corresponding law, that State is to be recognised for the purposes of section 113 as the State with which the worker's employment is connected.

(2) Subsection (1) does not prevent or affect the operation of a determination of the State with which a worker's employment is connected for the purposes of section 113 made by a court of this State before the determination is made by a designated court.

(3) Subsection (1) does not prevent any appeal relating to a determination of a designated court and, if the determination is altered on appeal, the altered determination is to be recognised under subsection (1).

(4) In this section—

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

designated court means—

(a) the Supreme Court of a State in which a corresponding law is in force; or

(b) a court, tribunal or other decision-making body of a State in which a corresponding law is in force that is declared under a regulation to be a designated court for the purposes of this section.

Division 3 Overseas arrangements

115 Overseas arrangements

(1) If—

(a) an injury is sustained by a worker in another country in circumstances that, had the injury been sustained in Queensland, compensation would have been payable; and

(b) at the time of the injury, the worker's principal place of employment was in Queensland;

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

(2) If—

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

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

compensation is not payable for the injury.

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

(a) the worker usually works in that country; or

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

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

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

Division 4 Relationship of entitlement to other compensation

116 Effect on entitlement 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 another law.

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

(3) However, if the person's entitlement under the other law relates only to payments corresponding to compensation under chapter 4A, subsection (2) applies only to stop the person's entitlement to compensation under chapter 4 or 4A.

Examples of payments to which subsection (3) may apply—

Payments under any of the following schemes—

(a) the scheme under the *National Disability Insurance Scheme Act 2013* (Cwlth);

(b) the scheme under the *National Injury Insurance Scheme (Queensland) Act 2016*;

(c) a scheme corresponding to the scheme mentioned in paragraph (b) under a law of a place other than Queensland.

117 Compensation recoverable if later paid under corresponding laws

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

(a) an insurer has paid compensation under this Act to, or on account of, a person; and

(b) subsequently payment (by whatever name called) that corresponds to compensation under this Act is made to, or on account of, the person under an entitlement under another law for the injury.

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

(3) However, if the payments made to, or on account of, the person under the other law correspond only to compensation under chapter 4A, subsection (2) applies only to the extent of compensation paid under chapter 4 or 4A.

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

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

(a) payment of compensation under this Act; and

(b) payment that corresponds to compensation payable under this Act under an entitlement under another law.

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

(a) a claim for payment for the injury under the entitlement under the other law has not been made; and

(b) a claim mentioned in paragraph (a) will not be made.

(3) However, if the person’s entitlement under the other law relates only to payments corresponding to compensation under chapter 4A—

(a) subsection (2) does not apply; and

(b) an application for compensation under this Act is duly made, and is to be acted on, only if the claimant gives the insurer the claimant’s statutory declaration about—

(i) whether or not the claimant has made a claim for payment for the injury under the entitlement under the other law; and

(ii) if the claimant has not made a claim for payment for the injury under the entitlement under the other law—whether or not the claimant intends to make the claim.

119 Entitlement to compensation ends if damages claim is finalised

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

(a) an entitlement to compensation; and

(b) an entitlement to recover damages against an employer or another person.

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

(3) However, an entitlement to compensation under chapter 4A for an injury ends only if—

(a) the damages include treatment, care and support damages; and

(b) the worker accepts the treatment, care and support damages within the acceptance period.

(4) To remove any doubt, it is declared that the ending, under subsection (3), of an entitlement to compensation under chapter 4A for an injury also stops any entitlement to compensation under chapter 4 for the injury.

(5) In this section—

accept, for treatment, care and support damages, see section 232U.

acceptance period, for treatment, care and support damages, see section 232U.

damages includes damages under a legal liability existing independently of this Act, whether or not within the meaning of section 10.

Division 5 Compensation and leave entitlements

119A Compensation entitlement does not restrict taking or accrual of leave

(1) This section applies to a worker who is entitled to compensation, including compensation payable as weekly payments.

(2) The worker is entitled to take or accrue annual leave, sick leave and long service leave under an Industrial Act or industrial instrument during the period to which the compensation relates.

Note—

In relation to entitlements under the *Fair Work Act 2009* (Cwlth), this section removes the restriction under section 130(1) of that Act.

Part 3 Compensation entitlements of particular workers

Division 1 Workers on ships

120 Application of div 1

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

121 Payment on account of workers on ships

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

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

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

(4) Subsection (3) applies subject to section 116.

Division 2 Miners

122 Application of div 2

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

123 Entitlements of miners

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

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

(a) has been continuously resident in the State during the 5 years immediately before—

(i) the onset of incapacity due to the disease; or

(ii) death due to the disease, if it happens without the onset of incapacity due to the disease; and

(b) during the period of residency, has been employed in employment in mining, quarrying, stone crushing or stone cutting in the State for at least 300 days.

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

(a) has been resident in the State for periods totalling at least 5 years during the 7 years immediately before—

(i) the onset of incapacity due to the disease; or

(ii) death due to the disease, if it happens without the onset of incapacity due to the disease; and

(b) during the period of residency, has been employed in employment in mining, quarrying, stone crushing or stone cutting in the State for at least 500 days.

Division 3 Workers with industrial deafness

124 Application of div 3

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

125 Entitlements for industrial deafness

(1) The worker is entitled to compensation for the industrial deafness under part 10 and sections 211(1)(a) and 219(1) 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) The insurer must ask that the worker's degree of permanent impairment resulting from the diminution of hearing be assessed under section 179.

126 Further application for compensation for industrial deafness

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

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

(3) The worker is entitled to further lump sum compensation if the worker has sustained a further diminution of hearing of more than 1%.

(4) The further application must be decided under section 125.

Division 4 Workers with latent onset injuries that are terminal conditions

128A Application of div 4

This division applies to a worker if a latent onset injury sustained by the worker is a terminal condition.

128B Entitlements of worker with terminal condition

(1) The worker is entitled to compensation for the latent onset injury calculated only under this division.

(2) The worker is entitled to lump sum compensation equal to the sum of the following amounts—

(a) 216.15 times QOTE;

(b) additional lump sum compensation for care of 10% of the amount payable under paragraph (a);

(c) additional lump sum compensation of no more than 216.15 times QOTE payable according to a graduated scale prescribed under a regulation, having regard to the age of the worker when the worker lodges an application for compensation for the latent onset injury.

(3) However, the amount payable under subsection (2)(a) is subject to any reduction made under section 128C.

(4) The worker is also entitled to compensation under chapter 4, part 2, but only until the worker receives lump sum compensation under subsection (2).

128C Reduction of amount payable

(1) This section applies if any of the following payments have been made in relation to the worker's latent onset injury—

(a) a weekly payment of compensation;

(b) a redemption payment;

(c) a payment of lump sum compensation;

(d) a payment of compensation or damages under a law of Queensland, another State or of the Commonwealth.

(2) The amount of compensation payable under section 128B(2)(a) must be reduced by the total of all payments mentioned in subsection (1).

128D Worker's dependants

(1) This section applies if the worker has dependants.

(2) The worker's dependants are entitled to lump sum compensation equal to the sum of the following amounts—

(a) 15% of the amount payable under section 200(2)(a);

(b) 2% of the amount payable under section 200(2)(a) for the reasonable expenses of the worker's funeral.

(3) An insurer may pay the compensation under this section—

(a) to the worker; or

(b) to the worker's dependants at the same time as the insurer pays the worker lump sum compensation under section 128B.

(4) The worker's dependants are not entitled to further compensation under chapter 3, part 11 for the death of the worker.

(5) In this section—

dependant, of a worker, means a member of the worker's family who is completely or partly dependent on the worker's earnings.

member of the family, of a worker, means—

(a) the worker's—

(i) spouse; or

(ii) parent, grandparent or step-parent; or

(iii) child, grandchild or stepchild; or

(iv) brother, sister, half-brother or 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 worker—the other person.

128E To whom payments made for death of worker

(1) This section applies if—

(a) the worker dies because of the latent onset injury; and

(b) the worker had received a payment of lump sum compensation under section 128B for the latent onset injury; and

(c) if the worker left dependants—an insurer had not paid the worker or the worker's dependants the lump sum compensation under section 128D to which the worker's dependants were entitled.

(2) The compensation under section 128D for the worker's dependants is payable—

(a) to the worker's legal personal representative; or

(b) if there is no legal personal representative—to the worker's dependants.

(3) The worker's legal personal representative must pay or apply the compensation to or for the benefit of the worker's dependants.

Division 5 Workers with pneumoconiosis

Note—

Under section 128B, if a worker sustains a latent onset injury that is a terminal condition, the worker is entitled to compensation for the injury only under division 4.

Subdivision 1 Entitlement to lump sum compensation

128F Application of subdivision

This subdivision applies to a worker—

(a) who has sustained an injury that is pneumoconiosis; and

(b) if section 119 applies for the worker's injury—whose entitlement to compensation for the injury has not ended under section 119(2).

128G Lump sum compensation

(1) The worker is entitled to lump sum compensation under this subdivision of no more than 80.97 times QOTE for the injury.

(2) The amount of the lump sum compensation is payable according to a graduated scale prescribed by regulation, calculated on the basis of—

(a) the worker's pneumoconiosis score; and

(b) the worker's lodgement age.

(3) For subsection (2), a regulation may prescribe bands (each a ***pneumoconiosis band***) that comprise particular pneumoconiosis scores.

(4) Subject to section 140, the worker's entitlement to lump sum compensation under this subdivision is in addition to any entitlement to lump sum compensation under part 10.

(5) This section applies despite section 176.

128H When lump sum compensation is payable

(1) The lump sum compensation is payable only after the worker's injury has been assessed under section 179.

(2) However, it does not matter whether the notice of assessment in relation to the injury states that the worker has sustained permanent impairment from the injury.

Subdivision 2 Entitlement to further lump sum compensation

128I Application of subdivision

(1) This subdivision applies to a worker who has sustained an injury that is pneumoconiosis if—

(a) the worker has received either of the following for the injury—

(i) lump sum compensation under subdivision 1;

(ii) further lump sum compensation under this subdivision; and

(b) at any time after receiving the lump sum compensation, or further lump sum compensation, the worker's pneumoconiosis score for the injury increases (the ***increased pneumoconiosis score***) and falls within a higher pneumoconiosis band.

(2) This subdivision also applies to a worker who has sustained an injury that is pneumoconiosis if—

(a) a settlement for damages has been agreed, or judgment for damages has been given, for the injury; and

(b) the settlement or judgment does not include damages to compensate the worker for the future progression of the injury; and

(c) at any time after the settlement is agreed, or the judgment is given, the worker's pneumoconiosis score for the injury increases (also the ***increased***

pneumoconiosis score) and falls within a higher pneumoconiosis band.

(3) For subsection (2)(b), if the settlement or judgment does not expressly state that it includes damages to compensate the worker for the future progression of the injury, the settlement or judgment is taken not to include damages for that purpose.

128J Further lump sum compensation

(1) The worker is entitled to further lump sum compensation under this subdivision for the injury.

(2) The amount of the further lump sum compensation is the difference between—

(a) the amount that would be payable according to the graduated scale mentioned in section 128G(2), calculated on the basis of—

(i) the worker's increased pneumoconiosis score; and

(ii) the worker's lodgement age; and

(b) the amount that would be payable according to the graduated scale mentioned in section 128G(2), calculated on the basis of—

(i) the worker's relevant previous pneumoconiosis score; and

(ii) the worker's lodgement age.

(3) For subsection (2)(b)(i), the worker's ***relevant previous pneumoconiosis score*** is—

(a) if the worker has received lump sum compensation under subdivision 1, but not further lump sum compensation under this subdivision—the pneumoconiosis score that was used to calculate the compensation under subdivision 1; or

(b) if the worker has received further lump sum compensation under this subdivision—the pneumoconiosis score that was used, or that has most recently been used, to calculate the further compensation under this subdivision; or

(c) if the worker is a worker mentioned in section 128I(2) and has not received further lump sum compensation under this subdivision—the pneumoconiosis score worked out using the last chest image of the worker taken before the settlement for damages was agreed or the judgment for damages was given.

(4) Subject to section 140, the worker's entitlement to further lump sum compensation under this subdivision is in addition to any entitlement to lump sum compensation under part 10.

(5) This section applies despite sections 119, 176 and 239.

128K When further lump sum compensation is payable

(1) The further lump sum compensation is payable only after the worker's injury has been further assessed under section 179.

(2) However, it does not matter whether the notice of assessment in relation to the injury states that the worker has sustained permanent impairment from the injury.

Subdivision 3 Miscellaneous

128L Advances on account

(1) This section applies if an insurer is satisfied a worker—

(a) is entitled to lump sum compensation under subdivision 1 or 2 for an injury; and

(b) is experiencing financial hardship.

(2) The insurer may, from time to time, advance to the worker amounts on account of any lump sum compensation as it considers appropriate in the circumstances.

(3) Subsection (2) applies despite sections 128H and 128K.

(4) Acceptance of the amount on account of lump sum compensation by the worker does not constitute an election by the worker not to seek damages for the injury.

Note—

See also section 178A.

128M Reduction of compensation for particular workers with more than 1 pneumoconiosis injury

(1) This section applies if a worker who has sustained an injury that is pneumoconiosis (the ***current injury***)—

(a) is entitled to compensation under subdivision 1 or 2 for the current injury; and

(b) has previously received compensation under subdivision 1 or 2 for another injury that was pneumoconiosis (a ***previous injury***).

(2) The compensation to which the worker would otherwise be entitled under subdivision 1 or 2 for the current injury must be reduced by an amount equal to the total of all amounts previously paid to the worker under subdivision 1 or 2 for the previous injury.

Part 4 Compensation affected by workers' conduct

129 Self-inflicted injuries

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

130 Injuries caused by misconduct

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

(a) the injury results in death; or

(b) the insurer considers that the injury could result in a DPI of 50% or more.

Note—

See, however, section 232H in relation to compensation payable under chapter 4A.

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

(a) a psychiatric or psychological injury; or

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

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

(a) the degree of permanent impairment that could be sustained by the worker may be decided only by a medical assessment tribunal; and

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

Part 5 Compensation application and other procedures

131 Time for applying

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

(2) If an application is lodged more than 20 business days after the entitlement to compensation arises, the extent of the insurer's liability to pay compensation is limited to a period starting no earlier than 20 business days before the day on which the valid application is lodged.

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

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

(5) Also, an insurer may waive subsection (1) for a particular application if—

(a) it is satisfied that a doctor, nurse practitioner or dentist has assessed the injury as resulting in total or partial incapacity for work; and

(b) the claimant lodged the application within 20 business days after the first assessment under paragraph (a).

(6) An insurer may waive subsection (1) or (2) for a particular application if the insurer is satisfied that a claimant's failure to lodge the application was due to—

(a) mistake; or

(b) the claimant's absence from the State; or

(c) a reasonable cause.

132 Applying for compensation

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

(2) The application must be lodged with the insurer.

(3) The application must be accompanied by—

(a) a certificate in the approved form given by—

(i) a doctor who attended the claimant; or

(ii) if the application relates to a minor injury—a nurse practitioner who attended the claimant and who is acting in accordance with the workers' compensation certificate protocol; 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.

(6) An application for compensation is valid and enforceable if it complies with this section.

132A Applying for assessment of DPI if no application made for compensation

(1) This section applies to a worker who has not made an application under section 132.

(1A) However, this section does not apply to a worker who is, or may be, entitled to compensation under chapter 4A.

(2) The worker may apply to the insurer to have the worker's injury assessed under section 179 to decide if the worker's injury has resulted in a DPI.

(3) An application under subsection (2) must be—

(a) lodged with the insurer; and

(b) in the approved form; and

(c) accompanied by—

(i) a certificate in the approved form given by a doctor who attended the worker; and

(ii) any other evidence or particulars prescribed under a regulation.

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

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

(6) The insurer must, within 40 business days after an application under subsection (2) is made, decide to allow or reject the application.

(7) The insurer may reject the application only if satisfied the worker—

(a) was not a worker when the injury was sustained; or

(b) has not sustained an injury; or

(c) is, or may be, entitled to compensation under chapter 4A because—

(i) the worker has sustained a serious personal injury that meets the chapter 4A eligibility criteria; and

(ii) section 116 does not apply to the injury.

(8) The insurer must notify the worker of its decision on the application.

(9) If the insurer rejects the application, the insurer must also, when giving the worker notice of its decision, give the worker written reasons for the decision and the information prescribed by regulation.

(10) If the worker is aggrieved by the insurer's decision on the application, the worker may have the decision reviewed under chapter 13.

(11) If the insurer does not decide the application within the time stated in subsection (6)—

(a) the insurer must, within 5 business days after the end of the time stated in subsection (6), notify the worker—

(i) of its reasons for not deciding the application; and

(ii) that the worker may have the insurer's failure to decide the application reviewed under chapter 13; and

(b) the worker may have the insurer's failure to decide the application reviewed under chapter 13.

(12) To remove any doubt, it is declared that a decision of the insurer to allow the application does not entitle the worker to compensation for the injury.

132B Applying for certificate of dependency

(1) This section applies to a person who—

(a) wishes to seek damages as a dependant of a deceased worker; and

(b) has not made an application under section 132.

(2) The person may apply to the insurer for the issue of a certificate stating the person is a dependant of the deceased worker for the purpose of section 237(1)(b)(ii).

(3) An application under subsection (2) must be—

(a) lodged with the insurer; and

(b) in the approved form; and

(c) accompanied by—

(i) a certificate in the approved form given by a doctor who attended the deceased worker; and

(ii) any other evidence or particulars prescribed by regulation.

(4) The insurer must, within 40 business days after the application is made, decide to allow or reject the application.

(5) The insurer may reject the application only if satisfied—

(a) the person is not a dependant of the deceased worker; or

(b) the deceased worker was not a worker when the injury was sustained; or

(c) the deceased worker did not sustain an injury; or

(d) the injury did not result in the worker's death.

(6) The insurer must notify the person of its decision on the application.

(7) If the insurer rejects the application, the insurer must also, when giving the person notice of its decision, give the person written reasons for the decision and the information prescribed by regulation.

(8) If the person is aggrieved by the insurer's decision on the application, the person may have the decision reviewed under chapter 13.

(9) If the insurer does not decide the application within the time stated in subsection (4)—

(a) the insurer must, within 5 business days after the end of the time stated in subsection (4), notify the person—

(i) of its reasons for not deciding the application; and

(ii) that the person may have the insurer's failure to decide the application reviewed under chapter 13; and

(b) the person may have the insurer's failure to decide the application reviewed under chapter 13.

(10) To remove any doubt, it is declared that a decision of the insurer to allow the application does not entitle the person to compensation for the injury.

133 Employer's duty to report injury

(1) An employer whose worker sustains an injury for which compensation may be payable must complete a report in the approved form and give the report to the insurer.

(2) The employer must complete and give the report to the insurer 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 the insurer's written request for the report.

(3) If an employer fails to comply with subsection (1) within 8 business days after the first of the circumstances mentioned in

subsection (2) happens, the employer commits an offence, unless the employer has a reasonable excuse.

Maximum penalty—50 penalty units.

(4) In this section—

insurer means—

(a) if the employer is a self-insurer—the person authorised by the employer as self-insurer to make a decision under section 134 on any claim for compensation for the injury; or

(b) if the employer is not a self-insurer—WorkCover.

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

(1) An employer must give the insurer written notice in the approved form if—

(a) a worker asks the employer for compensation for an injury sustained by the worker; or

(b) the employer pays the worker an amount, either in compensation or instead of compensation, that is payable under the Act by the employer as a self-insurer or WorkCover for an injury sustained by the worker.

(2) If the employer fails to comply with subsection (1) within 8 business days after the request or payment is made, the employer commits an offence, unless the employer has a reasonable excuse.

Maximum penalty—50 penalty units.

(3) In this section—

insurer means—

(a) if the employer is a self-insurer—the person authorised by the employer as self-insurer to make a decision under section 134 on any claim for compensation for the injury; or

(b) if the employer is not a self-insurer—WorkCover.

134 Decision about application for compensation

(1) A claimant's application for compensation must be allowed or rejected in the first instance by the insurer.

(2) The insurer must make a decision on the application within 20 business days after the application is made.

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

(4) If the insurer rejects the application, the insurer must also, when giving the claimant notice of its decision, give the claimant written reasons for the decision and the information prescribed under a regulation.

(5) Subsection (6) applies if the insurer does not make a decision on the application within the time stated in subsection (2).

(6) The insurer must, within 5 business days after the end of the time stated in subsection (2), notify the claimant of its reasons for not making the decision and that the claimant may have the claimant's application reviewed under chapter 13.

135 Examination by registered person

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

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

(a) fails, without reasonable excuse, to attend for the examination at the time and place advised by the insurer; or

(b) having attended, refuses to be examined by the registered person; or

(c) obstructs, or attempts to obstruct, the examination.

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

135A Examination of particular claimants by psychiatrist

(1) This section applies if—

(a) a person makes an application for compensation for an injury that is post-traumatic stress disorder; and

(b) at any time before the claimant was diagnosed as having the disorder, the claimant was employed as a first responder or an eligible employee; and

(c) there is no evidence that the claimant has been diagnosed by a psychiatrist as having the disorder.

(2) The insurer must—

(a) arrange for the claimant to be examined by a psychiatrist to obtain a diagnosis; and

(b) pay for—

(i) the examination by the psychiatrist; and

(ii) any travel costs incurred by the claimant in attending the examination that the insurer considers are necessary and reasonable.

(3) However, subsection (2) does not apply if the insurer decides under section 134 to allow the application.

(4) This section does not limit section 135.

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

(1) A worker receiving compensation for an injury must give notice within 10 business days of the worker's—

(a) return to work; or

(b) engagement in a calling.

Maximum penalty—50 penalty units.

(2) The notice must be given to the insurer.

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

137 Suspension of compensation during term of imprisonment

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

138 Compensation not payable during suspension

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

Note—

See also section 232ZH in relation to suspension of compensation under chapter 4A.

Part 6 Maximum statutory compensation

139 Application of pt 6

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

140 Maximum entitlement

(1) The maximum amount of compensation payable for 1 injury or multiple injuries sustained in 1 event, other than for a latent onset injury that is a terminal condition, is—

(a) for compensation payable as weekly payments under part 9—216.15 times QOTE; and

(b) for the total of all lump sum compensation payable under part 3, division 5 and section 180—216.15 times QOTE.

Note—

For the entitlement to compensation of a worker who has sustained a latent onset injury that is a terminal condition, see chapter 3, part 3, division 4.

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

(3) However, subsections (1) and (2) do not limit the power to make additional payment of compensation under part 10, division 4.

(4) In subsection (1)—

compensation does not include compensation provided for under part 8 or chapter 4A.

Part 7 Payment of compensation

141 Time from which compensation payable

(1) The entitlement to compensation for an injury arises on the day the worker's injury is assessed by—

(a) a doctor; or

(b) if the injury is a minor injury—a nurse practitioner acting in accordance with the workers' compensation certificate protocol; or

(c) if the injury is an oral injury and the worker attends a dentist—the dentist.

(2) However, any entitlement to weekly payment of compensation for an injury starts on—

(a) if a doctor, nurse practitioner 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, nurse practitioner 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, nurse practitioner or dentist assesses the injury.

(3) Also, any entitlement to payments under chapter 4A starts when the period mentioned in section 232L(3) or 232ZD(8) starts for the worker.

(4) Subsections (1) to (3) are not intended to limit any entitlement to compensation for the day of injury provided for under part 8.

(5) Subsection (2) is subject to section 131(2).

Part 8 Compensation for day of injury

142 Application of pt 8

This part applies only if a worker stops work because of an injury and under the industrial instrument or contract of employment applying to the worker—

(a) the worker is not entitled to be paid for the whole of the day on which the worker stops work; or

(b) no amount is specified as being payable to the worker for the whole of the day on which the worker stops work; or

(c) the amount specified as being payable to the worker for the whole of the day on which the worker stops work is less than the amount payable as compensation under this part.

143 Definition for pt 8

In this part—

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

144 When employer must pay worker for day of injury

(1) For the day the worker stops work because of the injury, the worker is entitled to compensation under this part for the injury.

(1A) Subsection (1) applies despite anything in an industrial instrument or contract of employment applying to the worker.

(2) Despite section 109, 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 66.

Part 8A When entitlement to compensation stops

144A When weekly payments of compensation stop

(1) The entitlement of a worker to weekly payments of compensation under part 9 stops when the first of the following happens—

(a) the incapacity because of the work related injury stops;

(b) the worker has received weekly payments for the incapacity for 5 years;

(c) compensation under this part reaches the maximum amount under part 6.

(2) If subsection (1)(b) or (c) applies, the worker's entitlement to further compensation for the injury stops.

(3) Subsection (2) does not apply to the worker's entitlement to compensation under chapter 4A.

(4) This section does not limit another provision of this Act that stops weekly payments.

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

(1) The entitlement of a worker to the payment of medical treatment, hospitalisation and expenses under chapter 4 for an injury stops when—

(a) the entitlement of the worker to weekly payments of compensation under part 9 stops; and

(b) medical treatment by a registered person is no longer required for the management of the injury because the injury is not likely to improve with further medical treatment or hospitalisation.

(2) Subsection (1) does not apply in relation to section 220 or part 5A.

Part 9 Weekly payment of compensation

Division 1 Application

145 Application and object of pt 9

(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

146 Advances on account

(1) If an insurer 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) The insurer may exercise the power under subsection (1) at any time before the entitlement to compensation is—

(a) ascertained; or

(b) reviewed under chapter 13.

Division 3 Adjustment of entitlements under pt 9

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

(1) A worker must not receive an amount under this part that is more than the worker would have received from the worker's employment if the worker were at work and the injury had not been sustained.

(2) Subsection (1) has effect despite any other provision of this part.

148 Regard to other benefits for workers

Despite divisions 4 and 5, in assessing the amount of weekly payment of compensation, the insurer—

(a) may have regard to the amount of an entitlement had by the worker independently of this Act by way of—

(i) payment or other benefit that is being, has been, or will be received by the worker; and

(ii) payment that is being, has been, or will be made on account of the worker; and

(b) may reduce the weekly payment of compensation by the equivalent weekly amount of the payment or other benefit mentioned in paragraph (a) for the relevant period of compensation.

Division 4 Entitlement for total incapacity

Subdivision 1 Application of div 4

149 Entitlement to weekly payments

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

Subdivision 2 Workers

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

(1) The compensation payable to a totally incapacitated worker whose employment is governed by an industrial instrument is, for each week—

(a) for the first 26 weeks of the incapacity, the greater of the following—

(i) 85% of the worker's NWE;

(ii) the amount payable under the worker's industrial instrument; and

(b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the greater of the following—

(i) 75% of the worker's NWE;

(ii) 70% of QOTE; and

(c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—

(i) if a worker demonstrates to the insurer that the injury could result in a DPI of more than 15%—the greater of the following—

(A) 75% of the worker's NWE;

(B) 70% 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).

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

(1) The compensation payable to a totally incapacitated worker whose employment is not governed by an industrial instrument is, for each week—

(a) for the first 26 weeks of the incapacity, the greater of the following—

(i) 85% of the worker's NWE;

(ii) 80% 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) 75% of the worker's NWE;

(ii) 70% 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 the insurer that the injury could result in a DPI of more than 15%—the greater of the following—

(A) 75% of the worker's NWE;

(B) 70% of QOTE; or

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

(2) However, the amount must not be more than the worker's NWE.

152 Total incapacity—certain contract workers

(1) The compensation payable to a totally incapacitated contract worker is, for each week—

(a) for the first 26 weeks of the incapacity, the greater of the following—

(i) 85% of the worker's NWE;

(ii) the amount payable under the worker's contract of service; and

(b) from the end of the first 26 weeks of the incapacity until the end of the first 2 years of the incapacity, the greater of the following—

(i) 75% of the worker's NWE;

(ii) 70% of QOTE; and

(c) from the end of the first 2 years of the incapacity until the end of the first 5 years of the incapacity—

(i) if a worker demonstrates to the insurer that the injury could result in a DPI of more than 15%—the greater of the following—

(A) 75% of the worker's NWE;

(B) 70% 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 a public service officer; or

(b) as an officer of a government entity; or

(c) by a university; or

(d) as a salaried employee in the electricity industry; or

(e) as a health service employee under the *Hospital and Health Boards Act 2011*.

153 Total incapacity—casual or part-time workers

(1) The compensation payable to a totally incapacitated worker engaged in casual or part-time employment is a payment under section 150, 151 or 152.

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

154 Total incapacity—workers receiving certain benefits under Commonwealth law

(1) This section applies if a totally incapacitated worker was receiving an age, disability support or class B widow pension under a Commonwealth law when the injury was sustained.

(2) The compensation payable to the worker is the lesser of the following amounts—

(a) the amount the worker was earning at the time of the injury;

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

155 Total incapacity—workers with more than 1 employer

(1) This section applies if—

(a) a totally incapacitated worker is employed by more than 1 employer when the injury is sustained; and

(b) the worker's employment with 1 employer is other than as a casual employee.

(2) The insurer may decide that the worker's entitlement to compensation is to be calculated under the industrial instrument that increases the worker's entitlement to compensation.

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

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

156 Application of sdiv 3

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

157 Total incapacity

(1) The compensation payable to a totally incapacitated person is a payment under this section.

(2) The payment for a person who is not in employment or self-employed is the amount (if any) that WorkCover considers is reasonable.

(3) However, the payment under subsection (2) must not be more than 70% of QOTE.

(4) The payment for a person who is employed, but not self-employed, is a payment under section 150, 151, 152, 153, 154 or 155.

(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—80% 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 greater of the following—

(i) 70% 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 DPI of more than 15%—the greater of the following—

(A) 75% of the person's NWE;

(B) 70% 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 80% of QOTE—the reasonable cost of labour paid to replace the person.

Subdivision 4 Eligible persons

158 Application of sdiv 4

This subdivision applies to an eligible person.

159 Total incapacity

(1) The compensation payable to a totally incapacitated person is, for each week—

(a) for the first 26 weeks of the incapacity—

(i) the lesser of the following—

(A) 85% of the amount stated in the person's contract of insurance;

(B) the person's actual earnings when the injury was sustained; or

(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) 75% of the amount stated in the person's contract of insurance;

(B) 70% 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 DPI of more than 15%—the greater of the following—

(A) 75% of the amount stated in the person's contract of insurance;

(B) 70% 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 5 Reference to tribunal

160 Total incapacity—reference about impairment to medical assessment tribunal

(1) This section applies if—

(a) for section 150(1)(c)(i), 151(1)(c)(i), 152(1)(c)(i), 157(5)(c)(i) or 159(1)(c)(i), an insurer and a worker or a person can not agree that the injury could result in a DPI of more than 15%; or

(b) for section 150(1)(c)(ii), 151(1)(c)(ii), 152(1)(c)(ii), 157(5)(c)(ii) or 159(1)(c)(ii), an insurer and a worker or a person can not agree that the injury could result in a DPI of 15% or less.

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

(3) The insurer must refer the question of the degree of permanent impairment to a tribunal for decision.

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

Division 5 Entitlement for partial incapacity

Subdivision 1 Persons entitled to compensation other than eligible persons

161 Application of sdiv 1

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

162 Definitions for sdiv 1

In this subdivision—

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

loss of earnings means the difference between—

(a) the amount of the worker's or person's normal weekly earnings at the time of injury; and

(b) the amount—

  (i) of the worker's or person's weekly earnings from employment during the period of partial incapacity; or

  (ii) if the worker or person is not in employment during the period of partial incapacity—that could be reasonably expected to be derived by the worker or person during the period, having regard to the worker's or person's incapacity and the availability of employment.

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

NWE see section 106.

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

163 Partial incapacity

(1) Compensation payable to a partially incapacitated worker or person is a weekly payment under this section.

(2) The weekly payment is an amount calculated under the following formula—

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

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

Subdivision 2 Eligible persons

164 Application of sdiv 2

This subdivision applies to an eligible person.

165 Definitions for sdiv 2

In this subdivision—

AP means the amount payable under section 159(1)(a).

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

loss of earnings means the difference between—

(a) the amount payable under section 159(1)(a); and

(b) the amount of the person's weekly earnings from employment during the period of partial incapacity.

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

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

166 Partial incapacity

(1) Compensation payable to a partially incapacitated person is a weekly payment under this section.

(2) The weekly payment is an amount calculated under the following formula—

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

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

Subdivision 3 Requiring information

167 Insurer may require information from partially incapacitated worker or person

(1) An insurer may, by written notice given to a partially incapacitated worker or person, require the worker or person to give the insurer information about, and particulars of, the worker's or person's employment and earnings during a period of partial incapacity.

(2) If a worker or person fails to give the insurer the required information or particulars within 10 business days after receiving the notice, the insurer may suspend the worker's or person's entitlement to weekly payments of compensation until the worker or person fully complies with the request.

Division 6 Review of compensation

168 Review of compensation

(1) If an insurer considers a person's entitlement to compensation under this Act may have changed, the insurer may review the person's entitlement to compensation under this Act.

(2) On the review, the insurer may terminate, suspend, decrease or increase the person's entitlement to compensation under this Act.

Note—

See also chapter 4A, part 4 for reviews of entitlement to compensation under that chapter.

169 Review of weekly payments—worker under 18

(1) This section applies if a worker receiving weekly payments of compensation—

(a) was under 18 years when the injury was sustained; and

(b) a review takes place more than 12 months after the injury was sustained.

(2) The worker's entitlement to weekly compensation may be increased from the date of the review.

(3) The worker's future entitlement to weekly payment of compensation must be calculated having regard to the industrial instrument applying to the worker as if the worker were at work and the injury had not been sustained.

(4) This section does not limit another provision of this chapter that provides for a review of the worker's entitlement.

170 Recovery of compensation overpaid

(1) This section applies if, for an application for compensation, payment has been made to a worker or another person of an amount that is more than the amount to which the worker or person is entitled.

(2) The insurer may—

(a) recover from the worker or person the difference between the payment and the entitlement; or

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

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

Division 7 Redemption of weekly payments

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

(1) This section applies if—

(a) a worker has been receiving weekly payments of compensation for at least 2 years; and

(b) the insurer receives a report from a doctor that the worker's injury is not stable and stationary for the purposes of assessing permanent impairment.

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

172 Redemption—worker moves interstate

(1) This section applies if—

(a) a worker receiving weekly payments of compensation moves interstate permanently; and

(b) the insurer receives a report from a doctor that the worker's injury is not stable and stationary for the purposes of assessing permanent impairment.

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

173 Redemption—worker moves abroad

(1) This section applies if a worker receiving weekly payments of compensation stops ordinarily residing in Australia.

(2) The worker stops being entitled to compensation.

(3) However, if the worker satisfies the insurer that the worker's incapacity resulting from the injury for which the compensation is payable is permanent, the worker is entitled to a redemption payment in an amount agreed between the insurer and the worker.

(4) Subsection (2) does not apply to compensation under chapter 4A.

Note—

See section 232L(4)(b) and chapter 4A, part 6 for what happens in relation to a worker's compensation under chapter 4A if the worker is absent from Australia.

174 Calculation of redemption payment

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

(156 x Q) – TWP

(2) In subsection (1)—

Q is 70% of QOTE.

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

175 Review of redemption payment

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

(2) On a review, the insurer may decrease or, subject to section 174, increase the payment.

176 No compensation after redemption payment made

(1) 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.

(2) Subsection (1) does not apply to compensation under chapter 4A.

Part 10 Entitlement to compensation for permanent impairment

Division 1 General statement

178 Entitlement to assessment of permanent impairment and lump sum compensation

(1) Under this part, an insurer or a worker is entitled to ask for an assessment to decide if a worker has sustained a DPI from injury.

(2) If the worker is assessed under this part as having sustained a DPI, 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 1A Advances on lump sum compensation

178A Advances on account

(1) This section applies if an insurer is satisfied that the worker—

(a) has an entitlement to lump sum compensation for an injury; and

(b) is experiencing financial hardship.

(2) The insurer may from time to time advance to the worker amounts on account of lump sum compensation as it considers appropriate in the circumstances.

(3) Acceptance of the amount on account of lump sum compensation by the worker does not constitute an election by the worker not to seek damages for the injury.

Note—

See also section 128L.

Division 2 Assessment of permanent impairment

179 Assessment of permanent impairment

(1) An insurer may decide, or a worker who has made an application under section 132 may ask the insurer, to have the worker's injury assessed to decide if the worker's injury has resulted in a degree of permanent impairment.

Note—

See also section 193C for when an insurer may decide, or the worker may ask the insurer, to have the worker's injury further assessed under this section.

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

(a) for industrial deafness—by an audiologist; or

(b) for a psychiatric or psychological injury—by a medical assessment tribunal; or

(c) for another injury—by a doctor.

(3) The degree of permanent impairment must be assessed in accordance with the GEPI to decide the DPI for the injury, and a report complying with the GEPI must be given to the insurer.

(4) If the worker sustains permanent impairment from multiple injuries sustained in 1 event—

(a) the degree of permanent impairment for the injuries, other than a psychiatric or psychological injury, must be assessed together to decide the DPI for the injuries; and

(b) the degree of permanent impairment for the psychiatric or psychological injury must be assessed separately to decide the DPI for the injury.

180 Calculation of lump sum compensation

(1) If, as a result of an assessment under section 179, 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 DPI.

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

(a) a condition existing before the injury; or

(b) a condition for which the worker is not entitled to compensation.

(3) The amount of lump sum compensation is to be calculated as at the day the insurer makes an offer of lump sum compensation to the worker under section 187.

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

(1) This section applies if—

(a) a worker has previously had an entitlement to lump sum compensation for injury (other than industrial deafness) to a part of the worker's body; and

(b) the worker sustains a further injury to the same part of the body (the ***later injury***).

(2) Lump sum compensation under section 180 for the later injury must be reduced by the worker's previous entitlement.

Example—

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

182 Regard to previous assessment for industrial deafness

(1) This section applies if—

(a) a worker has previously had an entitlement to lump sum compensation for industrial deafness; and

(b) the worker sustains further industrial deafness.

(2) In deciding the lump sum compensation under section 180 for the further industrial deafness, the assessed percentage loss of hearing must be reduced by the previously assessed percentage loss of hearing.

183 Guidelines for assessing a worker's degree of permanent impairment and deciding DPI

(1) The Regulator must make guidelines for assessing a worker's degree of permanent impairment for an injury to decide the DPI for the injury.

(2) The guidelines are to be called the Guidelines for Evaluation of Permanent Impairment.

(3) The Regulator must publish the guidelines in the gazette.

(4) The guidelines take effect—

(a) when published in the gazette; or

(b) if a later date is specified in the gazette—on the later date.

(5) The Regulator must consult with the Minister before making or amending the guidelines.

Division 3 Notification of assessment of permanent impairment

184 Application of div 3

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

185 Insurer to give notice of assessment of permanent impairment

(1) The insurer must, within 10 business days after receiving the assessment of the worker's permanent impairment, give the worker a notice of assessment in the approved form.

(2) To remove any doubt, it is declared that if a worker sustains multiple injuries in an event, the insurer must give the notice only after the worker's DPI for all injuries has been decided.

(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 DPI for the injury; and

(ii) the amount of lump sum compensation under section 180 to which the worker is entitled for the injury; and

(c) if the worker is entitled to additional lump sum compensation under division 4—the worker's entitlement.

186 Worker's disagreement with assessment of permanent impairment

(1) This section applies if—

(a) the worker's degree of permanent impairment has not been assessed by a medical assessment tribunal; and

(b) the worker does not agree with the degree of permanent impairment stated in the notice of assessment (the ***original notice***).

(2) The worker must advise the insurer within 20 business days after the original notice is given (the ***decision period***) that the worker—

(a) does not agree with the degree of permanent impairment; and

(b) requests—

(i) that the insurer has the worker's injury assessed again under section 179 by an entity mentioned in section 179(2) and agreed to by the worker and the insurer, (other than the entity that gave the report to the insurer under section 179(3)); or

(ii) that the insurer refer the question of degree of permanent impairment to a tribunal for decision.

(3) If the worker makes a request mentioned in subsection (2)(b)(i), the insurer must decide, within 10 business days after receiving the request, whether to have the worker's injury assessed again under section 179 to decide if the worker's injury has resulted in a degree of permanent impairment.

(4) If, under subsection (3), the insurer decides to have the worker's injury assessed again under section 179, the original notice is taken to have never been given.

(5) If the insurer has the worker's injury assessed again under section 179, the worker can not make a further request mentioned in subsection (2)(b)(i).

(6) If—

(a) under subsection (3), the insurer decides not to have the worker's injury assessed again under section 179; or

(b) the worker makes a request mentioned in subsection (2)(b)(ii);

the insurer must refer the question of degree of permanent impairment to a medical assessment tribunal for decision.

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

187 Offer of lump sum compensation

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

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

(1) This section applies if—

(a) the worker has—

(i) a psychiatric or psychological injury from an event that results in a DPI of the worker of 20% or more; or

(ii) another injury from an event that results in a DPI of the worker of 20% or more; and

(b) the worker has an entitlement to lump sum compensation.

(2) The worker may accept or defer a decision about the offer by giving the insurer written notice within the decision period.

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

(a) the offer is accepted; or

(b) the worker wants to defer the decision.

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

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

(1) This section applies if—

(a) the worker—

(i) has—

(A) a psychiatric or psychological injury from an event that results in a DPI of the worker of less than 20%; or

(B) another injury from an event that results in a DPI 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 DPI of the worker.

(2) The insurer must also, when giving the notice of assessment—

(a) give the worker a copy of sections 10, 237(3), 239, 240 and 316; and

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

(i) accepts the offer of payment of lump sum compensation; or

(ii) seeks damages for the injury; and

(c) without limiting paragraphs (a) and (b), if the injury is pneumoconiosis—

(i) give the worker a copy of part 3, division 5 and division 5 of this part; and

(ii) advise the worker that, if the worker seeks damages for the injury, the worker may, despite section 239, be entitled to further lump sum compensation under those provisions for the injury.

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

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

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

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

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

190 No further compensation after fixed time

(1) This section applies to a worker who has been given a notice of assessment.

(2) The worker is not entitled to further compensation for the injury after the first of the following happens—

(a) the worker notifies the insurer of the worker’s decision about the offer within the decision period;

(b) 20 business days have passed since the worker received the offer.

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

(a) lump sum compensation, if any, under part 3, division 5; or

(b) lump sum compensation under section 188(4) or 189(5); or

(c) additional compensation, if any, under division 4; or

(d) compensation under chapter 4A.

Division 4 Additional lump sum compensation

191 Application of div 4

This division applies only if a worker's DPI has been decided.

192 Additional lump sum compensation for workers with DPI of 30% or more

(1) This section applies if a worker sustains an injury that results in a DPI of 30% or more.

(2) The worker is entitled to additional lump sum compensation of no more than 216.15 times QOTE 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 DPI arises from—

(a) a psychiatric or psychological injury; or

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

193 Additional lump sum compensation for gratuitous care

(1) This section applies if a worker sustains an injury that results in—

(a) a DPI 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 DPI arises from—

(a) a psychiatric or psychological injury; or

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

(4) The insurer must ask that a registered occupational therapist assess the worker's level of dependency resulting from the impairment in the way prescribed under a regulation.

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

(a) the matters the therapist took into account, and the weight the therapist gave to the matters, in deciding the worker's level of dependency; and

(b) any other information prescribed under a regulation.

(6) The insurer must decide the amount of the worker's entitlement to additional compensation of no more than 244.86 times QOTE, payable according to a graduated scale prescribed under a regulation, having regard to—

(a) the worker's DPI; 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), the insurer 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.

193A Additional lump sum compensation for particular workers

(1) This section applies to a worker who sustained an injury on or after 15 October 2013 and before 31 January 2015, if—

(a) the worker's injury—

(i) results in a DPI of 5% or less; and

(ii) is not a terminal condition; and

(b) the worker has not accepted or rejected an offer of lump sum compensation from an insurer under section 189.

(2) The worker is entitled to additional lump sum compensation for the injury—

(a) up to an amount prescribed by regulation; and

(b) subject to the conditions prescribed by regulation.

(3) A regulation may provide for the establishment of a panel of appropriately qualified persons to review a decision of an insurer about whether a worker is entitled to additional lump sum compensation under this section.

Division 5 Particular workers with pneumoconiosis

Note—

Under section 128B, if a worker sustains a latent onset injury that is a terminal condition, the worker is entitled to compensation for the injury only under part 3, division 4.

193B Application of division

(1) This division applies to a worker who has sustained an injury that is pneumoconiosis if—

(a) the worker has previously been given a notice of assessment in relation to the injury, whether or not the notice states that the worker has sustained permanent impairment from the injury; and

(b) at any time after the notice is given, the worker's pneumoconiosis score for the injury increases and falls within a higher pneumoconiosis band; and

(c) if a settlement for damages has been agreed, or judgment for damages has been given, for the injury—the settlement or judgment does not include damages to compensate the worker for the future progression of the injury.

(2) For subsection (1)(c), if the settlement or judgment does not expressly state that it includes damages to compensate the worker for the future progression of the injury, the settlement or judgment is taken not to include damages for that purpose.

193C Further assessment under s 179

The insurer may decide, or the worker may ask the insurer, to have the worker's injury further assessed under section 179 to decide—

(a) if a previous notice of assessment in relation to the injury stated that the worker had sustained permanent impairment from the injury—whether the degree of permanent impairment resulting from the injury has increased; or

(b) otherwise—whether the injury has resulted in a degree of permanent impairment.

193D Entitlement of worker to lump sum compensation under s 180 and div 4

(1) This section applies if the worker is assessed under section 179 as having sustained a DPI or an increased DPI from the injury (the ***current DPI***).

(2) The worker is entitled to lump sum compensation for the injury under the following provisions, calculated on the basis of the worker's current DPI—

(a) section 180;

(b) division 4.

(3) However, the amount of compensation payable under section 180 and division 4 must be reduced by the total of—

(a) the amount of any compensation previously paid under those provisions for the injury; and

(b) the amount of any compensation paid under a law of Queensland (other than this Act), another State or the Commonwealth for the injury; and

(c) if a settlement for damages has been agreed, or judgment for damages has been given, for the injury—an amount equal to the compensation to which the worker would have been entitled under section 180 and division 4, calculated on the basis of the DPI stated in the first notice of assessment given to the worker in relation to the injury.

(4) This section applies—

(a) despite sections 119, 176, 190 and 239; and

(b) whether or not the worker has previously received compensation, or further compensation, under section 180 or division 4 because of this section.

Part 11 Compensation on worker's death

194 Application and object of pt 11

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

(2) However, this part does not apply if—

(a) a worker dies because of a latent onset injury that is a terminal condition; and

(b) the worker had received a payment of lump sum compensation or damages for the latent onset injury under this Act, another Act or a law of another State or the Commonwealth.

(3) The object of this part is to provide for payment by an insurer 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.

195 Definition for pt 11

In this part—

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

196 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.

197 Total and partial dependants

If compensation is payable for the death of a worker who is survived by persons totally dependent on the worker and persons partially dependent on the worker, the compensation may be apportioned between the total dependants and the partial dependants.

198 Dependant's compensation payable to public trustee

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

199 Medical and funeral expenses must be paid by insurer

An insurer must pay the reasonable expenses—

(a) of the medical treatment of, or attendance on, the worker; and

(b) the worker's funeral.

200 Total dependency

(1) This section applies if at least 1 of the worker's dependants was, at the time of the worker's death, totally dependent on the worker's earnings.

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

(a) if the worker has left dependent members of the worker's family, for the members—404.87 times QOTE; and

(aa) if the worker has left a totally dependent spouse, for the spouse—10.83 times QOTE; and

(ab) if the worker has left a totally dependent spouse and dependent members of the worker's family who are under 6, for the spouse—a weekly amount equal to 8% of QOTE while a dependent member is under 6; 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—21.64 times QOTE; 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 10% of QOTE while the member or child is under 16 or a student.

201 Partial dependency

(1) This section applies if all of the worker's dependants were, at the time of the worker's death, partially dependent on the worker's earnings.

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

(a) if the worker has left dependent members of the worker's family, for the members—an amount the insurer considers is reasonable and proportionate to the monetary value of the loss of dependence by the dependants; and

(b) if the worker has left dependent members of the worker's family or a child of the worker's spouse who was partially dependent on the worker's earnings and who are under 16 or students, for each member or child—a weekly amount equal to 7% of QOTE while the member or child is under 16 or a student.

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

(a) must not be less than 15% of the amount payable under section 200(2)(a); and

(b) must not be more than the amount payable under section 200(2)(a).

201A Worker with non-dependent spouse, issue or next of kin

(1) This section applies if a worker left no dependants but is survived by any of the following—

(a) a spouse;

(b) issue within the meaning of the *Succession Act 1981*;

(c) next of kin within the meaning of the *Succession Act 1981*.

(2) The amount of compensation payable to the worker's estate is 10% of the amount payable under section 200(2)(a).

202 Workers under 21

(1) This section applies if the worker—

(a) was under 21; and

(b) is survived by a parent ordinarily resident in Australia but left no dependants.

(2) The amount of compensation payable to the parent is no more than 24.34 times QOTE.

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

(a) the total amount of compensation payable to the parents is no more than 24.34 times QOTE; and

(b) the amount payable to each parent is to be decided by the insurer.

204 Reduced compensation if dependant dies before payment made

(1) This section applies if the worker is survived by a dependant who dies before payment of compensation is made for the dependant's benefit.

(2) For this section, the dependant is taken to have died before the worker.

(3) However, compensation for the period starting on the day of the worker's death and ending on the day of the dependant's death is payable to the dependant's legal personal representative for the benefit of the dependant's estate.

(4) The amount of the compensation is a weekly payment under this section.

(5) If the dependant was a spouse who was totally dependent on the worker's earnings, the payment is, for each week, 14% of QOTE.

(6) If the worker has left no surviving spouse and the dependant was a member of the worker's family who was totally dependent on the worker's earnings and was caring for—

(a) another member of the worker's family who was totally dependent on the worker's earnings; or

(b) the worker's child or stepchild who was under 16 or a student;

the payment is, for each week, 14% of QOTE.

(7) If the dependant was a member of the worker's family or a child of the worker's spouse who was under 16 or a student and was totally dependent on the worker's earnings, the payment is, for each week, 7% of QOTE.

Part 12 Automatic variation of compensation payable

205 Variation of payments for injuries

(1) If QOTE varies, each payment or amount under part 3, division 4 or 5 or part 6, 10 or 11 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.

206 Construing entitlements in light of variation

(1) This section applies if an amount is varied under section 205.

(2) An entitlement to an amount mentioned in section 205 is to be construed as an entitlement to the payment or amount as varied for the time being under section 205.

(3) A reference in part 3, division 4 or 5 or part 6, 10 or 11 to the amount is to be construed as a reference to the amount as varied for the time being under section 205.

207 Application of part to existing benefits

(1) This part applies to a benefit being paid and an entitlement accrued under a former Act as if they were a benefit paid or an entitlement accrued under this Act.

(2) For subsection (1), the reference in section 206(3) of this Act to part 6, 10 or 11 is to be construed as a reference to the corresponding provision of the former Act under which an entitlement arose.

Chapter 3A Compensation claim costs

207AA Definition for ch 3A

In this chapter—

worker includes a person to whom compensation is payable under this Act for injury.

207A Insurer may recover costs of reports from third party

(1) This section applies if an insurer incurs costs in obtaining reports, other than legal reports, while managing a claim for compensation in which an injury to a worker created a legal liability in a person to pay damages for the injury independently of this Act.

Examples of reports—

- medical reports
- traffic incident reports

(2) The insurer—

(a) is entitled to be indemnified by the person for a reasonable proportion of the costs reasonably incurred by the insurer in obtaining the reports; and

(b) may recover from the person as a debt a reasonable proportion of the costs reasonably incurred by the insurer in obtaining the reports.

(3) In deciding what is a reasonable proportion of the costs for subsection (2), a court must consider the extent to which the report is used for the purposes of managing the claim or deciding liability.

(4) In this section—

report includes advice.

207B Insurer's charge on damages for compensation paid

(1) This section applies to—

(a) an injury sustained by a worker in circumstances creating—

(i) an entitlement to compensation; and

(ii) a legal liability in the worker's employer, or other person, to pay damages for the injury, independently of this Act; and

(b) damages that an employer is not indemnified against under this Act.

(2) An amount paid as compensation to a person for an injury, to which there is an entitlement to payment of damages at a time or for a period before the person becomes entitled to payment of damages by an employer or another person, is a first charge on any amount of damages recovered by the person to the extent of the amount paid as compensation to the person.

(3) Subsection (2) applies to compensation paid under chapter 4A only if the damages include treatment, care and support damages.

(4) An employer or other person from whom the damages are recoverable must pay the insurer the amount of the first charge or, if the damages are not more than the amount of the first charge, the whole of the damages.

(5) Payment to the insurer under subsection (4), to the extent of the payment, satisfies the liability of the employer or other person for payment of the damages.

(6) A person can not settle, for a sum less than the amount that is a first charge on damages under subsection (2), a claim for damages had by the person independently of this Act for an injury to which there is an entitlement to payment of damages without the insurer's written consent.

(7) If, without the insurer's consent, a settlement mentioned in subsection (6) is made, then to the extent that the damages recovered are insufficient to meet all payments due to the insurer under this section—

(a) the insurer is entitled to be indemnified by the employer or other person who is required by the settlement to pay the damages; and

(b) to that end, the insurer is subrogated to the rights of the person who has sought the damages, as if the settlement had not been made.

(8) If a person who has received compensation has not recovered, or taken proceedings to recover, damages for the injury from another person, other than the worker's employer—

(a) the insurer is entitled to be indemnified for the amount of the compensation by the other person to the extent of that person's liability for the damages, so far as the amount of damages payable for the injury by that person extends; and

(b) to that end, the insurer is subrogated to the rights of the person for the injury.

(9) Payment made as indemnity under subsection (8), to the extent of the payment, satisfies the person's liability on a judgment for damages for the injury.

(10) In addition to all rights of action had by the insurer to give effect to its right to indemnity under this section, all questions about the right and the amount of the indemnity may, in default of agreement, be decided by an industrial magistrate if all persons affected by the indemnity consent.

(11) In this section—

damages includes damages under a legal liability existing independently of this Act, whether or not within the meaning of section 10.

Chapter 4 Injury management

Part 1 Application

208 Application and object of ch 4

(1) This chapter applies if a worker sustains an injury for which compensation under chapter 3 is payable.

(2) The object of this chapter is to provide for appropriate medical treatment, hospitalisation and rehabilitation of the worker.

(3) This section is subject to part 5A.

Part 2 Liability for medical treatment, hospitalisation and expenses

Division 1 Application and general statement of liability

209 Application of pt 2

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

(2) However, this part, other than section 219, does not apply to medical treatment provided to, or hospitalisation of, a worker during a period for which the worker is entitled to compensation under chapter 4A for the injury, including any period for which the entitlement is suspended under section 232ZH.

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

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

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

(3) Before imposing a condition under subsection (2) WorkCover must consult with self-insurers.

Division 2 Medical treatment costs

211 Extent of liability for medical treatment

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

(a) for medical treatment by a registered person—the cost that the insurer accepts as reasonable, having regard to the relevant table of costs;

(b) for nursing, medicines, medical or surgical supplies, curative apparatus, crutches or other assistive devices given to the worker otherwise than as an in-patient at a hospital—the cost that the insurer accepts as reasonable.

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

212 Extent of liability for prosthetic expenses

(1) This section applies if a worker, because of a condition resulting from an injury—

(a) is fitted with a prosthesis; or

(b) is dependent on support of a medical aid, or crutches or another assistive device.

(2) The insurer must pay expenses necessarily incurred by the worker that the insurer accepts as reasonable on account of—

(a) reasonable wear and tear of the prosthesis, medical aid or device; or

(b) replacement of the prosthesis, medical aid or device due to reasonable wear and tear; or

(c) damage to, or destruction of, a prosthesis, medical aid or device as a result of injury in a further event.

213 Accounts for medical treatment, certificate in approved form

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

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

(3) The accounts must specify—

(a) the worker's full name, date of birth and residential address; and

(b) any item number that the medical treatment may have that is listed in the relevant table of costs; and

(c) the date of each attendance; and

(d) detailed particulars of treatment; and

(e) the name and place of business of the worker's employer.

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

214 Review of costs payable

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

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

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

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

Division 3 Hospitalisation

Subdivision 1 Interpretation

215 Definitions for div 3

In this division—

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

(a) a public sector hospital under the *Hospital and Health Boards Act 2011*; or

(b) a Mater Misericordiae Public Hospital.

elective hospitalisation means hospitalisation involving a treatment or procedure decided on by a worker or the worker's doctor that is of advantage to the worker, but is not fundamental in the treatment of the worker's injury.

hospital includes a day hospital.

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

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

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

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

Subdivision 2 Private hospitalisation

216 Extent of liability for hospitalisation at private hospital

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

(a) for non-elective hospitalisation—for not more than 4 days; or

(b) for non-elective hospitalisation for more than 4 days—to the extent agreed to by the insurer under arrangements entered into between the insurer and the worker or someone for the worker before the hospitalisation or any extension of the hospitalisation; or

(c) for elective hospitalisation—to the extent agreed to by the insurer under arrangements entered into between the insurer and the worker or someone for the worker before the hospitalisation.

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

(a) a public hospital is not reasonably available to the worker or a public hospital that is reasonably available can not admit the worker as an in-patient to a public ward within a reasonable time; or

(b) admission of the worker to a private hospital—

(i) would relieve prolonged pain and suffering to the worker; or

(ii) would result in saving of costs.

217 Cost of hospitalisation at private hospital

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

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

(3) The insurer must pay the cost of hospitalisation that—

(a) is published by WorkCover by gazette notice; or

(b) if a cost of hospitalisation is not published—the cost lawfully charged by the hospital.

(4) In fixing a cost of hospitalisation to be published under subsection (3)(a), WorkCover must consult with self-insurers.

Subdivision 3 Public hospitalisation

218 Extent of liability for hospitalisation in public hospital

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

(a) for non-elective hospitalisation—for not more than 4 days; or

(b) for non-elective hospitalisation for more than 4 days—if the insurer considers the hospitalisation is reasonable, having regard to the worker's injury; or

(c) for elective hospitalisation—to the extent agreed to by the insurer under arrangements entered into between the insurer and the worker or someone for the worker before the hospitalisation.

(2) Subject to the *Hospital and Health Boards Act 2011*, a worker is not liable for the cost of hospitalisation, including medical treatment, as an in-patient at a public hospital for an injury sustained by the worker.

218A Cost of hospitalisation

(1) The costs for which an insurer is liable for hospitalisation of a worker as an in-patient at a public hospital are—

(a) the cost for the provision of the facility at a public hospital where a procedure is carried out; and

(b) the cost of medical treatment provided at the hospital.

(2) The insurer must pay the cost of hospitalisation and medical treatment, whether the hospitalisation is provided at 1 time or at different times.

(3) The insurer must pay the cost of hospitalisation that is published by WorkCover by gazette notice.

(4) In fixing a cost of hospitalisation to be published under subsection (3), WorkCover must consult with self-insurers.

Division 4 Travelling expenses

219 Extent of liability for travelling expenses

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

(a) obtaining medical treatment; or

(b) undertaking rehabilitation; or

(c) attending a medical assessment tribunal; or

(d) undertaking examination by a registered person.

(2) An insurer must pay the cost of the worker's transportation by ambulance vehicle provided by the Queensland Ambulance Service, irrespective of distance, if the transportation—

(a) for transportation first provided immediately after the injury is sustained—is from the place where the injury is sustained to a place where appropriate medical treatment is available to seek the treatment; or

(b) for transportation subsequently provided—is certified in writing by a doctor as necessary because of the worker's physical condition resulting from the injury.

(3) The insurer must also pay the cost of the worker's transportation by ambulance vehicle not provided by the Queensland Ambulance Service, irrespective of distance, if the transportation—

(a) for transportation first provided immediately after the injury is sustained—is from the place where the injury is sustained to a place where appropriate medical treatment is available to seek the treatment; or

(b) for transportation subsequently provided—is certified in writing by a doctor as necessary because of the worker's physical condition resulting from the injury.

(4) The cost of transportation by ambulance vehicle that the insurer must pay is—

(a) the cost the insurer accepts as reasonable, having regard to the relevant table of costs; or

(b) if there is no relevant table of costs—the cost the insurer approves.

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

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

(a) in travelling a distance of less than 20km one way; or

(b) if treatment or rehabilitation for the injury was reasonably available to the worker nearer than the place to which the worker has travelled to seek the treatment or rehabilitation.

(7) The insurer must reimburse the worker for expenses if—

(a) the worker is not entitled under subsection (6)(a) to be reimbursed by the insurer for travelling expenses; and

(b) in a period of 7 consecutive days, the worker incurs travelling expenses in reasonably travelling at least 150km to and from a place to seek treatment or rehabilitation.

Part 3 Responsibility for rehabilitation

Division 1 Insurer's responsibility for rehabilitation

220 Insurer's responsibility for rehabilitation and return to work

(1) An insurer must take all reasonable steps to secure the rehabilitation and early return to suitable duties of—

(a) workers who have an entitlement to compensation; and

(b) workers who are participating in an accredited rehabilitation and return to work program of the insurer.

Maximum penalty—50 penalty units.

(2) Without limiting subsection (1), an insurer—

(a) may refer a worker who is receiving compensation for an injury to an accredited rehabilitation and return to work program of the insurer; and

(b) must refer a worker who is receiving compensation for an injury, and has asked the insurer to be referred to a rehabilitation and return to work program, to an accredited rehabilitation and return to work program of the insurer; and

(c) must refer a worker who has stopped receiving compensation for an injury under section 144A, 168 or 190(2), and has not returned to work because of the injury, to an accredited rehabilitation and return to work program of the insurer.

(3) However—

(a) subsection (2)(b) and (c) does not apply if the insurer is satisfied the program is not able to further assist the worker with rehabilitation for the injury; and

(b) subsection (2)(c) does not apply if the worker is already participating in an accredited rehabilitation and return to work program of the insurer.

(4) A worker who is referred under subsection (2) to an accredited rehabilitation and return to work program of an insurer is entitled to participate in the program until the first of the following happens—

(a) the insurer is satisfied the worker is unwilling or unable to participate in the program;

(b) the insurer is satisfied the program is not able to further assist the worker with rehabilitation for the injury;

(c) the worker receives a payment of damages for the injury;

(d) the worker receives a redemption payment for the injury;

(e) the worker receives compensation for the injury for 5 years.

(5) An insurer must take all reasonable steps to coordinate the development and maintenance of rehabilitation and return to work plans for workers who have sustained an injury.

(6) If a worker is aggrieved by either of the following decisions of an insurer, the worker may have the decision reviewed under chapter 13—

(a) a decision under subsection (3) to refuse the worker's entitlement under subsection (2)(b) or (c) to be referred to an accredited rehabilitation and return to work program of the insurer;

(b) a decision under subsection (4) that the worker is no longer entitled to participate in an accredited rehabilitation and return to work program of the insurer.

(7) In this section—

rehabilitation and return to work plan, for a worker who has sustained an injury, means a written plan—

(a) outlining the rehabilitation objectives for the worker and the steps required to achieve the objectives; and

(b) developed in consultation with the worker, the worker's employer and registered persons treating the worker.

Division 2 Insurer's liability for rehabilitation fees and costs

221A Application of division

This division does not apply to rehabilitation provided to a worker during a period for which the worker is entitled to compensation under chapter 4A for the injury, including any period for which the entitlement is suspended under section 232ZH.

222 Liability for rehabilitation fees and costs

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

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

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

(4) The insurer's liability under this division stops when the worker's entitlement to compensation or the payment of another amount relating to an accredited rehabilitation and return to work program of the insurer stops.

(5) Before imposing a condition under subsection (3) WorkCover must consult with self-insurers.

223 Extent of liability for rehabilitation fees and costs

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

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

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

Division 3 Caring allowance

224 Liability for caring allowance

(1) This section applies if a worker is receiving weekly payments of compensation.

(2) A caring allowance may be paid if the insurer is satisfied that—

(a) the worker depends on day to day care for the fundamental activities of daily living; and

(b) the care is to be provided to the worker at the worker's home on a voluntary basis by another person in relation to whom compensation is not payable.

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

(4) The occupational therapist must give the insurer an assessment report stating—

(a) the matters the therapist took into account, and the weight the therapist gave to the matters, in deciding the worker's level of dependency and day to day care requirements; and

(b) any other information prescribed under a regulation.

(5) In this section—

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

225 Extent of liability for caring allowance

The insurer may pay the caring allowance—

(a) in the way prescribed under a regulation; and

(b) to, or on account of, the person providing the care.

Part 4 Employer's obligation for rehabilitation

226 Employer's obligation to appoint rehabilitation and return to work coordinator

(1) An employer must appoint a rehabilitation and return to work coordinator if the employer meets criteria prescribed under a regulation.

(2) The rehabilitation and return to work coordinator must be in Queensland and be employed by the employer under a contract (regardless of whether the contract is a contract of service).

(3) The employer must, unless the employer has a reasonable excuse, appoint the rehabilitation and return to work coordinator—

(a) within 6 months after—

(i) establishing a workplace; or

(ii) starting to employ workers at a workplace; or

(b) within a later period approved by the Regulator.

Maximum penalty—50 penalty units.

(4) The employer must give the insurer the prescribed details of a person appointed as a rehabilitation and return to work coordinator within 12 months after the appointment.

Maximum penalty—50 penalty units.

(5) If the prescribed details of a person appointed as a rehabilitation and return to work coordinator change, the employer must, by written notice, tell the insurer about the change within 12 months after the change.

Maximum penalty—50 penalty units.

(6) A rehabilitation and return to work coordinator, who is employed under a contract of service at the workplace, 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.

(7) If subsection (6) prevents a civil liability attaching to a rehabilitation and return to work coordinator, the liability attaches instead to the employer.

(8) In this section—

prescribed details, of a person appointed as a rehabilitation and return to work coordinator, means—

(a) the person's name and contact details; and

(b) the details of how the person is appropriately qualified under 41(1)(a); and

(c) the details of each workplace for which the person is appointed as the rehabilitation and return to work coordinator.

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

(1) This section applies if an employer must appoint a rehabilitation and return to work coordinator under section 226(1).

(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; or

(ii) starting to employ workers at a workplace; or

(b) within a later period approved by the Regulator.

Maximum penalty—50 penalty units.

(4) The employer must review the employer's workplace rehabilitation policy and procedures at least every 3 years.

228 Employer's obligation to assist or provide rehabilitation

(1) The employer of a worker who has sustained an injury must take all reasonable steps to assist or provide the worker with rehabilitation during the prescribed period for the worker.

Maximum penalty—50 penalty units.

(2) The rehabilitation must be of a suitable standard as prescribed by regulation.

(3) Without limiting subsection (1) or (2), the employer must cooperate with the insurer to enable the insurer to meet its obligations under section 220.

(4) If an employer considers it is not practicable to provide the worker with suitable duties programs, as mentioned in section 40(2)(a)(i), the employer must give the insurer written evidence that it is not practicable.

(5) In this section—

prescribed period, for a worker who has sustained an injury, means the period that—

(a) starts on the day the worker is injured; and

(b) ends on the day the insurer's responsibility for the worker's rehabilitation ends under section 220.

229 Employer’s failure in relation to rehabilitation

(1) This section applies if an employer, other than a self-insurer, fails to take reasonable steps to assist or provide a worker with rehabilitation.

(2) WorkCover may require the employer to pay WorkCover an amount by way of penalty equal to the amount of compensation paid to the worker during the period of noncompliance 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 have the decision reviewed under chapter 13.

Part 5 Worker’s mitigation and rehabilitation obligations

230 Application of pt 5

This part applies to a worker who has sustained an injury and is required to participate in rehabilitation.

231 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) Without limiting subsection (2), a worker must satisfactorily participate in any return to work program or suitable duties arranged by the insurer.

(4) The worker's duty under this section is in addition to any duty the worker may have under section 267.

232 Worker must participate in rehabilitation

(1) The worker must satisfactorily participate in rehabilitation—

(a) as soon as practicable after the injury is sustained; and

(b) for the period for which the worker is entitled to compensation.

(2) If the worker fails or refuses to participate in rehabilitation without reasonable excuse, the insurer may, by written notice given to the worker, suspend the worker's entitlement to compensation until the worker satisfactorily participates in rehabilitation.

(3) If the insurer suspends the worker's entitlement to compensation, the worker may have the decision reviewed under chapter 13.

Part 5A Support for workers with psychiatric or psychological injuries

232AA Application of part

(1) This part applies if a worker makes an application for compensation under section 132 for a psychiatric or

psychological injury arising out of, or in the course of, employment.

(2) However, this part does not apply if the worker has made an earlier application for compensation under section 132 for a psychiatric or psychological injury and the event that resulted in the injury the subject of the earlier application is the same, or substantially the same, as the event that resulted in the injury mentioned in subsection (1).

232AB Insurer's responsibility for providing support to worker

(1) The insurer must take all reasonable steps to provide reasonable services to support the worker in relation to the psychiatric or psychological injury during the prescribed period for the worker.

Examples of reasonable services to support a worker—

mediation services, counselling services

Maximum penalty—50 penalty units.

(2) Without limiting subsection (1), if the services include medical treatment for the worker's injury during the prescribed period for the worker, the insurer must pay—

(a) for medical treatment by a registered person—the cost the insurer accepts as reasonable, having regard to the relevant table of costs; and

(b) for nursing, medicines, or medical or surgical supplies—the cost the insurer accepts as reasonable.

(3) However, the insurer is not required to pay—

(a) the costs of nursing, medicines, or medical or surgical supplies that the worker receives as an in-patient at a hospital; or

(b) the costs of hospitalisation of the worker.

(4) If the worker's application for compensation is allowed, a payment under this section by the insurer is taken to be a payment of compensation.

(5) In this section—

prescribed period, for a worker, means the period that—

(a) starts on the day the worker makes an application for compensation under section 132 for a psychiatric or psychological injury arising out of, or in the course of, employment; and

(b) ends on the day the insurer decides to allow or reject the application for compensation mentioned in paragraph (a).

Part 6 Protection for injured workers

232A Definitions for pt 6

In this part—

dismiss an injured worker includes a situation where—

(a) an unreasonable employment condition that is designed to make the worker leave employment is imposed on the worker; and

(b) the worker leaves the employment.

former position of an injured worker means, at the worker's option—

(a) the position from which the injured worker was dismissed; or

(b) if the worker was transferred to a less advantageous position before dismissal—the position held by the worker when the worker became unfit for employment.

injured worker means a worker who sustains an injury.

injury means an injury for which compensation is payable.

232B Dismissal of injured worker only after 12 months

(1) Within 12 months after a worker sustains an injury, the employer must not dismiss the worker solely or mainly because the worker is not fit for employment in a position because of the injury.

Maximum penalty—40 penalty units.

(2) This section applies to a dismissal after the commencement of this section even if the worker became unfit before the commencement.

232C Replacement for injured worker

(1) This section applies if the employer wants to employ a replacement worker while an injured worker is not fit for employment in a position because of the injury.

(2) The employer must, before a replacement worker starts employment, give the replacement worker a written notice informing the replacement worker of—

(a) the temporary nature of the employment; and

(b) the injured worker's right to return to work.

(3) In this section—

replacement worker means—

(a) a person who is specifically employed because an injured worker is not fit for employment in a position because of the injury; or

(b) a person replacing a worker who is temporarily promoted or transferred to replace the injured worker.

232D Reinstatement of injured worker

(1) This section applies if an injured worker is dismissed because the worker is not fit for employment in a position because of the injury.

(2) The worker may apply to the employer, within 12 months after the injury, for reinstatement to the worker's former position.

(3) The worker must give the employer a doctor's certificate that certifies the worker is fit for employment in the former position.

(4) This section applies to a dismissal after the commencement of this section even if the worker became unfit before the commencement.

(5) In this section—

doctor's certificate means a certificate signed by a person registered under the Health Practitioner Regulation National Law to practise in the medical profession, other than as a student.

232E Application to industrial commission

(1) This section applies if the employer fails to immediately reinstate the worker under section 232D.

(2) The following persons may apply to the industrial commission for an order that the employer reinstate the worker to the worker's former position (a ***reinstatement order***)—

(a) the worker;

(b) an employee organisation of which the worker is a member, with the worker's consent.

(3) The commission may make a reinstatement order if satisfied the worker is fit for employment in the former position.

(4) The order may specify terms of reinstatement including, for example, the day the reinstatement is to take effect.

232F Powers of industrial commission

(1) When exercising its jurisdiction under this part—

(a) the industrial commission may exercise all relevant powers, so far as the powers are appropriate to matters arising under this part, as if the relevant powers were expressly conferred by or under this Act; and

(b) the following provisions, so far as they apply to the industrial commission and are appropriate to matters arising under this part, apply to the industrial commission as if the provisions were expressly included in this Act or in subordinate legislation made under this Act—

(i) the *Industrial Relations Act 2016*, chapter 11 and definitions of that Act relevant to the interpretation of the chapter;

(ii) rules made under the *Industrial Relations Act 2016*, section 551;

(iii) a regulation made for the *Industrial Relations Act 2016*.

(2) However, the only order the commission may make on an application under section 232E is a reinstatement order under the section.

(3) In this section—

relevant powers means powers conferred on the industrial commission by—

(a) the *Industrial Relations Act 2016*; or

(b) the rules made under the *Industrial Relations Act 2016*, section 551; or

(c) a regulation made for the *Industrial Relations Act 2016*.

232G Preservation of worker’s rights

(1) This part does not affect another right of a dismissed worker under an Act or law.

(2) This part can not be affected by a contract or agreement.

Chapter 4A Serious personal injuries

Part 1 Preliminary

232H Application and object of chapter

(1) This chapter applies if a worker sustains an injury for which compensation under chapter 3 is payable.

(2) However, this chapter does not apply if the injury—

(a) is an injury only because it is sustained in the circumstances mentioned in section 34(1)(c) or 35; or

(b) is caused by the worker's serious and wilful misconduct.

(3) The object of this chapter is to ensure that a worker who sustains a serious personal injury receives necessary and reasonable treatment, care and support.

232I Definitions for chapter

In this chapter—

approved service, for an eligible worker, means—

(a) if a support plan has not been made for the worker—treatment, care or support that is the subject of a service request relating to the worker and approved by the insurer under section 232P; or

(b) if a support plan has been made for the worker—

(i) a treatment, care and support need resulting from the worker's serious personal injury stated in the support plan to be a need the insurer considers is necessary and reasonable in the circumstances; and

(ii) any treatment, care or support resulting from another injury resulting from the same event as the serious personal injury stated in the support plan to be treatment, care or support the insurer considers is necessary and reasonable in the circumstances; and

(iii) other treatment, care or support stated in the support plan to be treatment, care or support the insurer agrees to, wholly or partly, pay for under this chapter.

attendant care and support services means services to help a person with everyday tasks.

Examples—

domestic, home maintenance, nursing or personal assistance services

eligibility criteria see section 232M(2)(a).

eligibility period, for an eligible worker, see section 232L(3).

eligible worker means a worker who an insurer decides, under section 232M, is entitled to treatment, care and support payments for the worker's injury.

excluded treatment, care or support see section 232K.

funding agreement see section 232Q(2).

interim period, for an eligible worker, means a period of 2 years from the day the insurer decides, under section 232M, the worker is entitled to treatment, care and support payments for the worker's injury.

payment request see section 232Q(3).

service request see section 232P(1).

support plan see section 232O(1)(b).

treatment, care and support damages, in relation to a worker, means damages relating to the worker's treatment, care and support needs resulting from the worker's injury.

treatment, care and support needs, of a worker, see section 232J.

treatment, care and support payments, for a worker who has sustained an injury, means payments under this chapter for the worker's treatment, care or support resulting from the injury.

232J Meaning of *treatment, care and support needs*

The ***treatment, care and support needs***, of a worker who has sustained an injury, are the worker's needs for, or relating to, 1 or more of the following resulting from the injury—

(a) medical treatment;

(b) hospitalisation;

(c) dental treatment;

(d) rehabilitation;

(e) ambulance transportation;

(f) respite care;

(g) attendant care and support services;

(h) aids and appliances, other than ordinary personal or household items;

Examples of ordinary personal or household items—

an air conditioner, a laptop, linen, a mobile phone, a personal computer or a washing machine

(i) prosthesis;

(j) education or vocational training;

(k) home, transport or workplace modification.

232K Meaning of *excluded treatment, care or support*

(1) Treatment, care or support is ***excluded treatment, care or support*** if it—

(a) is provided without charge; or

(b) for a child—ordinarily falls within the ordinary costs of raising a child; or

(c) must be provided by a registered provider but is provided by a person who, at the time of provision, is not a registered provider; or

(d) is provided as part of a medical trial or on another experimental basis; or

(e) is provided by State emergency services, including the Queensland Ambulance Service or the Queensland Fire and Emergency Service; or

(f) is prescribed by regulation.

(2) For subsection (1)(c), the following treatment, care or support must be provided by a registered provider—

(a) attendant care and support services that are personal assistance services or services to assist a person to participate in the community;

(b) any other treatment, care or support prescribed by regulation.

(3) However, subsection (2)(a) does not apply if the treatment, care or support is being provided to a person at a hospital (whether as an in-patient or an outpatient) as part of the services provided by the hospital.

(4) In this section—

registered provider, of a service, means an entity registered in the register of providers as a provider of the service.

register of providers means the register of providers kept by the Regulator and made available on the department's website.

Part 2 Liability for treatment, care and support payments

232L Insurer's liability for treatment, care and support payments

(1) The insurer must pay for the worker's treatment, care and support arising from the worker's injury—

(a) if the insurer decides, under section 232M, the worker is entitled to treatment, care and support payments for the injury; and

(b) as provided under this chapter.

(2) An eligible worker’s entitlement to treatment, care and support payments applies to treatment, care or support resulting from the worker’s injury provided to the worker during the worker’s eligibility period.

(3) An eligible worker’s ***eligibility period*** is the period—

(a) starting when the insurer decides, under section 232M, the worker is entitled to treatment, care and support payments for the injury; and

(b) ending when the first of the following happens—

(i) the worker dies;

(ii) the worker stops being entitled to treatment, care and support payments for the injury under a provision of this Act.

(4) However, an eligible worker is not entitled to treatment, care and support payments for treatment, care or support provided to the worker in any period for which—

(a) the worker’s entitlement to compensation under chapter 3 is suspended under this Act; or

(b) the worker’s entitlement to treatment, care and support payments is suspended under section 232ZH.

232M Assessment of entitlement for treatment, care and support payments

(1) The insurer may decide, or the worker may ask the insurer, to have the worker’s injury or injuries assessed to decide whether the worker is entitled to treatment, care and support payments for the injury or injuries.

(2) The insurer must decide the worker is entitled to treatment, care and support payments for an injury if the injury—

(a) is a serious personal injury that meets the criteria (the ***eligibility criteria***) for the injury prescribed by regulation; or

(b) resulted from the same event as an injury mentioned in paragraph (a).

(3) If the worker asks for an assessment under subsection (1), the insurer must ensure the assessment is carried out within 20 business days, or a longer period agreed between the insurer and the worker, after—

(a) receiving the request; or

(b) if the insurer asks the worker for further information to help the insurer carry out the assessment—the day the information is received.

(4) After carrying out an assessment under this section, the insurer must decide—

(a) that the worker is entitled to treatment, care and support payments for the worker's injury or injuries—

(i) for an interim period; or

(ii) if the insurer is satisfied the worker's serious personal injury is likely to continue to meet the eligibility criteria after the interim period ends—for the rest of the worker's life; or

(b) that the worker is not entitled to treatment, care and support payments for the worker's injury or injuries.

(5) If the worker has multiple injuries resulting from the same event, the insurer's decision under subsection (4)(a) must be made in relation to the worker's serious personal injury even though the worker may not need treatment, care or support for the other injuries for the whole period decided under the subsection.

(6) The insurer must give the worker written notice of the insurer's decision under subsection (4) within 10 business days after the decision is made.

Part 3 Assessing needs and payment options

Division 1 Assessing needs

232N Deciding necessary and reasonable treatment, care and support needs

For this chapter, an insurer must consider the following matters in deciding whether an eligible worker's treatment, care and support needs resulting from the worker's serious personal injury are necessary and reasonable in the circumstances—

(a) whether the treatment, care or support for, or relating to, the treatment, care and support needs is excluded treatment, care or support;

(b) any other matter prescribed by regulation.

232O Assessing needs and preparing support plan

(1) An insurer must, for an eligible worker—

(a) assess—

(i) the worker's necessary and reasonable treatment, care and support needs resulting from the worker's serious personal injury; and

(ii) any necessary and reasonable treatment, care or support needed by the worker for any other injury resulting from the same event as the worker's serious personal injury; and

(iii) any other treatment, care or support needed by the worker for the worker's serious personal injury or another injury resulting from the same event as the worker's serious personal injury; and

(b) make a plan (a ***support plan***) about the worker's treatment, care and support needs, and any other treatment, care or support needed by the worker, assessed under paragraph (a); and

(c) give a copy of the support plan to the worker.

(2) An assessment under subsection (1)(a)—

(a) must be carried out in the way, and at the intervals, prescribed by regulation; and

(b) may be carried out at other times the insurer considers appropriate; and

(c) may be carried out for the treatment, care or support needed by the worker for a particular period only.

(3) A support plan made under subsection (1)(b) must comply with the requirements prescribed by regulation.

(4) An insurer may amend the worker's support plan—

(a) to reflect the outcomes of a further assessment under subsection (1)(a); and

(b) as otherwise provided under this chapter.

Note—

See sections 232P(6) and 232ZG(2) in relation to amendments of the support plan.

(5) An amendment of the worker's support plan must comply with the requirements prescribed by regulation.

232P Deciding service requests

(1) An insurer may approve a written request (a ***service request***) to pay for particular treatment, care or support (the ***requested service***) to be provided to an eligible worker in a particular period.

(2) A service request may be made for an eligible worker—

(a) before or after a support plan is made for the worker; and

(b) by the worker or the person providing the requested service.

(3) An insurer must decide whether to approve, with or without conditions, or refuse a service request within—

(a) 20 business days after the request is received; or

(b) if, within the period mentioned in paragraph (a), the insurer asks for further information to help the insurer make the decision—20 business days after the information is received.

(4) In deciding whether to approve or refuse a service request, an insurer must consider the matters prescribed by regulation.

(5) An insurer must give written notice of the insurer's decision under subsection (3) to—

(a) the person who made the request; and

(b) if the person who made the request is not the eligible worker—the worker.

(6) If an insurer makes a decision about a service request relating to an eligible worker for whom a support plan has been made, the insurer must—

(a) if the insurer approves the service request, with or without conditions—amend the worker's support plan to reflect the approval; or

(b) if the insurer refuses the service request—ensure a copy of the written notice of the decision is attached to the worker's support plan.

Division 2 Payments

232Q Payment options

(1) An insurer may make treatment, care and support payments for an eligible worker's injury—

(a) under a funding agreement between the insurer and the worker; or

(b) in response to a payment request by a person who has incurred expenses for the treatment, care or support of the worker resulting from the injury.

(2) A ***funding agreement*** is an agreement between an insurer and an eligible worker for a stated period—

(a) providing for the insurer to pay the worker an amount to cover particular expenses to be incurred by the worker or another person, in the period, for the treatment, care or support of the worker; and

(b) entered into in the circumstances, and for the treatment, care or support, prescribed by regulation; and

(c) including the terms prescribed by regulation.

(3) A ***payment request*** is a written request by a person who has incurred an expense for the treatment, care or support of an eligible worker—

(a) asking an insurer to pay all or part of the amount of the expense; and

(b) made in the circumstances prescribed by regulation.

232R Deciding payment requests

(1) An insurer must approve or refuse a payment request within—

(a) 20 business days after receiving the request; or

(b) if, within the period mentioned in paragraph (a), the insurer asks for further information to help the insurer make the decision—20 business days after the information is received.

(2) A regulation may prescribe matters about an insurer deciding a payment request.

(3) If the insurer approves a payment request, the insurer must pay the amount requested to the person who made the request within 20 business days after approving the request.

(4) However, the insurer is not liable to pay a part of the amount requested in a payment request that exceeds an amount prescribed by regulation for the treatment, care or support.

(5) If the insurer refuses the payment request, the insurer must give written notice of the decision to—

(a) the person who made the payment request; and

(b) if the person who made the payment request is not the eligible worker—the eligible worker.

Part 4 Review of worker's entitlement

232S Review if worker entitled only for interim period

(1) This section applies if an insurer decides, under section 232M, a worker is entitled to treatment, care and support payments for the worker's injury or injuries for an interim period.

(2) The insurer—

(a) may review the worker's entitlement at any time during the interim period; and

(b) must review the worker's entitlement at least once before the end of the interim period.

(3) A review must be carried out in the way prescribed by regulation.

(4) After carrying out a review and before the interim period ends, the insurer must decide—

(a) if the insurer is satisfied that the worker's serious personal injury is likely to continue to meet the eligibility criteria for the injury after the interim period ends—that the worker is entitled to treatment, care and support payments for the worker's injury or injuries for the rest of the worker's life; or

(b) otherwise—that the worker's entitlement to treatment, care and support payments for the worker's injury or injuries ends—

(i) when the interim period ends; or

(ii) at the start of an earlier day decided by the insurer.

(5) If the worker has multiple injuries resulting from the same event, the insurer's decision under subsection (4) must be made in relation to the worker's serious personal injury even though the worker may not need treatment, care or support for the other injuries for the rest of the period decided under the subsection.

(6) Within 10 business days after making a decision under subsection (4), the insurer must give the worker written notice of the decision.

(7) If the insurer decides the worker's entitlement to treatment, care and support payments ends at a time mentioned in subsection (4)(b), the worker stops being entitled to treatment, care and support payments at that time.

Part 5 Relationship with treatment, care and support damages

Division 1 Preliminary

232T Application of part

(1) This part applies if an eligible worker may seek treatment, care and support damages for the worker's injury.

(2) Section 235 applies to the provisions of this part as if they were provisions of chapter 5.

232U Definitions for part

In this part—

accept, for awarded treatment, care and support damages, means accept by written notice given to the insurer.

acceptance period, for awarded treatment, care and support damages, means—

(a) if the damages are awarded under a judgment or settlement that must, under another Act, be sanctioned by a court or the public trustee—the period of 10 business days after the sanction is given; or

(b) if the damages are awarded under a judgment and paragraph (a) does not apply—the period of 10 business days after the period for lodging an appeal against the judgment ends; or

(c) if the damages are awarded under a settlement and paragraph (a) does not apply—the period of 10 business days after the settlement is made.

awarded, in relation to treatment, care and support damages, means awarded under a judgment or settlement for a claim for damages.

elect, in relation to a worker seeking treatment, care and support damages for the worker's injury, means elect in a notice of claim under section 275 for the injury.

person under a legal disability means—

(a) a child; or

(b) a person with impaired capacity for a matter within the meaning of the *Guardianship and Administration Act 2000*.

Division 2 Election to seek treatment, care and support damages

232V Worker must make election

(1) If the worker makes a claim for damages under chapter 5 for the worker's injury, the worker must state in the notice of

claim given under section 275 whether or not the worker elects to seek treatment, care and support damages for the injury.

(2) If the worker is entitled to treatment, care and support payments for multiple injuries resulting from the same event, the worker must make the same election under subsection (1) for all the injuries.

(3) If the worker does not elect to seek treatment, care and support damages for the worker's injury, or the election is taken not to have been made under section 232W, the worker is not entitled to seek treatment, care and support damages for the injury.

232W When election of no effect

(1) This section applies if—

(a) the worker elects to seek treatment, care and support damages for the worker's injury; and

(b) any of the following happens—

(i) a court decides, under section 232X, not to sanction the election;

(ii) a court makes an order, under section 232Y, preventing the worker from being awarded treatment, care and support damages for the injury;

(iii) a court decides, or the worker and insurer agree by way of settlement, that—

(A) the worker is guilty of contributory negligence in relation to the claim for damages; and

(B) the damages the worker would otherwise be entitled to in the absence of contributory negligence are to be reduced, because of the contributory negligence, by 50% or more.

(2) The election is taken not to have been made.

232X Court sanction for election by worker under legal disability

(1) If the worker elects to seek treatment, care and support damages for the worker's injury and the insurer considers the worker is a person under a legal disability, the insurer must apply to the court for an order sanctioning the notice.

(2) Subsections (3) to (5) apply if the court considers the worker is a person under a legal disability.

(3) The court—

(a) must decide whether or not to sanction the election; and

(b) may order that the worker, or a person acting for the worker, amend the notice of claim to remove the election; and

(c) may make any other order the court considers appropriate.

(4) In deciding whether to make an order under subsection (3), the court—

(a) must consider the worker's likely legal costs relating to the claim for damages; and

(b) may consider any other matter the court considers relevant.

(5) If the worker is an adult, the court may exercise all the powers of QCAT under the *Guardianship and Administration Act 2000*, chapter 3.

(6) If the court exercises a power mentioned in subsection (5), the *Guardianship and Administration Act 2000*, section 245(3) to (6) applies in relation to the exercise of the power as if the court were acting under section 245(2) of that Act.

(7) This section is subject to section 232Y.

(8) In this section—

court means—

(a) if a proceeding for the claim for damages has been brought in the District Court or the Supreme Court—the court hearing the proceeding; or

(b) otherwise—the District Court or the Supreme Court.

232Y Court order preventing election to seek treatment, care and support damages

(1) The insurer may apply to the court for an order preventing the worker from being awarded treatment, care and support damages for the worker's injury.

(2) An application under subsection (1) may be made whether or not the worker has made an election to seek treatment, care and support damages for the injury.

(3) The worker is the respondent to the application.

(4) In deciding whether to make the order, the court—

(a) must consider the worker's ability to manage an award of treatment, care and support damages in a way that will not compromise the worker's—

(i) prospects of improvement or rehabilitation; or

(ii) future health and wellbeing; and

(b) must consider whether the worker is a person under a legal disability; and

(c) must consider the worker's likely legal costs relating to the claim for damages; and

(d) may consider any other matter the court considers relevant.

(5) If the court makes the order—

(a) the worker may not elect to seek treatment, care and support damages for the injury; and

(b) any election to seek treatment, care and support damages for the injury made by the worker is taken not to have been made.

(6) If the worker is an adult, the court may exercise all the powers of QCAT under the *Guardianship and Administration Act 2000*, chapter 3.

(7) If the court exercises a power mentioned in subsection (6), the *Guardianship and Administration Act 2000*, section 245(3) to (6) applies in relation to the exercise of the power as if the court were acting under section 245(2) of that Act.

(8) In this section—

court means—

(a) if a proceeding for the claim for damages has been brought in the District Court or the Supreme Court—the court hearing the proceeding; or

(b) otherwise—the District Court or the Supreme Court.

Division 3 Worker's entitlement to treatment, care and support payments

232Z Worker does not elect to seek treatment, care and support damages

(1) This section applies if the worker does not elect to seek treatment, care and support damages for the worker's injury.

(2) The worker's entitlement to treatment, care and support payments for the worker's injury continues for the remaining eligibility period for the worker.

232ZA Worker entitled for interim period elects to seek treatment, care and support damages

(1) This section applies if the worker—

(a) is an eligible worker for the worker's injury only for an interim period; and

(b) elects to seek treatment, care and support damages for the injury.

(2) Judgment for damages for the injury can not be awarded, and settlement for damages for the injury can not be agreed, until the first of the following happens—

(a) the interim period ends;

(b) the insurer decides, under section 232S, the worker is entitled to treatment, care and support payments for the injury for the rest of the worker’s life;

(c) the worker stops being entitled to treatment, care and support payments under section 232S(7) or another provision of this Act.

232ZB Worker entitled for life elects to seek treatment, care and support damages—damages not awarded or not accepted

(1) This section applies if the worker—

(a) is an eligible worker for the worker’s injury for the rest of the worker’s life; and

(b) elects to seek treatment, care and support damages for the injury; and

(c) either—

(i) is awarded damages for the injury that do not include treatment, care and support damages; or

(ii) is awarded treatment, care and support damages for the injury, but the worker does not accept the awarded treatment, care and support damages within the acceptance period.

(2) The worker’s entitlement to treatment, care and support payments for the worker’s injury continues for the remaining eligibility period for the worker.

(3) If subsection (1)(c)(ii) applies, despite the judgment or the terms of the settlement for the claim for damages, neither the insurer nor the employer is liable to pay the amount of the awarded treatment, care and support damages.

232ZC Worker entitled for life elects to seek treatment, care and support damages—damages awarded and accepted

(1) This section applies if the worker—

(a) is an eligible worker for the worker's injury for the rest of the worker's life; and

(b) elects to seek treatment, care and support damages for the injury; and

(c) is awarded treatment, care and support damages for the injury; and

(d) accepts the awarded treatment, care and support damages within the acceptance period.

(2) The worker's entitlement to treatment, care and support payments for the worker's injury continues until the awarded treatment, care and support damages are accepted by the worker, at which time the worker's entitlement to treatment, care and support payments for the injury stops.

Note—

See section 270 for what happens when treatment, care and support damages for an injury are awarded to a worker who has received treatment, care and support payments for the injury.

232ZD Additional payments if treatment, care and support damages insufficient

(1) This section applies if—

(a) the worker accepted treatment, care and support damages awarded for the worker's injury within the acceptance period; and

(b) the period, of at least 5 years, prescribed by regulation has passed since the worker accepted the awarded treatment, care and support damages; and

(c) the worker considers the amount of awarded treatment, care and support damages is not sufficient to meet the worker's necessary and reasonable treatment, care and support needs resulting from the injury.

(2) The worker may apply to the insurer for treatment, care and support payments for the injury.

(3) The insurer may accept liability to make treatment, care and support payments to the worker if the insurer is satisfied the amount of awarded treatment, care and support damages is not sufficient to meet the worker's necessary and reasonable treatment, care and support needs resulting from the worker's serious personal injury.

(4) In deciding whether to accept liability to make treatment, care and support payments to the worker, the insurer must have regard to the matters prescribed by regulation.

(5) The insurer must decide to accept or not accept liability to make treatment, care and support payments to the worker within 20 business days after the application is made.

(6) The insurer must give the worker written notice of the insurer's decision.

(7) In this section, a reference to the amount of awarded treatment, care and support damages includes the amount of treatment, care and support payments paid under section 232ZC(2) until the damages were accepted by the worker.

(8) If the insurer accepts liability to make treatment, care and support payments for the worker's injury under this section—

(a) the worker is entitled to treatment, care and support payments for treatment, care or support resulting from the injury provided during the period—

(i) starting on the day the insurer decides to accept the liability; and

(ii) ending when the first of the following happens—

(A) the worker dies;

(B) the worker's entitlement to treatment, care and support payments ends under another provision of this Act; and

(b) parts 3 and 6 apply to the worker's entitlement to treatment, care and support payments, and for that purpose—

(i) the worker is an eligible worker; and

(ii) the worker's eligibility period is the period mentioned in paragraph (a).

Part 6 Recipient absent from Australia

232ZE Application of part

This part applies to an eligible worker if—

(a) the worker leaves Australia; and

(b) while the worker is absent from Australia, expenses are, or are likely to be, incurred by or for the worker for the worker's treatment, care or support; and

(c) the insurer did not, in deciding the approved services for the worker, consider the need for treatment, care or support to be provided outside Australia as a result of the worker's absence.

232ZF Worker must notify insurer of absence

(1) At least 1 month before leaving Australia, the worker must give written notice of the absence to the insurer, unless the worker has a reasonable excuse.

Maximum penalty—10 penalty units.

(2) The notice must state—

(a) the day the worker intends to leave Australia; and

(b) if the worker intends to return to Australia—the day the worker intends to return; and

(c) the worker's address while outside Australia; and

(d) any treatment, care or support to be provided outside Australia that the worker wants the insurer to pay for.

(3) However, this section does not apply if, before the worker leaves Australia, a service request is made, or a funding agreement is entered into, for the treatment, care or support to be provided to the worker outside Australia.

232ZG Reviewing support plan or service request approval

(1) This section applies if—

(a) a support plan has been made for the worker; or

(b) a support plan has not been made for the worker, but a service request relating to the worker has been approved.

(2) To the extent the support plan or approved service request relates to the period the worker is, or intends to be, absent from Australia, the insurer may—

(a) review the plan or approval; and

(b) make any amendments to the plan or approval the insurer considers appropriate.

(3) Without limiting subsection (2), the insurer may amend the approved services for the worker by—

(a) removing or rescheduling any treatment, care or support that is to be provided in Australia while the worker is absent from Australia; or

(b) including any treatment, care or support that is to be provided outside Australia while the worker is absent from Australia, if the insurer considers the treatment, care or support should be, wholly or partly, paid for under this chapter, having regard to the following matters—

(i) the length of the absence;

(ii) whether the treatment, care or support is to be, or could be, provided or funded in another way during the absence;

(iii) whether the treatment, care or support is excluded treatment, care or support;

(iv) any other matter the insurer considers relevant.

(4) However, the insurer may amend the approved services to include treatment, care or support that is to be provided outside Australia only if a service request has not been made for the treatment, care or support.

(5) If the insurer decides to amend the support plan, or the approved service request, the insurer must, within 10 business days of making the decision, give the worker a copy of the amended plan or approval.

(6) To remove any doubt, it is declared that the insurer is not required to carry out an assessment under section 232O(1)(a) before amending a support plan under this section.

232ZH Suspending entitlement

(1) The insurer may suspend the worker's entitlement to treatment, care and support payments if the insurer considers the worker's absence from Australia will, or is likely to, adversely affect—

(a) the worker's condition resulting from the worker's injury; or

(b) the worker's prospects of improvement or rehabilitation.

(2) The worker's entitlement to treatment, care and support payments may be suspended for all or part of the period the worker is absent from Australia.

(3) If the insurer decides to suspend the worker's entitlement to treatment, care and support payments, the insurer must give the worker written notice of the decision.

Note—

See section 232L(4) for the effect of a worker's entitlement to treatment, care and support payments being suspended under this section.

(4) The notice—

(a) must state the period of the suspension; and

(b) may state that the period of suspension starts on the day the worker left Australia, even if the notice is given after that day.

Part 7 Other provision

232ZI Engagement of NIIS (Qld) agency to perform functions and exercise powers

(1) An insurer may, by way of an agreement under the NIIS (Qld) Act, section 60, engage the NIIS (Qld) agency to perform the insurer's functions or exercise the insurer's powers under this chapter, including, for example—

(a) assessing and deciding a worker's entitlement to treatment, care and support payments; and

(b) preparing support plans; and

(c) deciding service requests under section 232P; and

(d) entering into funding agreements under section 232Q; and

(e) deciding payment requests under section 232R.

(2) To remove any doubt, it is declared that an insurer who engages the NIIS (Qld) agency to perform functions or exercise powers under subsection (1) remains liable to make payments to workers under this chapter.

(3) The Regulator may impose a condition on a self-insurer's licence that the self-insurer engage the NIIS (Qld) agency under subsection (1) for all of the self-insurer's functions and powers under this chapter or for stated functions and powers.

(4) The Regulator may monitor the performance of functions or the exercise of powers by the NIIS (Qld) agency under an engagement under subsection (1).

(5) In this section—

NIIS (Qld) Act means the *National Injury Insurance Scheme (Queensland) Act 2016*.

NIIS (Qld) agency means the agency under the NIIS (Qld) Act.

Chapter 5 Access to damages

Part 1 Interpretation and application

233 Definitions for ch 5

In this chapter—

claimant means a person entitled to seek damages.

contribution claim means a claim for contribution or indemnity made against another person by an insurer who adds the person as a contributor under section 278A.

offer, in relation to written final offers at a compulsory conference, includes a nil offer of settlement.

Example—

An insurer may make a nil offer of settlement to a worker when it intends to allege fraud by the worker.

party includes contributor.

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

written final offer means written final offer under section 292.

235 Requirements of chapter to prevail and are substantive law

(1) If a provision of an Act or a rule of law is inconsistent with this chapter, this chapter prevails.

(2) All the provisions of this chapter are provisions of substantive law.

(3) However, subsection (2) does not affect minor variations in procedure.

235A Date of relevant health practitioner consultation taken to be date of injury

(1) For the application of this chapter in relation to an injury sustained by a worker that happens over a period, the date on which the worker first consulted a relevant health practitioner about the injury is taken to be the date of the worker's injury.

(2) This section does not apply to a latent onset injury.

(3) This section does not limit section 236.

(4) In this section—

relevant health practitioner means a doctor, nurse practitioner or dentist authorised under section 132 to issue a certificate under the section.

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

(1) It is declared that nothing in this Act affects, or has ever affected, the commencement of the period of limitation provided by the *Limitation of Actions Act 1974*, section 11.

(2) To remove any doubt, it is declared that the period of limitation provided by the *Limitation of Actions Act 1974*, section 11 applicable to an action for damages for injury sustained by a worker in circumstances creating, independently of this Act, a legal liability in the worker's employer to pay the damages for the injury is, and always has

been, the same as would have been applicable to that action if this Act had not been enacted.

(3) This section is subject to section 302.

236A Application of ch 5 to specified volunteer firefighter

(1) This chapter applies to a specified volunteer firefighter who—

(a) is covered by a contract entered into with WorkCover for chapter 1, part 4, division 3, subdivision 1; and

(b) sustains an injury that is a specified disease; and

(c) is entitled to seek damages.

(2) For applying this chapter to the specified volunteer firefighter—

(a) the firefighter is taken to be a worker; and

(b) the activity covered by the contract mentioned in subsection (1)(a) is taken to be the firefighter's employment; and

(c) the party with whom WorkCover entered the contract is taken to be the firefighter's employer; and

(d) an amount paid to the firefighter under the contract as compensation is taken to be compensation paid to the firefighter under chapter 3; and

(e) a document given, or a thing done, under the contract in relation to the payment of compensation to the firefighter is, to the extent chapter 3 provides for an equivalent document or thing, taken to have been given or done under chapter 3.

Examples for subsection (2)(e)—

- a notice of assessment given to the firefighter
- an election made by the firefighter to seek damages
- the acceptance by the firefighter of an offer of lump sum compensation
- an assessment of the injury to decide if the injury has resulted in a DPI

236B Liability of contributors

(1) This section applies to an agreement between an employer and another person under which the employer indemnifies the other person for any legal liability of the person to pay damages for injury sustained by a worker.

(2) The agreement does not prevent the insurer from adding the other person as a contributor under section 278A in relation to the employer's liability or the insurer's liability for the worker's injury.

(3) The agreement is void to the extent it provides for the employer, or has the effect of requiring the employer, to indemnify the other person for any contribution claim made by the insurer against the other person.

(4) In this section—

damages includes damages under a legal liability existing independently of this Act, whether or not within the meaning of section 10.

Part 2 Entitlement conditions

Division 1 Limitations on persons entitled to seek damages

237 General limitation on persons entitled to seek damages

(1) The following are the only persons entitled to seek damages for an injury sustained by a worker—

(a) the worker, if the worker—

(i) has received a notice of assessment from the insurer for the injury; or

(ii) has not received a notice of assessment for the injury, but—

(A) has received a notice of assessment for any injury resulting from the same event (the ***assessed injury***); and

(B) for the assessed injury, the worker has a DPI of 20% or more or, under section 239, has elected to seek damages; or

(iii) has a terminal condition;

(b) a dependant of the deceased worker, if the injury results in the worker's death and—

(i) compensation for the worker's death has been paid to, or for the benefit of, the dependant under chapter 3, part 11; or

(ii) a certificate has been issued by the insurer to the dependant under section 132B.

(2) The entitlement of a worker, or a dependant of a deceased worker, to seek damages is subject to the provisions of this chapter and the provisions of chapter 4A, part 5.

Note—

See, for example, section 232V(3) which provides that a worker required under section 232V to elect to seek treatment, care and support damages for an injury who does not make the election is not entitled to seek treatment, care and support damages for the injury.

(3) If a worker—

(a) is required under section 239 to make an election to seek damages for an injury; and

(b) has accepted an offer of payment of lump sum compensation under chapter 3, part 10, division 3 for the injury;

the worker is not entitled to seek damages.

(4) However, subsection (3) does not prevent a worker from seeking damages under section 266.

(5) To remove any doubt, it is declared that subsection (1) abolishes any entitlement of a person not mentioned in the

subsection to seek damages for an injury sustained by a worker.

238 Worker with terminal condition

(1) This section applies to a worker who has a terminal condition and wishes to seek damages.

(2) The following provisions of this chapter do not apply to the worker—

(a) section 239;

(b) part 2, division 4;

(c) section 267(2) or (3);

(d) part 6, other than section 293;

(e) part 7, other than sections 300 to 302.

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

239 Worker who is required to make election to seek damages

(1) This section applies if a worker's notice of assessment states that the worker's DPI is less than 20%.

(2) If, in the notice of assessment, the worker is offered a payment of lump sum compensation under chapter 3, part 10, division 3 for the injury, the worker is not entitled to both—

(a) payment of lump sum compensation for the injury; and

(b) damages for the injury.

(3) If, in the notice of assessment, the worker is required to make an election to seek damages for the injury, the worker can not change the worker's election—

(a) if the worker has elected to seek damages for the injury—after notice of the election is given to the insurer; or

(b) if the worker is taken, under section 189(7), to have elected to seek damages for the injury—after the worker lodges a notice of claim.

239A Worker with more than 1 injury from an event

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

(2) The claimant can not have, and the insurer can not decide to have, the injury assessed under chapter 3, part 10 to decide if the claimant has sustained a DPI.

(3) The insurer can not decide the claimant's notice of claim does not comply with section 275 only because the claimant has not received a notice of assessment for the injury.

(4) However, the claimant may seek damages for the injury only if the insurer decides the claimant has sustained an injury.

(5) The insurer must make a decision for subsection (4) within 40 business days after—

(a) the claimant gives, or is taken to have given, a complying notice of claim; or

(b) the claimant gives a notice of claim for which the insurer waives compliance with the requirements of section 275 with or without conditions; or

(c) a court makes a declaration under section 297.

(6) The insurer must—

(a) notify the claimant of its decision for subsection (4); and

(b) if the insurer decides the claimant has not sustained an injury—give the claimant written reasons for the decision; and

(c) if the insurer is WorkCover—also give the information mentioned in paragraphs (a) and (b) to the claimant's employer.

(7) If the insurer does not make a decision for subsection (4) within the time stated in subsection (5)—

(a) the insurer must, within 5 business days after the end of the time stated in subsection (5), notify the claimant—

(i) of its reasons for not making the decision; and

(ii) that the claimant may have the insurer's failure to make the decision reviewed under chapter 13; and

(b) the claimant may have the insurer's failure to make the decision reviewed under chapter 13.

(8) A person aggrieved by the insurer's decision may have the decision reviewed under chapter 13.

Division 2 Consequences, to costs, of seeking damages

240 Consequences, to costs, of seeking damages

(1) If the claimant is a worker who does not have a terminal condition and the claimant's notice of assessment states that the claimant's DPI is 20% or more, part 12, division 1 applies in relation to costs in the claimant's proceeding for damages.

(2) If the claimant is a worker who does not have a terminal condition and the claimant's notice of assessment states that the claimant's DPI is less than 20%, part 12, division 2 applies in relation to costs in the claimant's proceeding for damages.

(3) If the claimant is a worker who has a terminal condition, part 12, division 1 applies in relation to costs in the claimant's proceeding for damages.

(4) If the claimant is a dependant, part 12, division 1 applies in relation to costs in the claimant's proceeding for damages.

Division 3 Urgent proceedings

241 Application of div 3

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

242 Need for urgent proceedings

(1) This section applies in relation to an urgent need for the claimant to start a proceeding for damages.

(2) Section 276 provides a way for the claimant to satisfy section 302(2).

(3) Also, the claimant may, under section 298, seek leave to start a proceeding for damages for an injury without complying with section 275.

(4) However, if the leave mentioned in subsection (3) is given, a proceeding started by leave is stayed until the claimant complies with section 275.

Division 4 Review of worker's decision to accept payment of lump sum compensation for injury—DPI of less than 20%

265 Application of div 4

This division applies if—

(a) a worker has elected, under section 189, to accept payment of lump sum compensation for an injury; and

(b) the worker has been assessed under chapter 3, part 10 as having sustained a DPI of less than 20%.

266 Decision not to seek damages reviewable in certain circumstances

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

(a) to satisfy the insurer of the matters mentioned in subsection (7) for the purpose of seeking damages for the injury; and

(b) within the period mentioned in section 302(1).

(2) The insurer is required to consider the medical evidence only if the worker satisfies the insurer that—

(a) when the worker’s DPI was decided under section 179, there was no reason to believe that there would be a material deterioration of the worker’s injury; and

(b) the further material deterioration is a deterioration of the injury for which the worker was assessed and accepted payment of lump sum compensation under section 189; and

(c) the medical evidence—

(i) was not available when the worker’s DPI was previously decided 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 has resulted in an additional DPI of 10% or more.

(3) If the insurer rejects the evidence, the insurer must refer the evidence to a review panel for review.

(4) The review panel must consider the medical evidence produced by the worker and may accept or reject the evidence.

(5) A decision of the review panel is final and may not be appealed against.

(6) If the insurer or the review panel accepts the medical evidence, the insurer must refer the question of degree of permanent impairment to an appropriate medical assessment tribunal for decision.

(7) The worker may seek damages for the injury if the insurer is satisfied that—

(a) the worker's further material deterioration has resulted in an additional DPI 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 DPI, when added to the worker's previous DPI, results in a DPI 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

267 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) Without limiting subsection (2), a worker must satisfactorily participate in any return to work program or suitable duties arranged by the insurer.

(4) The worker's duty mentioned in this section is in addition to any duty the worker may have under section 231.

268 Provision of rehabilitation

(1) An insurer may make rehabilitation available to a worker on the insurer's own initiative or if the worker asks.

(2) If the insurer makes rehabilitation available to a worker before admitting or denying liability for damages, the insurer must not be taken, only for that reason, to have admitted liability.

(3) If—

(a) liability has been admitted for damages; or

(b) the insurer has agreed to fund rehabilitation without making an admission of liability;

the insurer must, if the worker asks, ensure that reasonable and appropriate rehabilitation is made available to the worker.

(4) The worker may, if not satisfied that the rehabilitation is reasonable and appropriate, apply to the insurer to appoint a mediator to help resolve the questions between the worker and the insurer.

(5) An application for appointment of a mediator under subsection (4) must—

(a) be made in writing; and

(b) give details of any attempts made by the applicant to resolve the matter in dispute.

(6) The fees and expenses of the mediator are to be paid as agreed between the parties or, in the absence of agreement, by the parties in equal proportions.

(7) The insurer must make rehabilitation available to the worker, and the worker must satisfactorily participate in the rehabilitation, in sufficient time to enable the insurer and the worker to comply with parts 5, 6 and 7.

(8) This section does not apply to a worker for any period for which the worker is entitled to compensation under chapter 4A, including any period for which the entitlement is suspended under section 232ZH.

269 Costs of rehabilitation

(1) If an insurer intends to ask a court to take the cost of rehabilitation into account in the assessment of damages payable to a worker, the insurer must, before providing the rehabilitation, give the worker a written statement estimating the cost of the rehabilitation.

(2) The insurer must bear, or reimburse, the cost of providing the rehabilitation, unless the insurer's liability for the cost is reduced—

(a) by agreement with the worker; or

(b) by order of the court.

(3) The cost to the insurer of providing the rehabilitation is to be taken into account in the assessment of damages on the claim if, and only if, the insurer gave the statement mentioned in subsection (1).

(4) The following applies if the cost of rehabilitation is to be taken into account in the assessment of damages—

(a) the damages are first assessed, without reduction for contributory negligence, on the assumption that the worker has incurred the cost of the rehabilitation;

(b) then, any reduction of the damages assessed, on account of contributory negligence, is made;

(c) then, the total cost of rehabilitation is set off against the amount assessed under paragraph (b).

Example—

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

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

(a) if the insurer is WorkCover—WorkCover may recover the cost of providing the rehabilitation, as a debt, from the worker; or

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

Part 4 Reduction of recoverable damages

270 When damages are to be reduced

(1) The amount of damages that an employer is legally liable to pay to a claimant for an injury must be reduced by the total amount paid or payable by an insurer by way of compensation for the injury.

(2) However, subsection (1) applies to compensation paid or payable under chapter 4A only if the damages include treatment, care and support damages.

(3) Also, the amount of damages must not be reduced by an amount paid under section 193.

(4) This section does not limit the reduction of the amount of the damages by any other amount that the insurer or the claimant is legally liable to pay on account of the worker under another law.

271 Assessment by court of total liability for damages

(1) This section applies if—

(a) damages are awarded for an injury; or

(b) damages are to be paid in settlement of a claim for an injury.

(2) To establish the reduction under section 270(1) in damages for compensation paid, the claimant or insurer may apply to—

(a) the court in which the proceeding is brought; or

(b) if a proceeding has not been started—the Industrial Magistrates Court.

(3) The court's decision is binding on the insurer and all persons entitled to payment by the insurer for the injury.

Part 5 Pre-court procedures

273 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.

274 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.

275 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 mentioned in section 302(1).

(2) The claimant must—

(a) give the notice of claim in the approved form to the insurer at the insurer's registered office; and

(b) if the worker's employer is not a self-insurer, give a copy of the notice of claim to the worker's employer.

(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.

Note—

See also section 232V.

(5) Any statement made by the claimant in the notice that is in the claimant’s personal knowledge must be verified by statutory declaration.

(6) The notice must be accompanied by a genuine offer of settlement or a statement of the reasons why an offer of settlement can not yet be made.

(7) The notice must be accompanied by the claimant’s written authority allowing the insurer to obtain information, including copies of documents relevant to the claim, and in the possession of—

(a) a hospital; or

(b) the ambulance service of the State or another State; or

(c) a doctor, provider of treatment or rehabilitation services or person qualified to assess cognitive, functional or vocational capacity; or

(d) the employer or a previous employer; or

(e) persons that carry on the business of providing workers’ compensation insurance, compulsory third party insurance, personal accident or illness insurance, insurance against loss of income through disability, superannuation funds or any other type of insurance; or

(f) a department, agency or instrumentality of the Commonwealth or the State; or

(g) a solicitor, other than where giving the information or documents would breach legal professional privilege.

(8) The notice must also be accompanied by copies of all documents supporting the claim including, but not limited to—

(a) hospital, medical and other reports relating to the injury sustained by the worker, other than reports obtained by or on behalf of the insurer; and

(b) income tax returns, group certificates and other documents for the 3 years immediately before the injury supporting the claimant's claim for lost earnings or diminution of income-earning capacity; and

(c) invoices, accounts, receipts and other documents evidencing the claimant's claim for out-of-pocket expenses; and

(d) for a claimant other than a worker with a terminal condition or a dependant—the notice of assessment for the injury sustained by the worker.

276 Noncompliance with s 275 and urgent proceedings

(1) The purpose of this section is to enable a claimant to avoid the need to bring an application under section 298.

(2) Without limiting section 297 or 298, if the claimant alleges an urgent need to start a proceeding for damages despite noncompliance with section 275, the claimant must, in the claimant's notice of claim—

(a) state the reasons for the urgency and the need to start the proceeding; and

(b) ask the insurer to waive compliance with the requirements of section 275.

(3) The claimant's lawyer may sign the notice of claim on the claimant's behalf if it is not reasonably practicable for the claimant to do so.

(4) The claimant's notice of claim may be given by fax in the way provided for under a regulation.

(5) The insurer must, before the end of 3 business days after receiving the notice of claim, advise the claimant that the insurer agrees or does not agree that there is an urgent need to start a proceeding for damages.

(6) If the insurer agrees that there is an urgent need to start a proceeding for damages, the insurer may, in the advice to the claimant under subsection (5), impose the conditions the insurer considers necessary or appropriate to satisfy the insurer to waive compliance under section 278(2)(b).

(7) The claimant must comply with the conditions within a reasonable time that is agreed between the insurer and the claimant.

(8) The claimant's agreement to comply with the conditions is taken to satisfy section 302(2)(a)(ii).

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

(1) The claimant must give the insurer written notice of any significant change in relation to the information given in the notice of claim.

(2) The notice must also state the date of, and reasons for, the change in the information.

278 Response to notice of claim

(1) This section applies if a notice of claim is given to an insurer.

(2) The insurer must, within 10 business days after receiving the notice, give the claimant written notice—

(a) stating whether the insurer is satisfied that the notice of claim is a complying notice of claim; and

(b) if there is an urgent need to start a proceeding—stating that the insurer is only willing to waive compliance with the requirements if the claimant agrees to satisfy conditions imposed by the insurer under section 276; and

(c) if the insurer is not so satisfied—identifying the noncompliance and stating whether the insurer waives compliance with the requirements; and

(d) if the insurer does not waive compliance with the requirements—allowing the claimant a reasonable period of at least 10 business days either to satisfy the insurer that the claimant has complied with the requirements or to take reasonable action to remedy the noncompliance; and

(e) stating whether the insurer is prepared, without admitting liability on the claim, to meet the cost of the claimant's reasonable and appropriate rehabilitation.

(3) If the insurer is not prepared to waive compliance with the requirements in the first instance, the insurer must, within 10 business days after the end of the period specified in subsection (2)(d), give the claimant written notice stating that—

(a) the insurer—

(i) is satisfied the claimant has complied with the relevant requirements; or

(ii) is satisfied with the action taken by the claimant to remedy the noncompliance; or

(iii) waives the noncompliance; or

(b) the insurer is not satisfied that the claimant has taken reasonable action to remedy the noncompliance, with full particulars of the noncompliance and the claimant's failure to remedy it.

(4) If the insurer does not give the written notice mentioned in subsection (2) within 10 business days after receiving the notice of claim, the notice of claim is taken to be a complying notice of claim.

(5) The insurer must, within 5 business days after receiving a complying notice of claim or waiving noncompliance with the

requirements of section 275, advise the employer or employers against whom negligence is alleged.

278A Insurer may add other person as contributor

(1) An insurer who receives a notice of claim may, within the time prescribed under a regulation or, if no period is prescribed, within 20 business days after receiving the notice of claim, add someone else as a contributor for the purposes of this part by giving the person a written notice (***contribution notice***)—

(a) claiming an indemnity from, or contribution towards—

(i) the employer's liability; and

(ii) the insurer's liability; and

(b) stating the grounds on which the insurer holds the person liable; and

(c) stating any other information that may be prescribed under a regulation; and

(d) accompanied by copies of documents about the claim given to or received from any other party under this Act.

(2) If the time prescribed under subsection (1) for adding a contributor has ended, an insurer may add someone else as a contributor only with the person's agreement and with—

(a) the agreement of the parties; or

(b) the court's leave.

(3) If an insurer adds someone as a contributor under this section, the insurer must give a copy of the contribution notice to each other party within the time prescribed under a regulation or, if no period is prescribed, within 5 business days after adding someone as a contributor.

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

278B Contributor's response

(1) A contributor must, within the period prescribed under a regulation or, if no period is prescribed, within 20 business days after receiving a contribution notice, give the insurer who gave the contribution notice a written response (***contributor's response***)—

(a) containing a statement of information prescribed under a regulation; and

(b) accompanied by any documents that may be prescribed under a regulation.

(2) The contributor's response must also state—

(a) whether the claim for the contribution or indemnity claimed in the contribution notice is admitted, denied or admitted in part; and

(b) if the claim for the contribution or indemnity is admitted in part, the extent, expressed as a percentage, to which it is admitted.

(3) An admission of liability in the contributor's response—

(a) is not binding on the contributor in relation to any other claim; and

(b) is not binding on the contributor at all if it later appears the admission was induced by fraud.

(4) If the insurer requires information provided by a contributor under this section to be verified by statutory declaration, the contributor must verify the information by statutory declaration.

279 Parties to cooperate

(1) The parties must cooperate in relation to a claim, in particular by—

(a) giving each other copies of relevant documents about—

(i) the circumstances of the event resulting in the injury; and

(ii) the worker's injury; and

(iii) the worker's prospects of rehabilitation; and

(b) giving information reasonably requested by each other party about—

(i) the circumstances of the event resulting in the injury; and

(ii) the nature of the injury and of any impairment or financial loss resulting from the injury; and

(iii) if applicable—the medical treatment and rehabilitation the worker has sought from, or been provided with, by the worker's employer or the insurer; and

(iv) the worker's medical history, as far as it is relevant to the claim; and

(v) any applications for compensation made by the claimant or worker for any injury resulting from the same event.

(2) Subsection (1)(a) applies to relevant documents that—

(a) are in the possession of a party; or

(b) are reasonably required by WorkCover from the worker's employer under section 280.

(3) A claimant and an insurer must give each other copies of the relevant documents within 21 business days after the claimant gives the insurer a notice of claim.

(3A) An insurer and a contributor must give each other copies of the relevant documents within 21 business days after the insurer gives the contributor a contribution notice.

(3B) A contributor must give the claimant copies of the relevant documents within 21 business days after the insurer gives the contributor a contribution notice.

(3C) If the relevant documents come into a party's possession later than the time mentioned in subsection (3), (3A) or (3B), a party mentioned in the subsection must give the other party mentioned in the subsection a copy of the relevant documents within 21 business days after they come into the party's possession.

(4) A party must respond to a request from another party under subsection (1)(b) within 21 business days after receiving it.

(5) This section is subject to section 284.

(6) In this section—

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

280 Employer to cooperate with WorkCover

(1) An employer against whom negligence is alleged in connection with a claim must cooperate fully with and give WorkCover all information and access to documents in relation to the claim that WorkCover reasonably requires.

(2) WorkCover may recover from the employer as a debt in the Industrial Magistrates Court—

(a) any additional costs reasonably incurred in connection with the claim as a direct result of the employer's noncompliance with subsection (1); and

(b) to the extent that WorkCover's interests in connection with the claim have been prejudiced as a direct result of the employer's noncompliance with subsection (1)—an amount reflecting the extent of WorkCover's prejudice.

281 Parties to attempt to resolve claim

(1) The parties must endeavour to resolve a claim as quickly as possible.

(2) The insurer must give the claimant a written notice under subsection (4) within 6 months after—

(a) the insurer receives a complying notice of claim or waives the claimant's noncompliance with the requirements of section 275; or

(b) the court makes an order under section 297; or

(c) the court makes an order under section 298.

(3) For subsection (2), for a worker with a terminal condition, the insurer must give the claimant the written notice within 3 months.

(4) The written notice must—

(a) state whether liability in connection with the event to which the claim relates is admitted or denied and—

(i) if liability is admitted—

(A) state whether contributory liability is claimed from the worker or another party; and

(B) state the extent, expressed as a percentage, to which liability is admitted; and

(ii) if liability is denied, completely or partly—give particulars of the basis on which liability is denied; and

(b) state whether the insurer accepts or rejects any offer of settlement that may be made by the claimant; and

(c) if the claimant did not make an offer of settlement in the notice of claim or the insurer is rejecting the offer—contain a genuine offer or counter-offer of settlement, or a statement of the reasons why an offer or counter-offer of settlement can not yet be made; and

(d) be accompanied by copies of all medical reports, assessments of cognitive, functional or vocational capacity, or other material in the insurer's possession not previously given to the claimant that may help the claimant to make a proper assessment of the offer.

(4A) The insurer must, within 5 business days after giving the claimant the written notice, give a copy of the notice to any contributor.

(5) If the insurer is WorkCover, WorkCover must also, within 5 business days after giving the claimant the written notice, give a copy of the notice to the worker's employer.

(6) The insurer or the claimant to whom a written offer or counter-offer of settlement is made must respond in writing to the offer within 10 business days after receiving it, indicating acceptance or rejection of the offer, unless a response to the offer is to be made under subsection (4)(b).

(7) The offer or counter-offer of settlement is made on a without prejudice basis and must not be disclosed to a court except on the issue of costs.

(8) An admission of liability by an insurer under this section—

(a) is not binding on the insurer at all if it is later shown at the trial in the proceeding for damages that the claimant has been relevantly guilty of fraud or attempted fraud; and

(b) is not binding on the insurer at all if it is later shown that liability was admitted because of misrepresentation by any person; and

(c) is not an admission about the nature and extent of the claimant's loss or damage or that the claimant has sustained loss or damage, unless it specifically states otherwise; and

(d) does not entitle the claimant to apply for judgment, summary or otherwise, in a court of competent jurisdiction; and

(e) is confined to damages under the claim.

(9) In calculating the period of 6 months mentioned in subsection (2), any period during which a decision of the insurer relevant to the claim is subject to a review or appeal is not counted.

(10) In this section—

decision, for subsection (9), includes failure to make a decision.

review or appeal means a review or appeal under chapter 13 that has been started.

282 Worker to undergo medical examination

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

(a) a medical examination by a doctor to be selected by the worker from a panel of at least 3 doctors nominated in the request;

(b) an assessment of cognitive, functional or vocational capacity by a registered person to be selected by the worker from a panel of at least 3 persons with appropriate qualifications and experience nominated in the request.

(2) The worker must comply with the request unless it would be unreasonable or unnecessarily repetitious.

(3) If 3 doctors or persons with appropriate qualifications and experience are not available for inclusion on a panel, the number on the panel may be reduced to 2.

283 Joint expert reports

(1) Some or all of the parties may jointly arrange for an expert report about—

(a) the event or events giving rise to the claim; or

(b) the worker's injury; or

(c) the worker's capacity to undertake specific rehabilitation programs; or

(d) the worker's capacity to undertake further work and earn income; or

(e) any other matter about the claim.

(2) None of the parties is under an obligation to agree to a proposal to obtain a report.

(3) The person preparing the report must be a person agreed to by the parties and have appropriate qualifications and experience in the relevant field.

(4) The person preparing the report must give each party a copy of the report.

(5) The cost of obtaining a report is to be paid by the parties in proportions agreed to in writing between them or, in default of agreement, in equal proportions.

(6) This section does not prevent a party from obtaining a report other than under this section.

284 Nondisclosure of certain material

(1) A party is not obliged to disclose information or a document if the information or document is protected by legal professional privilege.

(2) However, the following must be disclosed even though otherwise protected by legal professional privilege—

(a) investigative reports;

(b) medical reports;

(c) reports relevant to the worker's rehabilitation;

(d) relevant documents mentioned in section 279, other than correspondence between a party and the party's lawyer.

(3) If an insurer or a contributor has reasonable grounds to suspect a claimant of fraud, the insurer or contributor may withhold from disclosure information, or omit a document or a passage from a document, that—

(a) would alert the claimant to the suspicion; or

(b) could help further the fraud; or

(c) the insurer or contributor believes would meet the requirements of the *Right to Information Act 2009*, schedule 3.

(4) Subsection (3) applies even if the information or document would, if the subsection did not apply, have to be disclosed under subsection (2).

(5) Also, WorkCover or an employer is not obliged to disclose the estimate of damages calculated by WorkCover for the purpose of premium setting under chapter 2, part 3.

285 Consequence of failure to give information

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

(2) The document can not be used by the party in a subsequent court proceeding for the claim, or the deciding of the claim, unless the court orders otherwise.

(3) If the document comes to the other party's knowledge, the document may be used by the other party.

286 Privilege and duties

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

287 Court's power to enforce compliance with chapter

If a party fails to comply with a provision of this chapter, a court may order the party to comply with the provision, and may make consequential or ancillary orders that may be necessary or desirable in the circumstances of the case.

Part 6 Settlement of claims

Division 1 Compulsory conference

288 Application of div 1

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

289 Compulsory conference

(1) Before the claimant starts a proceeding for damages, there must be a conference of the parties (the ***compulsory conference***).

(2) Any party may call the compulsory conference.

(3) The compulsory conference must be held within 3 months after the insurer gives the claimant a written notice under section 281.

(4) However, if the parties agree, the conference may be held at a later date.

(5) If the insurer is WorkCover, WorkCover must advise the worker's employer of the time and place of the compulsory conference.

(6) On application by a party, the court—

(a) may—

(i) fix the time and place for the compulsory conference; or

(ii) dispense with the compulsory conference for good reason; and

(b) may make any other orders the court considers appropriate.

(7) In considering whether to dispense with the compulsory conference, the court must take into account the extent of

compliance by the parties with their respective obligations in relation to the claim.

(8) The claimant in person, a person authorised to settle on the insurer's behalf and a person authorised to settle on behalf of any contributor must attend the conference and actively participate in an attempt to settle the claim, unless the claimant or person has a reasonable excuse.

(9) If it would be unreasonable for all parties to attend at the same place, for example, because of distance or illness, the conference may be conducted by telephone conferencing, videoconferencing or another form of communication that allows reasonably contemporaneous and continuous communication between the parties.

290 Procedure at conference

(1) The compulsory conference may be held with a mediator if all parties agree.

(2) An agreement that the compulsory conference is to be held with a mediator must specify how the costs of the mediation are to be borne.

(3) The mediator must be a person independent of the parties—

(a) agreed to by the parties; or

(b) nominated by the registrar of the court on application under subsection (4).

(4) If the parties are unable to agree on the appointment of a mediator within 21 business days after the date for the compulsory conference is fixed, any party may apply to the registrar of the court for the nomination of a mediator.

290A Exchange of material for compulsory conference

(1) At least 5 business days before the compulsory conference is to be held, each party must give each other party—

(a) copies of all documents not yet given to the party that are relevant and required to be given for the claim; and

(b) a statement verifying that all relevant documents in the possession of the party or the party's lawyer have been given as required; and

(c) details of the party's legal representation; and

(d) if the party has legal representation—a certificate (a ***certificate of readiness***) signed by the party's lawyer to the effect that the party is ready for the conference.

(2) A certificate of readiness must state that—

(a) the party is completely ready for the conference; and

(b) all investigative material required for the conference has been obtained, including witness statements from persons, other than expert witnesses; and

(c) medical or other expert reports have been obtained from all persons the party proposes to rely on as expert witnesses at the conference; and

(d) the party has complied fully with the party's obligations to give all other parties material that is relevant and required to be given for the claim; and

(e) the party's lawyer has given the party a statement (a ***financial statement***) containing the information required under subsection (3).

(3) A financial statement must state—

(a) details of the legal costs payable by the party to the party's lawyer up to the completion of the conference; and

(b) an estimate of the party's likely legal costs and net damages if the claim proceeds to trial and is decided by the court; and

(c) an estimate of the party's likely legal costs and net damages if the claim is settled without proceeding to trial; and

(d) the consequences to the party, in terms of costs, in each of the following cases if the claim proceeds to trial and is decided by the court—

(i) the amount of the damages awarded by the court is equal to, or more than, the claimant's written final offer;

(ii) the amount of the damages awarded by the court is less than the claimant's written final offer but equal to, or more than, the insurer's written final offer;

(iii) the claim is dismissed, the court makes no award of damages or the amount of the damages awarded by the court is equal to, or less than, the insurer's written final offer.

(4) If the insurer is WorkCover, WorkCover must give a copy of the certificates of readiness and WorkCover's costs statement to the worker's employer at least 5 business days before the compulsory conference.

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

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

292 Parties to make written final offers if claim not settled at compulsory conference

(1) This section applies to the following (each a ***claim***)—

(a) a claim made by the claimant against another party;

(b) a contribution claim relating to the claim made by the claimant.

(2) If a claim is not settled at a compulsory conference, each party that has legal capacity to settle the claim must ensure that it makes a written final offer or written final offers at the conference to another or other parties at the conference that would dispose of the claim if the offer or offers were accepted.

(3) Any 2 or more parties may make a joint written final offer to another party.

(4) Before a joint written final offer is made, the parties making the offer must give the party to whom the offer is to be given sufficient notice of the fact that a joint written final offer will be made to enable the party to appropriately respond.

(5) Also, if more than 1 claim is the subject of the compulsory conference, a written final offer may be a consolidated written final offer for all the claims made by the claimant.

(6) A consolidated written final offer must cover all contribution claims relating to all the claims made by the claimant to the extent the party making the offer has legal capacity to settle the contribution claims.

(7) A consolidated written final offer must detail the portion of the offer applicable to each claim.

(8) A consolidated written final offer can only be accepted or rejected in full.

(9) A written final offer must remain open for 10 business days and proceedings must not be started while the offer remains open.

(10) If the claimant or insurer brings a proceeding in a court for a claim, the claimant or insurer must, at the start of the proceeding, file at the court a sealed envelope containing a copy of the claimant's or insurer's written final offer for the claim.

(11) A party to proceedings for a claim, other than the party who starts the proceedings, within 10 business days after being served with the legal process that starts the proceeding, must file at the court a sealed envelope containing a copy of the party's written final offer for the claim.

(12) The court must not read an offer filed under subsection (10) or (11) until it has decided the claim relating to the offer.

(13) The court must have regard to the filed offer in making a decision about whether it should order that a party to whom an offer was given should pay all or part of—

(a) the costs of a party who made the offer; and

(b) if the claim is a contribution claim—any costs the party who was given the offer is liable to pay to the claimant.

Division 2 Settlement before court proceedings

293 Settlement of claim for damages

If a claim or contribution claim is settled before the start of a court proceeding, the parties to the settlement must sign a discharge for the claim.

Part 7 Start of court proceedings

Division 1 When claimant can start court proceedings

294 Application of div 1

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

295 Compliance necessary before starting proceeding

The claimant may start a proceeding in a court for damages only if the claimant has complied with—

(a) the relevant division under part 2, to the extent the division imposes a requirement on the person; and

(b) part 5, other than as provided by sections 297 and 298; and

(c) part 6; and

(d) section 296.

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

The claimant may start the proceeding if any of the following have happened—

(a) at least 6 months or, for a claimant with a terminal condition or to whom section 302(1)(b) applies, 3 months have elapsed after—

(i) the claimant has given, or is taken to have given, a complying notice of claim; or

(ii) the insurer has waived the claimant's noncompliance with the requirements of section 275 with or without conditions; or

(iii) the court has made an order under section 297 or 298;

(b) the insurer has admitted liability, but is claiming contributory liability from the claimant, a contributor or another party, and the claimant has given the insurer written notice that the extent of the admission is disputed;

(c) the insurer has admitted liability but damages can not be agreed.

297 Court to have made declaration about noncompliance

(1) Subject to section 296, the claimant may start the proceeding if the court, on application by the claimant dissatisfied with the insurer's response under section 278 to a notice of claim, declares that—

(a) notice of claim has been given under section 275; or

(b) the claimant is taken to have remedied noncompliance with the requirements of section 275.

(2) A declaration that a claimant is taken to have remedied noncompliance with section 275 may be made on conditions the court considers necessary or appropriate to minimise

prejudice to the insurer from the claimant's failure to comply with the requirements of section 275.

298 Court to have given leave despite noncompliance

(1) Subject to section 296, the claimant may start the proceeding if the court, on application by the claimant, gives leave to bring the proceeding despite noncompliance with the requirements of section 275.

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

299 Other provision for urgent proceedings

Part 2, division 3 provides for the urgent starting of proceedings by persons mentioned in section 237(1), and for the staying of those proceedings.

Division 2 Court proceedings

300 Carriage of proceedings

(1) If a proceeding is brought for damages, the proceeding must be brought against the employer of the injured or deceased worker and not against WorkCover.

(2) However, a proceeding may, and may only, be brought against WorkCover if—

(a) the employer was an individual and can not be adequately identified, is dead or can not practically be served; or

(b) the employer was a corporation and has been wound up; or

(c) the employer was self-insured at the time of the event and WorkCover has since assumed the employer's liability for the injury.

(3) If a claim has not been settled at a compulsory conference, then despite any rule of court, the legal process that starts the proceeding must be served on the employer—

(a) within 60 days after the day the conference was held; or

(b) within the further period that the court orders on the claimant's application.

(4) If the employer is not a self-insurer, legal process that starts the proceeding must be served on WorkCover within 30 days after the employer has been served, and no step may be taken in the proceeding until WorkCover or the self-insurer has been served.

(5) WorkCover is entitled to conduct for an employer, other than an employer who is a self-insurer, all proceedings taken to enforce the claim or to settle any matter about the claim.

(6) An employer who is a self-insurer is entitled to conduct all proceedings taken to enforce the claim or to settle any matter about the claim.

(7) In addition to an employer's obligation under section 280(1), the employer, other than an employer who is a self-insurer, immediately on being required by WorkCover to do so, must execute all documents and do everything that WorkCover considers reasonably necessary to allow the proceedings to be conducted by it.

(8) If an employer, other than an employer who is a self-insurer—

(a) is absent from the State or, after reasonable inquiry, can not be found; or

(b) refuses, fails or is unable to execute documents mentioned in subsection (7);

WorkCover may execute for the employer all documents that it may require or requires the employer to execute for subsection (7).

301 Exclusion of jury trial

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

302 Alteration of period of limitation

(1) A claimant may bring a proceeding for damages for a personal injury—

(a) within the period of limitation (the ***general limitation period***) allowed for bringing a proceeding for damages for personal injury under the *Limitations of Actions Act 1974*; or

(b) if schedule 5 provides for a different period for bringing the proceeding—within the period mentioned in schedule 5.

(2) A claimant may bring a proceeding for damages for personal injury after the end of the period mentioned in subsection (1) only if—

(a) before the end of that period—

(i) the claimant gives, or is taken to have given, a complying notice of claim; or

(ii) the claimant gives a notice of claim for which the insurer waives compliance with the requirements of section 275 with or without conditions; or

(iii) a court makes a declaration under section 297; or

(iv) a court gives leave under section 298; and

(b) the claimant complies with section 295.

(3) However, the proceeding must be brought within 60 days after a compulsory conference for the claim is held.

303 Court may have regard to claimant's noncompliance with s 275 in relation to costs and interest

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

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

(b) may award interest in the claimant's favour for a period for which the claimant was in default but only if the court is satisfied that there is a reasonable excuse for the default.

304 Court may have regard to compulsory conference

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

(a) whether the matter of the damages should be referred to an alternative dispute resolution process; or

(b) costs in the proceeding for damages.

Part 8 Civil liability

Division 1 Interpretation

305 Definitions for pt 8

In this part—

duty means any duty giving rise to a claim for damages, including the following—

(a) a duty of care in tort;

(b) a duty of care under contract that is concurrent and coextensive with a duty of care in tort;

(c) another duty under statute or otherwise that is concurrent with a duty of care mentioned in paragraph (a) or (b).

duty of care means a duty to take reasonable care or to exercise reasonable skill (or both duties).

305A Provisions not to apply to particular injuries

(1) The provisions of this part other than division 4, do not apply in relation to deciding liability for injury if the injury resulting from the breach of duty is or includes—

(a) an injury that is a dust-related condition; or

(b) an injury resulting from smoking or other use of tobacco products or exposure to tobacco smoke.

(2) To remove any doubt, it is declared that a breach of duty mentioned in subsection (1) includes a breach of duty giving rise to a dependency claim.

Division 2 General standard of care

305B General principles

(1) A person does not breach a duty to take precautions against a risk of injury to a worker unless—

(a) the risk was foreseeable (that is, it is a risk of which the person knew or ought reasonably to have known); and

(b) the risk was not insignificant; and

(c) in the circumstances, a reasonable person in the position of the person would have taken the precautions.

(2) In deciding whether a reasonable person would have taken precautions against a risk of injury, the court is to consider the following (among other relevant things)—

(a) the probability that the injury would occur if care were not taken;

(b) the likely seriousness of the injury;

(c) the burden of taking precautions to avoid the risk of injury.

305C Other principles

In a proceeding relating to liability for a breach of duty—

(a) the burden of taking precautions to avoid a risk of injury includes the burden of taking precautions to avoid similar risks of injury for which the person may be responsible; and

(b) the fact that a risk of injury could have been avoided by doing something in a different way does not of itself give rise to or affect liability for the way in which the thing was done; and

(c) the subsequent taking of action that would (had the action been taken earlier) have avoided a risk of injury does not of itself give rise to or affect liability in relation to the risk and does not of itself constitute an admission of liability in connection with the risk.

Division 3 Causation

305D General principles

(1) A decision that a breach of duty caused particular injury comprises the following elements—

(a) the breach of duty was a necessary condition of the occurrence of the injury (***factual causation***);

(b) it is appropriate for the scope of the liability of the person in breach to extend to the injury so caused (***scope of liability***).

(2) In deciding in an exceptional case, in accordance with established principles, whether a breach of duty—being a breach of duty that is established but which can not be

established as satisfying subsection (1)(a)—should be accepted as satisfying subsection (1)(a), the court is to consider (among other relevant things) whether or not and why responsibility for the injury should be imposed on the party in breach.

(3) If it is relevant to deciding factual causation to decide what the worker who sustained an injury would have done if the person who was in breach of the duty had not been so in breach—

(a) the matter is to be decided subjectively in the light of all relevant circumstances, subject to paragraph (b); and

(b) any statement made by the worker after suffering the injury about what he or she would have done is inadmissible except to the extent (if any) that the statement is against his or her interest.

(4) For the purpose of deciding the scope of liability, the court is to consider (among other relevant things) whether or not and why responsibility for the injury should be imposed on the party who was in breach of the duty.

305E Onus of proof

In deciding liability for a breach of a duty, the worker always bears the onus of proving, on the balance of probabilities, any fact relevant to the issue of causation.

Division 4 Contributory negligence

305F Standard of care in relation to contributory negligence

(1) The principles that are applicable in deciding whether a person has breached a duty also apply in deciding whether the worker who sustained an injury has been guilty of contributory negligence in failing to take precautions against the risk of that injury.

(2) For that purpose—

(a) the standard of care required of the person who sustained an injury is that of a reasonable person in the position of that person; and

(b) the matter is to be decided on the basis of what that person knew or ought reasonably to have known at the time.

305G Contributory negligence can defeat claim

In deciding the extent of a reduction in damages by reason of contributory negligence, a court may decide a reduction of 100% if the court considers it just and equitable to do so, with the result that the claim for damages is defeated.

305H 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) undertook an activity involving obvious risk or failed, at the material time, so far as was practicable, to take account of obvious risk; or

(g) 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.

(3) Without limiting subsection (2), subsection (1)(f) does not limit the discretion of a court to make a finding of contributory negligence if the worker—

(a) undertook an activity involving risk that was less than obvious; or

(b) failed, at the material time, so far as was practicable, to take account of risk that was less than obvious.

305I Meaning of *obvious risk* for s 305H

(1) For section 305H, an ***obvious risk*** to a worker who sustains an injury is a risk that, in the circumstances, would have been obvious to a reasonable person in the position of the worker.

(2) Obvious risks include risks that are patent or a matter of common knowledge.

(3) A risk of something occurring can be an obvious risk even though it has a low probability of occurring.

(4) A risk can be an obvious risk even if the risk (or a condition or circumstance that gives rise to the risk) is not prominent, conspicuous or physically observable.

(5) To remove any doubt, it is declared that a risk from a thing, including a living thing, is not an obvious risk if the risk is created because of a failure on the part of a person to properly

operate, maintain, replace, prepare or care for the thing, unless the failure itself is an obvious risk.

305J Presumption of contributory negligence if person who suffers injury is intoxicated

(1) This section applies if a worker who sustained an injury was intoxicated at the time of the breach of duty giving rise to a claim for damages and contributory negligence is alleged against the worker.

(2) Contributory negligence will, subject to this section, be presumed.

(3) The worker may only rebut the presumption by establishing on the balance of probabilities—

(a) that the intoxication did not contribute to the breach of duty; or

(b) that the intoxication was not self-induced.

(4) Unless the worker rebuts the presumption of contributory negligence, the court must assess damages on the basis that the damages to which the worker would be entitled in the absence of contributory negligence are to be reduced, on account of contributory negligence, by 25% or a greater percentage decided by the court to be appropriate in the circumstances of the case.

(5) If, in the case of a motor vehicle accident, the worker who sustained an injury was the driver of a motor vehicle involved in the accident and the evidence establishes—

(a) that the concentration of alcohol in the worker's blood was 150mg or more of alcohol in 100mL of blood; or

(b) that the worker was so much under the influence of alcohol or a drug as to be incapable of exercising effective control of the vehicle;

the minimum reduction prescribed by subsection (4) is increased to 50%.

305K Application of contributory negligence for particular injuries

Despite any other provision of this division, treatment, care and support damages awarded to a worker who is entitled to compensation under chapter 4A for the injury can not be reduced for the worker's contributory negligence.

Part 9 Assessment of damages

Division 1 Interpretation

306 Definitions for pt 9

In this part—

future loss means all or any of the following—

(a) future economic loss;

(b) future general expenses;

(c) future medical expenses.

general damages means damages for all or any of the following—

(a) pain and suffering;

(b) loss of amenities of life;

(c) loss of expectation of life;

(d) disfigurement.

loss of earnings means—

(a) past economic loss due to loss of earnings or the deprivation or impairment of earning capacity; and

(b) future economic loss due to loss of prospective earnings or the deprivation or impairment of prospective earning capacity.

306A Provisions not to apply to particular injuries

(1) The provisions of this part other than division 2, division 3, subdivision 1 and division 4 do not apply in relation to deciding awards of damages for injury if the injury resulting from the breach of duty is or includes—

(a) an injury that is a dust-related condition; or

(b) an injury resulting from smoking or other use of tobacco products or exposure to tobacco smoke.

(2) To remove any doubt, it is declared that a breach of duty mentioned in subsection (1) includes a breach of duty giving rise to a dependency claim.

Division 2 Exemplary damages

306B 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.

Division 3 Assessment of damages

Subdivision 1 No right to damages for particular services

306C Application of sdiv 1

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

306D Definitions for sdiv 1

In this subdivision—

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

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

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

Examples of services—

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

306E Paid services provided to worker before injury

(1) This section applies if—

(a) before the worker sustained the injury, the worker was usually provided with particular services that were paid services; and

(b) after the worker sustains the injury—

(i) the worker is, or is to be, provided with paid services that are substantially of the same kind; or

(ii) the worker is, or is to be, provided with gratuitous services that are substantially of the same kind.

(2) A court can not award damages for the cost or value of the services that have been provided to the worker after the worker sustained the injury or that are to be provided to the worker in the future.

306F Worker performed services before injury

(1) This section applies if—

(a) before the worker sustained the injury, the worker usually performed particular services; and

(b) after the worker sustained the injury, the worker is provided with services of substantially the same type (the ***provided services***); and

(c) all or part of the provided services are gratuitous services.

(2) A court can not award damages for the cost or value of—

(a) the part of the services that are gratuitous services; or

(b) services of substantially the same type as the gratuitous services that are to be provided to the worker in the future as either gratuitous services or paid services.

(3) However, this section does not apply if the court is satisfied that the services mentioned in subsection (2)(a)—

(a) were usually provided to the worker as paid services; and

(b) were provided as gratuitous services only in exceptional circumstances.

Example of exceptional circumstances for paragraph (b)—

During a 2-year period, paid services were provided to the worker on a weekly basis. However, the provider of the services was on holidays, or otherwise unable to provide the services, on 2 occasions. On those 2 occasions the services were provided as gratuitous services.

306G Gratuitous services provided to worker before injury

(1) This section applies if—

(a) before the worker sustained the injury, the worker was usually provided with particular services that were gratuitous services; and

(b) after the worker sustains the injury—

(i) the worker is, or is to be, provided with paid services of substantially the same type; or

(ii) the worker is, or is to be, provided with gratuitous services of substantially the same type.

(2) A court can not award damages for the cost or value of the services that have been provided to the worker after the worker sustained the injury or that are to be provided to the worker in the future.

306H Services not required by or provided to worker before injury

(1) This section applies if—

(a) before the worker sustained the injury, the worker usually did not require or was not usually provided with particular services; and

(b) after the worker sustains the injury, the worker is provided with services (the ***provided services***); and

(c) all or part of the provided services are gratuitous services.

(2) A court can not award damages for the cost or value of—

(a) the part of the provided services that are gratuitous services; or

(b) services of substantially the same type as the gratuitous services that are to be provided to the worker in the future as either gratuitous services or paid services.

(3) However, this section does not apply if the court is satisfied that the services mentioned in subsection (2)(a) were provided as gratuitous services only in exceptional circumstances.

Example of exceptional circumstances for subsection (3)—

During a 2-year period after the worker sustains the injury, the provided services were provided on a weekly basis. However, the provider of the services was on holidays, or otherwise unable to provide the services, on 2 occasions. On those 2 occasions the services were provided as gratuitous services.

Subdivision 2 Other provisions

306I Damages for loss of earnings

(1) In making an award of damages for loss of earnings, including in a dependency claim, the maximum award a court may make is for an amount equal to the limit fixed by subsection (2).

(2) The limit is an amount equal to the present value of 3 times QOTE per week for each week of the period of loss of earnings.

(3) In this section—

present value means the value when the award is made.

306J When earnings can not be precisely calculated

(1) This section applies if a court is considering making an award of damages for loss of earnings that are unable to be precisely calculated by reference to a defined weekly loss.

(2) The court may only award damages if it is satisfied that the worker has suffered or will suffer loss having regard to the person's age, work history, actual loss of earnings, any permanent impairment and any other relevant matters.

(3) If the court awards damages, the court must state the assumptions on which the award is based and the methodology it used to arrive at the award.

(4) The limitation mentioned in section 306I(2) applies to an award of damages under this section.

306L Discount rate to be applied in calculating the present value of future loss

(1) This section applies if—

(a) a person is to be compensated for future loss; and

(b) an actuarial multiplier is to be used to calculate the present value of future loss.

(2) A discount rate of 5% is to be applied in deciding the actuarial multiplier.

306M Damages for loss of consortium or loss of servitium

(1) A court must not award damages for loss of consortium or loss of servitium unless—

(a) the injured worker died as a result of injuries sustained; or

(b) general damages for the injured worker are assessed (before allowing for contributory negligence) at the amount prescribed under a regulation for this provision, or more.

(2) The court must not assess damages for loss of servitium above the limit fixed by subsection (3).

(3) The limit is 3 times QOTE per week.

(4) Section 10(3) does not apply to the reference to damages in subsection (1).

306N Interest

(1) A court can not order the payment of interest on an award for general damages.

(2) Interest awarded on damages compensating past monetary loss—

(a) must not be more than interest at the appropriate rate; and

(b) must be related in an appropriate way to the period over which the loss was incurred.

(3) The appropriate rate is the rate for 10 year Treasury bonds published by the Reserve Bank of Australia under 'Interest rates and yields—capital market' as at the beginning of the quarter in which the award of interest is made.

Example of calculation of interest for this section—

Suppose that past monetary loss consists of medical expenses that have been incurred at a uniform rate over a particular period. The interest to be awarded would be calculated under the following formula—

A = am/100 x p x 0.5

where—

A is the amount of the award of interest.

a is a percentage rate decided by the court subject to the limit fixed in subsection (2).

m is the aggregate of the medical expenses.

p is the period over which the medical expenses have been incurred (expressed in years).

306O Assessment by court of injury scale

(1) If general damages are to be awarded by a court in relation to an injury, the court must assess an injury scale value as follows—

(a) the worker's total general damages must be assigned a numerical value (***injury scale value***) on a scale running from 0 to 100;

(b) the scale reflects 100 equal gradations of general damages, from a case in which an injury is not severe enough to justify any award of general damages to a case in which an injury is of the gravest conceivable kind;

(c) in assessing the injury scale value, the court must—

(i) assess the injury scale value under any rules provided under a regulation; and

(ii) have regard to the injury scale values given to similar injuries in previous proceedings.

(2) If a court assesses an injury scale value for a particular injury to be more or less than any injury scale value prescribed for or attributed to similar particular injuries under subsection (1)(c), the court must state the factors on which the assessment is based that justify the assessed injury scale value.

306P Calculation of general damages

(1) For an injury, general damages must be calculated by reference to the general damages calculation provisions applying to the period within which the injury was sustained.

(2) In this section—

general damages calculation provisions, applying to a period, means the provisions prescribed for the period under a regulation.

Division 4 Structured settlements

306Q Definition for div 4

In this division—

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.

306R Court required to inform parties of proposed award

(1) The purpose of this section is to enable the court to give the parties to a proceeding a reasonable opportunity to negotiate a structured settlement.

(2) A court that decides to make an award for future loss (not including interest) of more than the amount prescribed under a regulation for this section must first notify all the parties to the proceeding of the terms of the award it proposes to make.

306S Court may make consent order for structured settlement

A court may, on the application of the parties to a claim for damages, make an order approving of or in the terms of a structured settlement even though the payment of damages is not in the form of a lump sum award of damages.

306T Obligation of legal practitioners to provide advice

A lawyer engaged by the worker must advise the worker, in writing, about the following if the worker proposes to negotiate a settlement of a claim for damages—

(a) the availability of structured settlements;

(b) the desirability of the worker obtaining independent financial advice about structured settlements and lump sum settlements of the claim.

306U Offer of structured settlement—legal costs

(1) The *Uniform Civil Procedure Rules 1999*, chapter 9, part 5 extends to an offer of compromise by way of a structured settlement on a claim for damages.

(2) In that case, the court is to have regard to the cost to the defendant of the proposed structured settlement as compared to the lump sum payment of damages when deciding whether a reasonable offer of compromise has been made.

Part 12 Costs

Division 1 Costs applying to worker with DPI of 20% or more, worker with terminal condition, or dependant

310 Application of div 1

This division applies only if the claimant is—

(a) a worker who does not have a terminal condition, if the worker's DPI is 20% or more; or

(b) a worker who has a terminal condition; or

(c) a dependant.

311 Principles about orders as to costs

If a court dismisses the claim, makes no award of damages or makes an award of damages in the claimant's proceeding for damages, it must apply the principles set out in sections 312 to 314.

312 Costs if written final offer by claimant

(1) This section applies if—

(a) the claimant makes a written final offer that is not accepted by the insurer; and

(b) the court later awards an amount of damages to the claimant that is equal to or more than the written final offer; and

(c) the court is satisfied that the claimant was at all material times willing and able to carry out what was proposed in the written final offer.

(2) The court must order the insurer to pay the claimant's costs, calculated on the indemnity basis.

313 Costs if written final offer by insurer

(1) This section applies if—

(a) the insurer makes a written final offer that is not accepted by the claimant; and

(b) the claim is dismissed, the court makes no award of damages or makes an award of damages that is equal to or less than the insurer's written final offer; and

(c) the court is satisfied that the insurer was at all material times willing and able to carry out what was proposed in the written final offer.

(2) The court must—

(a) order the insurer to pay the claimant's costs, calculated on the standard basis, up to and including the day of service of the written final offer; and

(b) order the claimant to pay the insurer's costs, calculated on the standard basis, after the day of service of the written final offer.

314 Interest after service of written final offer

(1) This section applies if the court gives judgment for the claimant for the recovery of a debt or damages and—

(a) the judgment includes interest or damages in the nature of interest; or

(b) under an Act, the court awards the claimant interest or damages in the nature of interest.

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

Division 2 Costs applying to worker who does not have a terminal condition and has DPI of less than 20%

315 Application of div 2

This division applies if the claimant is a worker who does not have a terminal condition and has a DPI of less than 20%.

316 Principles about orders as to costs

(1) No order about costs, other than an order allowed under this section, is to be made by the court in the claimant's proceeding.

(2) If a claimant or an insurer makes a written final offer of settlement that is refused, the court must, in the following circumstances, make the order about costs provided for—

(a) if the court later awards an amount of damages to the worker that is equal to or more than the worker's written final offer—an order that the insurer pay the worker's costs on the standard basis from the day of the written final offer;

(b) if the court later dismisses the worker's claim, makes no award of damages or awards an amount of damages that is equal to or less than the insurer's written final offer—an order that the worker pay the insurer's costs on the standard basis from the day of the final offer.

(3) If an award of damages is less than the claimant's written final offer but more than the insurer's written final offer, each party bears the party's own costs.

Division 2A Costs when offers made for a contribution claim

316A Principles about order as to costs

(1) This section applies to the extent proceedings in a court relate to a contribution claim.

(2) Subsections (3) to (5) apply if the contributor or other party (including an insurer) made an offer that was not accepted.

(3) If the court later awards an amount of contribution that is equal to or more than the other party's written final offer, the court must order the contributor to pay the other party's costs on the indemnity basis from the day the written final offer was made.

(4) If the court later—

(a) dismisses the contribution claim; or

(b) makes no award for the contribution; or

(c) makes an award of contribution of an amount that is equal to or less than the contributor's written final offer;

the court must order the other party to pay the contributor's costs on the standard basis from the day the written final offer was made.

(5) If an award of contribution is less than the other party's written final offer but more than the contributor's written final offer, each party bears the party's own costs.

(6) This section applies to a written final offer whether or not it is made as a separate offer or as part of a joint or consolidated offer.

(7) In this section—

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

Division 3 Costs generally

318 Costs if proceeding could have been brought in a lower court

(1) 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.

(2) This section applies to all claimants.

318A General application of costs provisions in part

(1) A court may make no order about costs to which division 1, 2 or 2A applies except the orders for costs provided for in the division.

(2) Subsection (1) applies subject to this division.

318B Court may make an alternative order in particular circumstances

(1) Subsection (2) applies to an order for costs a court is required to make under the following sections (a ***prescribed order***)—

(a) section 312(2);

(b) section 313(2);

(c) section 316A(3) or (4).

(2) The court may make an order for costs other than the prescribed order if the party ordered to pay costs shows the other order is appropriate in the circumstances.

(3) Subsection (4) applies if an award of damages is affected by factors that were not reasonably foreseeable by a party at the time of making or failing to accept a written final offer.

(4) The court may, if satisfied that it is just to do so, make an order for costs under divisions 1, 2 or 2A as if the reference to a written final offer or a failure to accept a written final offer were a reference to a later offer made, or a failure to accept a later offer made, in the light of the factors that became apparent after the parties completed the exchange of written final offers.

Example—

A claimant's medical condition suddenly and unexpectedly deteriorates after the date of the written final offers and the court makes a much higher award of damages than would have been reasonably expected at that time. In that case, the court may ignore the written final offers and award costs on the basis of later offers of settlement.

318C Costs order under div 2 for an interlocutory application

An order about costs for an interlocutory application may be made under division 2 only if the court is satisfied that the application has been brought because of unreasonable delay by 1 of the parties.

318D Order for costs if more than 1 person liable for the same costs

If more than 1 party in a proceeding for damages has a liability to pay the same costs under this part, or under this part and another law about costs, the court may apportion the costs payable by each party according to the proportion of liability of the parties and the justice of the case.

318E Order for costs if an entity was not a party at the compulsory conference

If an entity other than a defendant that participated in a compulsory conference is joined as a defendant in a proceeding for damages, 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.

Part 13 Excess damages awarded in another jurisdiction

319 Application of pt 13

This part applies if—

(a) a person is entitled to seek as a claimant damages for an injury sustained by a worker in a court of the State, other than under the *Jurisdiction of Courts (Cross-vesting) Act 1987*; and

(b) damages for the injury are awarded by a court that is not a court of the State; and

(c) the court that awards the damages does not do so subject to this chapter; and

(d) the amount of the damages awarded to a claimant is more than the amount that would have been awarded subject to this chapter in a proceeding before a court of the State; and

(e) an insurer would be liable to pay all the damages if section 320 did not apply.

320 No liability for excess damages

The insurer is not liable for the difference between the amount of damages awarded to the claimant and the amount of damages that would have been awarded in a proceeding before a court of the State.

Part 14 Expressions of regret and apologies

Division 1 Expressions of regret

320A Application of division

This division applies in relation to liability for damages.

320B Purpose of division

The purpose of this division is to allow an individual to express regret about an incident that may give rise to an action for damages without being concerned that the expression of regret may be construed or used as an admission of liability on a claim or in a proceeding based on a claim arising out of the incident.

320C Meaning of *expression of regret*

An ***expression of regret*** made by an individual in relation to an incident alleged to give rise to an action for damages is any oral or written statement expressing regret for the incident to the extent that it does not contain an admission of liability on the part of the individual or someone else.

320D Expressions of regret are inadmissible

An expression of regret made by an individual in relation to an incident alleged to give rise to an action for damages at any time before a civil proceeding in relation to the incident is started in a court is not admissible in the proceeding.

Division 2 Apologies

320E Application of division

This division applies in relation to liability for damages.

320F Purpose of division

The purpose of this division is to allow a person to make an apology about a matter without the apology being construed or used as an admission of liability for damages in relation to the matter.

320G Meaning of *apology*

An ***apology*** is an expression of sympathy or regret, or of a general sense of benevolence or compassion, in connection with any matter, whether or not it admits or implies an admission of fault in relation to the matter.

320H Effect of apology on liability

(1) An apology made by or on behalf of a person in relation to any matter alleged to have been caused by the person—

(a) does not constitute an express or implied admission of fault or liability for damages by the person in relation to the matter; and

(b) is not relevant to the determination of fault or liability for damages in relation to the matter.

(2) Evidence of an apology made by a person is not admissible in any civil proceeding as evidence of the fault or liability for damages of the person in relation to the matter.

Chapter 6 Choice of law for damages

Part 1 Application of chapter 6

321 Claims to which chapter applies

(1) This chapter applies only to a claim for damages against a worker's employer in relation to an injury that was caused by—

(a) the negligence or other tort (including breach of statutory duty) of the worker's employer; or

(b) a breach of contract by the worker's employer.

(2) Subsection (1)(a) applies even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.

Part 2 Interpretation

322 Meaning of *substantive law*

(1) In this chapter, ***substantive law*** includes—

(a) a law that establishes, modifies, or extinguishes a cause of action or a defence to a cause of action; and

(b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgement 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; or

(b) otherwise—any provisions of a law of a State that are declared under a regulation to be the State's legislation about damages for work related injury.

323 What constitutes injury and employment and who is employer

For this chapter—

(a) injury and employer include anything that is within the scope of a corresponding term in the statutory workers' compensation scheme of another State; and

(b) the determination of what constitutes employment or whether or not a person is the worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers' compensation scheme of another State.

Part 3 Substantive law that governs claim

324 The applicable substantive law for work injury claims

(1) If compensation is payable (whether or not it has been paid) under the statutory workers' compensation scheme of a State in relation to an injury to a worker, the substantive law of that State is the substantive law that governs—

(a) whether or not a claim for damages in relation to the injury can be made; and

(b) if it can be made, the determination of the claim.

(2) For the purposes of this section, compensation is considered to be payable under a statutory workers' compensation scheme of a State in relation to an injury if compensation in relation to it—

(a) would have been payable apart from a provision of the scheme that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision; or

(b) would have been payable if a claim for that compensation had been properly made, and (if applicable) an election to claim that compensation (instead of damages) had been properly made.

325 Availability of action in another State not relevant

(1) It makes no difference for the purposes of this chapter that, under the substantive law of another State—

(a) it is the nature of the circumstances that they would not have given rise to a cause of action had they occurred in that State; or

(b) the circumstances on which the claim is based do not give rise to a cause of action.

(2) In this section—

another State means a State other than the State with which the injury is connected.

Chapter 6A Medical examinations for former coal workers

325A Application of chapter

This chapter applies to a person (a ***former coal worker***) who—

(a) was a worker employed in an industry that involved mining, loading, transporting or otherwise dealing with coal; and

(b) permanently stopped working in the industry before 1 January 2017.

325B Applications for lung disease examinations

(1) The former coal worker may apply (an ***examination application***) to the insurer for approval to undergo a lung disease examination.

(2) The application must—

(a) be in the approved form; and

(b) include information that shows the former coal worker was exposed to coal dust at the worker's place of employment for a period, whether or not continuous, of at least 6 months; and

(c) be accompanied by a medical certificate signed by a doctor stating that the former coal worker suspects that the worker may have sustained an injury that is a coal mine dust lung disease.

(3) However, an application may not be made under this section—

(a) on or after 1 January 2022; or

(b) if the former coal worker has previously made an application under this section that was approved.

325C Deciding examination applications

(1) Within 20 business days after receiving an examination application, the insurer must—

(a) approve or refuse the application; and

(b) give the applicant written notice of the decision.

(2) The insurer must approve the examination application unless satisfied—

(a) the applicant was not exposed to coal dust at the applicant's place of employment for a period, whether or not continuous, of at least 6 months; or

(b) the applicant was exposed to coal dust at the applicant's place of employment for a period, whether or not continuous, of at least 6 months, but the exposure did not happen in Queensland.

(3) If the insurer refuses the examination application, the notice mentioned in subsection (1)(b) must—

(a) state the reasons for the decision; and

(b) include or be accompanied by information about the rights of review under this Act for the decision.

325D Insurer must arrange and pay for lung disease examinations

(1) If an examination application is approved, the insurer must—

(a) arrange for a lung disease examination of the applicant to be carried out by a doctor who is qualified and competent to carry out the examination; and

(b) within 10 business days after the approval is given, give the applicant a written notice stating—

(i) the day, time and place the lung disease examination will be carried out; and

(ii) the name of the doctor; and

(c) pay for—

(i) the lung disease examination; and

(ii) the preparation of an examination report by the doctor; and

(iii) the giving of a copy and explanation of the examination report to the applicant; and

(iv) any travel costs, that the insurer considers are necessary and reasonable, incurred by the applicant in attending the lung disease examination.

(2) In this section—

examination report means a report about a lung disease examination that states whether or not the applicant is diagnosed as having a coal mine dust lung disease.

Chapter 7 The Workers' Compensation Regulator

Part 1 Office and appointment

326 Establishment of office and appointment of Regulator

(1) The office of the Workers' Compensation Regulator is established.

(2) The Governor in Council may appoint a public service officer as the Workers' Compensation Regulator (the ***Regulator***).

(3) The Regulator is appointed under the *Public Service Act 2008* and may hold that appointment in conjunction with his or her other public service office.

(4) The Regulator must act independently when making a decision under this Act but otherwise is subject to direction in the person's capacity as a public service officer or an officer of the department.

Part 2 Functions and powers

327 Functions of the Regulator

(1) The Regulator has the following functions—

(a) to regulate the workers' compensation scheme;

(b) to monitor the compliance of insurers with this Act;

(c) to monitor the performance of insurers under this Act, including the consistent application of this Act;

(d) to decide applications relating to self-insurance;

(e) to approve amounts payable under an industrial instrument for the purposes of section 107B;

(f) to undertake reviews of decisions under chapter 13, part 2 and manage appeals under chapter 13, part 3;

(g) to support and oversee the efficient administration of medical assessment tribunals;

(h) to undertake workplace rehabilitation and return to work accreditation activities;

(i) to provide rehabilitation advisory services;

(j) to maintain a database for scheme-wide reporting;

(k) to promote education about the workers' compensation scheme;

(l) to collect fees under the Act;

(m) to administer grants under the Act;

(n) to conduct and defend proceedings under this Act before a court or tribunal;

(o) to perform other functions given to the Regulator under this or another Act.

(2) To remove any doubt, it is declared that proceedings mentioned in subsection (1)(n) may be taken by or against the Regulator in the name 'the Workers' Compensation Regulator'.

328 Powers of the Regulator

(1) Subject to this Act, the Regulator has the power to do all things necessary or convenient to be done for or in connection with the performance of the Regulator's functions.

(2) Without limiting subsection (1), the Regulator has all the powers and functions that an authorised person has under this Act.

329 Delegation by the Regulator

The Regulator may delegate a function or power under this Act to an appropriately qualified—

(a) public service employee; or

(b) authorised person; or

(c) person, or a person of a class, prescribed under a regulation.

Part 3 Authorised persons

Division 1 Appointment of authorised persons

330 Appointment of authorised persons

(1) The Regulator may, by instrument, appoint any of the following as an authorised person for the Regulator—

(a) a public service employee;

(b) the holder of a statutory office;

(c) a person of a class prescribed under a regulation.

(2) The following are taken to be authorised persons appointed by the Regulator—

(a) a person appointed as an inspector under the *Industrial Relations Act 2016*, but only for the purposes of chapter 4, part 6, while that person holds the appointment;

(b) a person appointed as an inspector under the *Work Health and Safety Act 2011*, while that person holds the appointment.

331 Accountability of authorised persons

(1) An authorised person must give written notice to the Regulator of all interests, pecuniary or otherwise, that the authorised person has, or acquires, and that conflict or could conflict with the proper performance of the authorised person's functions.

(2) The Regulator must give a direction to an authorised person not to deal, or to no longer deal, with a matter if the Regulator becomes aware that the authorised person has a potential conflict of interest in relation to a matter and the Regulator considers that the authorised person should not deal, or should no longer deal, with the matter.

Note—

Failure to comply with subsection (1) or a direction under subsection (2) may result in action by the Regulator under section 332 or disciplinary action under the *Public Service Act 2008*.

332 Suspension and ending of appointment of authorised persons

(1) The Regulator may suspend or end the appointment of a person appointed under section 330(1).

(2) A person’s appointment as an authorised person ends when the person ceases to be eligible for appointment as an authorised person.

Division 2 Identity cards

333 Identity cards

(1) The Regulator must issue an identity card to each authorised person.

(2) The card must—

(a) contain a recent photo of the authorised person; and

(b) contain a copy of the authorised person’s signature; and

(c) identify the person as an authorised person under this Act; and

(d) state an expiry date for the card.

(3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

334 Production or display of identity card

(1) In exercising a power under this Act in relation to a person in the person’s presence, an authorised person must—

(a) produce the authorised person’s identity card for the person’s inspection before exercising the power; or

(b) have the identity card displayed so it is clearly visible to the person when exercising the power.

(2) However, if it is not practicable to comply with subsection (1), the authorised person must produce the identity card for the person's inspection at the first reasonable opportunity.

335 Return of identity card

If a person to whom an identity card has been issued ceases to be an authorised person, the person must return the identity card to the Regulator as soon as practicable.

Maximum penalty—40 penalty units.

Division 3 Functions of authorised persons etc.

336 Functions of authorised persons

An authorised person has the following functions under this Act—

(a) to provide to the Regulator information and advice about compliance with this Act;

(b) to require compliance with this Act through the issuing of notices;

(c) to investigate contraventions of this Act and assist in the prosecution of offences against this Act.

337 Conditions on authorised persons' compliance powers

An authorised person's powers under this Act are subject to any conditions stated in the instrument of the authorised person's appointment.

338 Authorised persons subject to Regulator's directions

(1) An authorised person is subject to the Regulator's direction in the exercise of powers under this Act.

(2) A direction under subsection (1) may be of a general nature or may relate to a stated matter or stated class of matter.

(3) Without limiting subsection (1), the Regulator must issue directions to authorised persons to ensure powers are exercised under this Act in a way that minimises any adverse effect on the privacy, confidentiality and security of persons and businesses.

339 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 the State.

Chapter 8 WorkCover Queensland

Part 1 Establishment

380 WorkCover is established

WorkCover Queensland is established.

381 WorkCover is a body corporate etc.

WorkCover—

(a) is a body corporate with perpetual succession; and

(b) has a common seal; and

(c) may sue and be sued in its corporate name.

382 Relationship with State

(1) WorkCover represents the State.

(2) Without limiting subsection (1), every WorkCover policy or other insurance contract with WorkCover is guaranteed by the government of the State.

(3) If WorkCover is unable to pay from a fund under its control an amount payable by WorkCover under a policy or contract guaranteed under subsection (2), the amount is to be paid out of consolidated fund to WorkCover.

(4) The consolidated fund is appropriated for the amount.

Part 2 Functions and powers

Division 1 Functions and insurance business

383 General statement of WorkCover's functions

(1) WorkCover's functions are as follows—

(a) to undertake the insurance business mentioned in section 384;

(b) to fund and provide programs and incentives to encourage improved health and safety performance by employers;

(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) is subject to the Minister's directions under chapter 9.

384 WorkCover's insurance business

(1) WorkCover may undertake the business of—

(a) accident insurance; and

(b) other insurance this Act authorises WorkCover to undertake.

(2) WorkCover may reinsure, on conditions that it considers appropriate, all or part of any risk accepted by it.

385 WorkCover as the exclusive provider of accident insurance

(1) Accident insurance is to be undertaken only by WorkCover.

(2) Policies for accident insurance are to be issued by or for WorkCover and no other person or association or group of persons.

(3) A policy issued in contravention of this section is unenforceable at law.

(4) This section is subject to the provisions of this Act authorising self-insurers to provide accident insurance.

385A WorkCover may fund and provide programs and incentives

(1) WorkCover may fund and provide programs and incentives to encourage improved health and safety performance by employers.

(2) Before acting under subsection (1), WorkCover must consult with—

(a) the regulator under the *Work Health and Safety Act 2011*; and

(b) any prescribed entity that has a function or power under an Act relating to the program or incentive proposed.

(3) This section does not limit section 384 or 481A.

(4) In this section—

prescribed entity means an entity prescribed by regulation for this definition.

386 WorkCover's offices

WorkCover may establish offices anywhere and discontinue any WorkCover offices.

Division 2 Powers generally

387 Objects of div 2

The objects of this division include—

(a) abolishing any application of the doctrine of ultra vires to WorkCover; and

(b) ensuring that WorkCover gives effect to any restrictions on its objects or powers, but without affecting the validity of its dealings with outsiders.

388 WorkCover's general powers

(1) WorkCover has, for or in connection with the performance of its functions, all the powers of a natural person, including, for example, the power to—

(a) enter into contracts; and

(b) acquire, hold, dispose of and deal with property; and

(c) appoint attorney and agents, including for debt collection; and

(d) charge, and fix terms, for goods, services and information supplied by it; and

(e) engage consultants; and

(f) establish subsidiaries; and

(g) do all other things necessary or convenient to be done for, or in connection with, the performance of its functions.

(2) Without limiting subsection (1), WorkCover has the powers that are conferred on it by this or another Act.

(3) WorkCover may exercise its powers inside and outside Queensland.

(4) Without limiting subsection (3), WorkCover may exercise its powers in a foreign country.

(5) The fact that the doing of an act by WorkCover would not be, or is not, in its best interests does not affect its power to do the act.

(6) In this section—

power includes legal capacity.

389 General restriction on WorkCover’s powers

(1) Section 388 applies to WorkCover subject to any restrictions on WorkCover’s powers expressly imposed under this or another Act.

(2) Section 388 also applies to WorkCover subject to any restrictions expressly imposed by—

(a) WorkCover’s statement of corporate intent; and

(b) any relevant directions, notifications or approvals given to WorkCover by the Minister.

(3) WorkCover contravenes this subsection if—

(a) WorkCover exercises a power contrary to a restriction mentioned in subsection (1) or (2); or

(b) does an act otherwise than for its functions.

(4) The exercise of the power mentioned in subsection (3)(a), or the act mentioned in subsection (3)(b), is not invalid merely because of the contravention.

(5) A WorkCover officer who is involved in the contravention contravenes this subsection.

(6) An act of the officer is not invalid merely because, by doing the act, the officer contravenes subsection (5).

(7) WorkCover or a WorkCover officer is not guilty of an offence merely because of the contravention.

(8) The fact that—

(a) by exercising the powers mentioned in subsection (3)(a), or doing the act as mentioned in subsection (3)(b), WorkCover contravened, or would contravene, subsection (3); or

(b) by doing a particular act, a WorkCover officer contravened, or would contravene, subsection (5);

may be asserted or relied on only in proceedings between the Minister or the State and officers of WorkCover.

(9) In this section—

restriction includes prohibition.

WorkCover officer means—

(a) a WorkCover director; or

(b) a WorkCover employee; or

(c) an employee of the employing office or of another government entity or non-Queensland government entity who performs work for WorkCover under a work performance arrangement.

390 Disposal of main undertakings

(1) WorkCover may dispose of any of its main undertakings only with the prior written approval of the Minister.

(2) In this section—

main undertakings means the undertakings specified as WorkCover's main undertakings in WorkCover's most recent statement of corporate intent.

391 Acquiring and disposing of subsidiaries

WorkCover may do the following only with the prior written approval of the Minister—

(a) form, or participate in the formation of, a company that will become a WorkCover subsidiary;

(b) acquire shares, or participate in any other transaction that will result in a body corporate becoming, or ceasing to be a WorkCover subsidiary.

392 Protection of persons who deal with WorkCover

(1) If a person has dealings with WorkCover—

(a) the person is entitled to make the assumptions mentioned in subsection (3); and

(b) in a proceeding about the dealings, any assertion by WorkCover that the matters that the person is entitled to assume were not correct must be disregarded.

(2) If a person (the ***first person***) has dealings with another person (the ***second person***) who has acquired, or purports to have acquired, title to property from WorkCover (whether directly or indirectly)—

(a) the first person is entitled to make the assumptions mentioned in subsection (3); and

(b) in a proceeding for the dealings, any assertion by WorkCover or the second person that the matters that the first person is entitled to assume were not correct must be disregarded.

(3) The assumptions that a person is, because of subsection (1) or (2), entitled to make are—

(a) that, at all relevant times, this Act has been complied with; and

(b) that a person who is held out by WorkCover to be a WorkCover officer or agent of WorkCover—

(i) has been properly appointed; and

(ii) has authority to exercise the powers and perform the functions customarily exercised or performed by an officer or agent of the kind concerned; and

(c) that a WorkCover officer or agent of WorkCover who has authority to issue a document for WorkCover has authority to warrant that the document is genuine; and

(d) that a WorkCover officer or agent of WorkCover who has authority to issue a certified copy of a document for WorkCover has authority to warrant that the copy is a true copy; and

(e) that a document has been properly sealed by WorkCover if—

(i) it bears what appears to be an imprint of WorkCover's seal; and

(ii) the sealing of the document appears to be authenticated by a person who, because of paragraph (b), may be assumed to be a WorkCover director or WorkCover's chief executive officer; and

(f) that the directors, chief executive officer, employees and agents of WorkCover have properly performed their duties to WorkCover.

(4) However, a person is not entitled to assume a matter mentioned in subsection (3) if—

(a) the person has actual knowledge that the assumption would be incorrect; or

(b) because of the person's connection or relationship with WorkCover, the person ought to know that the assumption would be incorrect.

(5) If, because of subsection (4), a person is not entitled to make a particular assumption—

(a) if the assumption is in relation to dealings with WorkCover—subsection (1) does not apply to any assertion by WorkCover in relation to the assumption; or

(b) if the assumption is in relation to an acquisition or purported acquisition from WorkCover of title to property—subsection (2) does not apply to any assertion by WorkCover or another person in relation to the assumption.

(6) In this section—

WorkCover officer means—

(a) a WorkCover director; or

(b) a WorkCover employee; or

(c) an employee of the employing office or of another government entity or non-Queensland government entity who performs work for WorkCover under a work performance arrangement.

393 Reserve power of Minister to direct that asset not be disposed of

(1) The Minister may, after consultation with WorkCover's board, give the board a written direction requiring WorkCover not to dispose of a specified asset.

(2) The board must ensure that the direction is complied with.

(3) The Minister must cause a copy of the direction to be published in the gazette within 21 days after it is given.

Part 3 Obligations

Division 1 Corporate plan

394 WorkCover must have corporate plan

WorkCover must have a corporate plan.

395 Guidelines in relation to corporate plans

(1) The Minister may issue guidelines about the form and content of WorkCover's corporate plan.

(2) WorkCover must comply with the guidelines.

396 Draft corporate plan

(1) WorkCover's board must prepare, and submit to the Minister for the Minister's agreement, a draft corporate plan not later than 2 months before the start of each financial year.

(2) The board and the Minister must endeavour to reach agreement on the draft plan as soon as possible and, for a draft corporate plan for a financial year, in any case not later than 1 month before the start of the financial year.

397 Special procedures for draft corporate plan

(1) The Minister may return a draft corporate plan to WorkCover's board and ask it to—

(a) consider or further consider any matter and deal with the matter in the draft plan; and

(b) revise the draft plan in the light of its consideration or further consideration.

(2) The board must comply with the request as a matter of urgency.

(3) If, for a financial year, a draft corporate plan has not been agreed to by the Minister by 1 month before the start of the financial year, the Minister may, by written notice, direct the board—

(a) to take specified steps in relation to the draft plan; or

(b) to make specified changes to the draft plan.

(4) The board must immediately comply with a direction under subsection (3).

(5) The Minister must cause a copy of the direction to be published in the gazette within 21 days after it is given.

398 Corporate plan on agreement

When a draft corporate plan is agreed to by the Minister, it becomes WorkCover's corporate plan for the relevant financial year.

399 Corporate plan pending agreement

(1) This section applies if, for a financial year, the Minister has not agreed to a draft corporate plan before the start of the financial year.

(2) The draft corporate plan submitted or last submitted by WorkCover's board to the Minister before the start of the financial year, with any changes made by the board, whether before or after that time, at the direction of the Minister, is taken to be WorkCover's corporate plan until a draft corporate plan becomes WorkCover's corporate plan under section 398.

400 Changes to corporate plan

(1) WorkCover's corporate plan may be changed by its board with the Minister's agreement.

(2) The Minister may, by written notice, direct the board to change the corporate plan.

(3) The Minister must cause a copy of the direction to be published in the gazette within 21 days after it is given.

Division 2 Statement of corporate intent

401 WorkCover must have statement of corporate intent

WorkCover must have a statement of corporate intent for each financial year.

402 Statement of corporate intent must be consistent with corporate plan

WorkCover's statement of corporate intent must be consistent with its corporate plan.

403 Matters to be included in statement of corporate intent

(1) WorkCover's statement of corporate intent must specify WorkCover's financial and non-financial performance targets for its activities for the relevant financial year.

(2) The statement of corporate intent must also include the matters required by the following sections—

(a) section 404;

(b) section 410;

(c) section 451.

404 Additional matters to be included in statement of corporate intent

(1) WorkCover's statement of corporate intent must include the following additional matters—

(a) an outline of WorkCover's objectives;

(b) an outline of the nature and scope of the activities proposed to be undertaken by WorkCover during the relevant financial year;

(c) an outline of WorkCover's main undertakings during the relevant financial year;

(d) WorkCover's capital structure and payments to the consolidated fund under section 460;

(e) an outline of the borrowings made, and proposed to be made, by WorkCover;

(f) an outline of the policies adopted by WorkCover to minimise and manage any risk of investments and borrowings that may adversely affect its financial stability;

(g) an outline of WorkCover's policies and procedures relating to the acquisition and disposal of major assets;

(h) WorkCover's accounting policies that apply to the preparation of its accounts;

(i) the type of information to be given to the Minister, including information to be given in quarterly and annual reports.

(2) The Minister may exempt WorkCover from including any matter, or any aspect of a matter, mentioned in subsection (1) in the statement of corporate intent.

(3) Subsection (1) does not limit the matters that may be included in a statement of corporate intent.

405 Draft statement of corporate intent

(1) WorkCover's board must prepare, and submit to the Minister for the Minister's agreement, a draft statement of corporate intent not later than 2 months before the start of each financial year.

(2) The board and the Minister must endeavour to reach agreement on the draft statement as soon as possible and, for a draft statement of corporate intent for a financial year, in any case not later than the start of the financial year.

406 Special procedures for draft statement of corporate intent

(1) The Minister may return the draft statement of corporate intent to WorkCover's board and ask it to—

(a) consider or further consider any matter and deal with the matter in the draft statement; and

(b) revise the draft statement in the light of its consideration or further consideration.

(2) The board must comply with the request as a matter of urgency.

(3) If, for a financial year, a draft statement of corporate intent of WorkCover has not been agreed to by the Minister before the start of the financial year, the Minister may, by written notice, direct the board—

(a) to take specified steps in relation to the draft statement; or

(b) to make specified changes to the draft statement.

(4) The board must immediately comply with a direction under subsection (3).

(5) The Minister must cause a copy of the direction to be published in the gazette within 21 days after it is given.

407 Statement of corporate intent on agreement

When a draft statement of corporate intent of WorkCover is agreed to by the Minister, it becomes WorkCover's statement of corporate intent for the relevant financial year.

408 Changes to statement of corporate intent

(1) WorkCover's statement of corporate intent may be changed by its board with the Minister's agreement.

(2) The Minister may, by written notice, direct the board to change the statement of corporate intent.

(3) Before giving the direction, the Minister must consult with the board and take its views into account.

(4) The Minister must cause a copy of the direction to be published in the gazette within 21 days after it is given.

Division 3 Community service obligations

409 Meaning of *community service obligations*

(1) WorkCover's ***community service obligations*** are obligations to perform activities that WorkCover's board establishes to the Minister's satisfaction—

(a) are not in the commercial interests of WorkCover to perform; and

(b) arise because of a direction, notification or duty to which this section applies.

(2) This section applies to the following directions, notifications and duties—

(a) a direction given to WorkCover's board under section 393;

(b) a direction given to WorkCover's board under section 397;

(c) a direction given to WorkCover's board under section 400;

(d) a direction given to WorkCover's board under section 406;

(e) a direction given to WorkCover's board under section 408;

(f) a notification given to WorkCover's board under section 480;

(g) a direction given to WorkCover's board under section 481;

(h) a statutory duty to perform activities, including any economic development activities.

410 Community service obligations to be specified in statement of corporate intent

(1) The community service obligations that WorkCover is to perform are to be specified in its statement of corporate intent.

(2) The costings of, funding for, or other arrangements to make adjustments relating to, WorkCover's community service obligations are also to be specified in its statement of corporate intent.

(3) The statement of corporate intent is conclusive, as between the Government and WorkCover, of—

(a) the nature and extent of WorkCover's community service obligations; and

(b) the ways in which, and the extent to which, WorkCover is to be compensated by the Government for performing its community service obligations.

Division 4 Reports and other accountability matters

411 Quarterly reports

(1) WorkCover's board must give to the Minister a report on the operations of WorkCover for each quarter of a financial year.

(2) A quarterly report must be given to the Minister—

(a) within 1 month after the end of the quarter; or

(b) if another period after the end of the quarter is agreed between the board and the Minister—within the agreed period.

(3) A quarterly report must include the information required to be given in the report by WorkCover's statement of corporate intent.

412 Matters to be included in annual report

(1) Each annual report of WorkCover must—

(a) contain the information that is required to be included in the report by the Minister to enable an informed assessment to be made of WorkCover's operations, including a comparison of the performance of WorkCover's statement of corporate intent; and

(b) state WorkCover's policy for the relevant financial year for payments to the consolidated fund under section 460; and

(c) include the statement of corporate intent for the relevant financial year; and

(d) include particulars of any changes made to the statement of corporate intent during the relevant financial year; and

(e) include particulars of any directions and notifications given to WorkCover's board by the Minister that relate to the relevant financial year; and

(f) include particulars of the impact on the financial position, profits and losses and prospects of WorkCover of any changes made to the statement of corporate intent, and any directions and notifications given to the board by the Minister, that relate to the relevant financial year.

(2) Each annual report of WorkCover must also state whether or not WorkCover's directors consider there are, when the statement is made, reasonable grounds to believe that WorkCover will be able to pay its debts as and when they fall due.

413 Deletion of commercially sensitive matters from annual report etc.

(1) If WorkCover's board asks the Minister to delete from the copies of an annual report of WorkCover and accompanying documents that are to be made public a matter that is of a

commercially sensitive nature, the Minister may delete the matter from the copies of the annual report and accompanying documents that are laid before the Legislative Assembly or otherwise made public.

(2) An annual report of WorkCover may include a summary of a matter required to be included in the annual report, rather than a full statement of the matter, if—

(a) the summary indicates that it is a summary only; and

(b) a full statement of the matter is laid before the Legislative Assembly at the same time as a copy of the annual report is laid before the Legislative Assembly.

(3) Subsections (1) and (2) have effect despite section 412 or another Act.

(4) Subsection (1) has effect despite subsection (2).

414 Board to keep Minister informed

(1) WorkCover's board must—

(a) keep the Minister reasonably informed of the operations, financial performance and financial position of WorkCover, including the assets and liabilities, profits and losses and prospects of WorkCover; and

(b) give the Minister reports and information that the Minister requires to enable the Minister to make informed assessments of matters mentioned in paragraph (a); and

(c) if matters arise that in the board's opinion may prevent, or significantly affect, achievement of WorkCover's objectives outlined in its statement of corporate intent or targets under its corporate plan—immediately inform the Minister of the matters and its opinion about them.

(2) Subsection (1) does not limit the matters of which the board is required to keep the Minister informed, or limit the reports or information that the board is required, or may be required, to give to the Minister, by another Act.

Division 5 Duties and liabilities of directors and other officers of WorkCover

415 Disclosure of interests by director

(1) If a WorkCover director has a direct or indirect interest in a matter being considered, or about to be considered, by WorkCover’s board, the director must disclose the nature of the interest to a meeting of the board as soon as practicable after the relevant facts come to the director’s knowledge.

Maximum penalty—100 penalty units.

(2) The disclosure must be recorded in the board’s minutes.

416 Voting by interested director

(1) A WorkCover director who has a material personal interest in a matter that is being considered by WorkCover’s board must not—

(a) vote on the matter; or

(b) vote on a proposed resolution (a ***related resolution***) under subsection (2) in relation to the matter (whether in relation to the director or another director); or

(c) be present while the matter, or a related resolution, is being considered by the board; or

(d) otherwise take part in any decision of the board in relation to the matter or a related resolution.

Maximum penalty—100 penalty units.

(2) Subsection (1) does not apply to the matter if the board has at any time passed a resolution that—

(a) specifies the director, the interest and the matter; and

(b) states that the directors voting for the resolution are satisfied that the interest should not disqualify the director from considering or voting on the matter.

(3) A quorum is present during a consideration of a matter by the board only if at least 2 directors are present who are entitled to vote on any motion that may be moved in relation to the matter.

(4) The Minister may, by signing consent to a proposed resolution, deal with a matter if the board can not deal with it because of subsection (3).

417 Duty and liability of certain officers of WorkCover

(1) A WorkCover officer must act honestly in the exercise of powers, and discharge of functions, as a WorkCover officer.

Maximum penalty—

(a) if the contravention is committed with intent to deceive or defraud WorkCover, WorkCover's creditors or creditors of another person or for another fraudulent purpose—500 penalty units or 5 years imprisonment; or

(b) in any other case—100 penalty units.

(2) In the exercise of powers and the discharge of functions, a WorkCover officer must exercise the degree of care and diligence that a reasonable person in a like position within WorkCover would exercise.

Maximum penalty—100 penalty units.

(3) A person who is, or was, a WorkCover officer must not make improper use of information acquired because of the person's position as a WorkCover officer—

(a) to gain, directly or indirectly, an advantage for the person or for another person; or

(b) to cause detriment to WorkCover.

Maximum penalty—500 penalty units or 5 years imprisonment.

(4) A WorkCover officer must not make improper use of the officer's position as a WorkCover officer—

(a) to gain, directly or indirectly, an advantage for the officer or another person; or

(b) to cause detriment to WorkCover.

Maximum penalty—500 penalty units or 5 years imprisonment.

(5) If a person contravenes this section in relation to WorkCover, WorkCover may recover from the person as a debt due to WorkCover—

(a) if the person or another person made a profit because of the contravention—an amount equal to the profit; and

(b) if WorkCover suffered loss or damage because of the contravention—an amount equal to the loss or damage.

(6) An amount may be recovered from the person whether or not the person has been convicted of an offence in relation to the contravention.

(7) Subsection (5) is in addition to, and does not limit, the *Criminal Proceeds Confiscation Act 2002*.

(8) In deciding for subsection (2) the degree of care and diligence that a reasonable person in a like position within WorkCover would exercise, regard must be had to—

(a) the fact that the person is a WorkCover officer; and

(b) the application of this Act to WorkCover; and

(c) relevant matters required or permitted to be done under this Act in relation to WorkCover;

including, for example—

(d) any relevant community service obligations of WorkCover; and

(e) any relevant directions, notifications or approvals given to WorkCover by the Minister.

(9) Subsection (8) does not limit the matters to which regard may be had for the purposes of subsection (2).

(10) In this section—

WorkCover officer means—

(a) a WorkCover director; or

(b) WorkCover's chief executive officer; or

(c) another person who is concerned, or takes part, in WorkCover's management.

418 Prohibition on loans to directors

(1) WorkCover must not, whether directly or indirectly—

(a) make a loan to a WorkCover director, a spouse of a director or a relative of a director or spouse; or

(b) give a guarantee or provide security in connection with a loan made to a WorkCover director, a spouse of a director or a relative of a director or spouse.

(2) Subsection (1) does not apply to the entering into by WorkCover of an instrument with a person mentioned in subsection (1) if the instrument is entered into on the same terms as similar instruments, if any, are entered into by WorkCover with members of the public.

(3) A WorkCover director must not be knowingly concerned in a contravention of subsection (1) by WorkCover (whether or not in relation to the director).

Maximum penalty—100 penalty units.

(4) In this section—

relative means—

(a) a parent or remoter lineal ancestor; or

(b) a son, daughter or remoter issue; or

(c) a brother or sister.

419 WorkCover not to indemnify WorkCover officers

(1) WorkCover must not—

(a) indemnify a person who is or has been a WorkCover officer against a liability incurred as an officer; or

(b) exempt a person who is or has been a WorkCover officer from a liability incurred as an officer.

(2) An instrument is void so far as it provides for WorkCover to do something that subsection (1) prohibits.

(3) Subsection (1) does not prevent WorkCover from indemnifying a person against a civil liability, other than a liability to WorkCover, unless the liability arises out of conduct involving a lack of good faith.

(4) Subsection (1) does not prevent WorkCover from indemnifying a person against a liability for costs and expenses incurred by the person—

(a) in defending a proceeding, whether civil or criminal, in which judgment is given in favour of the person or in which the person is acquitted; or

(b) in connection with an application in relation to a proceeding in which relief is granted to the person by a court.

(5) WorkCover may give an indemnity mentioned in subsection (3) or (4) only with the prior approval of the Minister.

(6) In this section—

indemnify includes indemnify indirectly through 1 or more interposed entities.

WorkCover officer means—

(a) a WorkCover director; or

(b) WorkCover's chief executive officer; or

(c) another person who is concerned, or takes part, in WorkCover's management.

420 WorkCover not to pay premiums for certain liabilities of WorkCover officers

(1) WorkCover must not pay, or agree to pay, a premium in relation to a contract insuring a person who is or has been a WorkCover officer against a liability—

(a) incurred by the person as an officer; and

(b) arising out of conduct involving—

(i) a wilful breach of duty in relation to WorkCover; or

(ii) without limiting subparagraph (i), a contravention of section 417(3) or (4).

(2) Subsection (1) does not apply to a liability for costs and expenses incurred by a person in defending proceedings, whether civil or criminal, and whatever their outcome.

(3) An instrument is void so far as it insures a person against a liability in contravention of subsection (1).

(4) In this section—

pay includes pay indirectly through 1 or more interposed entities.

WorkCover officer means—

(a) a WorkCover director; or

(b) WorkCover's chief executive officer; or

(c) another person who is concerned, or takes part, in WorkCover's management.

421 Examination of persons concerned with WorkCover

(1) This section applies if it appears to the Attorney-General that—

(a) a person who has been concerned, or taken part, in WorkCover's management, administration or affairs has been, or may have been, guilty of fraud, negligence, default, breach of trust or breach of duty or other misconduct in relation to WorkCover; or

(b) a person may be capable of giving information about WorkCover's management, administration or affairs.

(2) The Attorney-General may apply to the Supreme Court or a District Court for an order under this section about the person.

(3) The court may order that the person attend before the court at a time and place fixed by the court to be examined on oath on anything about WorkCover's management, administration or affairs.

(4) The examination of the person is to be held in public except so far as the court considers that, because of special circumstances, it is desirable to hold the examination in private.

(5) The court may give directions about—

(a) the matters to be inquired into at the examination; and

(b) the procedures to be followed at the examination, including, if the examination is to be held in private, the persons who may be present.

(6) The person must not fail, without reasonable excuse—

(a) to attend as required by the order; or

(b) to continue to attend as required by the court until the completion of the examination.

Maximum penalty—200 penalty units or 2 years imprisonment.

(7) The person must not fail to take an oath or make an affirmation at the examination.

Maximum penalty—200 penalty units or 2 years imprisonment.

(8) The person must not fail to answer a question that the person is directed by the court to answer.

Maximum penalty—200 penalty units or 2 years imprisonment.

(9) The person may be directed by the court, in the order or by subsequent direction, to produce any document in the person's possession, or under the person's control, relevant to the matters on which the person is to be, or is being, examined.

(10) The person must not, without reasonable excuse, contravene a direction under subsection (9).

Maximum penalty—200 penalty units or 2 years imprisonment.

(11) If the court directs the person to produce a document and the person has a lien on the document, the production of the document does not prejudice the lien.

(12) The person must not knowingly make a statement at the examination that is false or misleading in a material particular.

Maximum penalty—500 penalty units or 5 years imprisonment.

(13) The person is not excused from answering a question put to the person at the examination on the ground that the answer might tend to incriminate the person or make the person liable to a penalty.

(14) If—

(a) before answering a question put to the person at the examination, the person claims that the answer might tend to incriminate the person or make the person liable to a penalty; and

(b) the answer might in fact tend to incriminate the person or make the person liable to a penalty;

the answer is not admissible in evidence against the person in—

(c) a criminal proceeding; or

(d) a proceeding for the imposition of a penalty;

other than a proceeding for an offence against this section or another proceeding in relation to the falsity of the answer.

(15) The court may order the questions put to the person and the answers given by the person at the examination to be recorded in writing and may require the person to sign the record.

(16) Subject to subsection (14), any written record of the examination signed by the person, or any transcript of the examination that is authenticated by the signature of the examiner, may be used in evidence in any legal proceeding against the person.

(17) The person may, at the person's own expense, employ counsel or a solicitor, and the counsel or solicitor may put to the person questions that the court considers just for the purpose of enabling the person to explain or qualify any answers given by the person.

(18) The court may adjourn the examination from time to time.

(19) If the court is satisfied that the order for the examination of the person was obtained without reasonable cause, the court may order the whole or any part of the costs incurred by the person be paid by the State.

422 Power to grant relief

(1) If, in a proceeding against a WorkCover officer for negligence, default, breach of trust or breach of duty as an officer, it appears to the court that—

(a) the officer is or may be liable for the negligence, default or breach; and

(b) the officer has acted honestly; and

(c) having regard to all the circumstances of the case, including circumstances connected with the officer's appointment, the officer ought fairly to be excused for the negligence, default or breach;

the court may relieve the officer, completely or partly, from liability on terms that the court considers appropriate.

(2) If a WorkCover officer believes that a claim will or might be made against the officer for negligence, default, breach of

trust or breach of duty as an officer, the officer may apply to the Supreme Court or a District Court for relief.

(3) The court has the same power to relieve the officer as it would have if a proceeding had been brought against the officer in the court for the negligence, default or breach.

(4) If—

(a) a proceeding mentioned in subsection (1) is being tried by a judge with a jury; and

(b) the judge, after hearing the evidence, is satisfied that the defendant ought under that subsection be relieved, completely or partly, from the liability sought to be enforced against the person;

the judge may withdraw the case, completely or partly, from the jury and direct that judgment be entered for the defendant on the terms, as to costs or otherwise, the judge considers appropriate.

(5) In this section—

WorkCover officer means—

(a) a WorkCover director; or

(b) a WorkCover employee; or

(c) an employee of the employing office or of another government entity or non-Queensland government entity who performs work for WorkCover under a work performance arrangement.

423 False or misleading information or documents

(1) A WorkCover officer must not make a statement concerning the affairs of WorkCover to another WorkCover officer or the Minister that the first officer knows is false or misleading in a material particular.

(2) A complaint against a person for an offence against subsection (1) is sufficient if it states that the statement was

false or misleading to the person's knowledge, without specifying which.

(3) A WorkCover officer must not give to another WorkCover officer or the Minister a document containing information that the first officer knows is false or misleading in a material particular without—

(a) indicating to the recipient that the document is false or misleading and the respect in which the document is false or misleading; and

(b) giving the correct information to the recipient if the first officer has, or can reasonably obtain, the correct information.

Maximum penalty—

(a) if the contravention is committed with intent to deceive or defraud WorkCover, creditors of WorkCover or creditors of another person or for another fraudulent purpose—500 penalty units or 5 years imprisonment; or

(b) in any other case—100 penalty units.

(4) In this section—

WorkCover officer means—

(a) a WorkCover director; or

(b) a WorkCover employee; or

(c) an employee of the employing office or of another government entity or non-Queensland government entity who performs work for WorkCover under a work performance arrangement.

Part 4 Board of directors

Division 1 Establishment of WorkCover's board

424 Establishment of board

(1) WorkCover's board of directors is established.

(2) The board consists of not more than 9 members appointed by the Governor in Council.

425 Appointment of chairperson and deputy chairperson

(1) The Governor in Council may appoint a director to be the board's chairperson and another director to be the board's deputy chairperson.

(2) The deputy chairperson is to act as chairperson—

(a) during a vacancy in the office of chairperson; and

(b) during all periods when the chairperson is absent from duty or is, for another reason, unable to perform the functions of the office.

426 Regard to particular ability in appointment of directors

(1) In appointing a person as a director, the Governor in Council must have regard to the person's ability to make a contribution to WorkCover's implementation of its statement of corporate intent and to its performance as a commercial enterprise.

(2) A person is not eligible for appointment as a director if the person is not able to manage a corporation because of the Corporations Act, part 2D.6.

427 Role of board

The board's role includes the following—

(a) ensuring that, as far as possible, WorkCover achieves, and acts in accordance with, its statement of corporate intent and carries out the objectives outlined in its statement of corporate intent;

(b) accounting to the Minister for its performance as required by this Act or under another law applying to WorkCover;

(c) responsibility for WorkCover's commercial policy and management;

(d) notifying the Minister of the methods and rates it proposes to use to assess premiums;

(e) giving timely advice to the Regulator on information impacting on the workers' compensation scheme;

(f) performing other functions conferred on the board under this or another Act;

(g) ensuring WorkCover otherwise performs its functions in a proper, effective and efficient way.

428 Delegation by board

The board may, by resolution, delegate its powers to—

(a) a WorkCover director; or

(b) a committee of the board; or

(c) WorkCover's chief executive officer; or

(d) an appropriately qualified WorkCover employee or employee of the employing office or of another government entity or non-Queensland government entity who performs work for WorkCover under a work performance arrangement.

Division 2 Meetings and other business of board

429 Meaning of *required minimum number* of directors

In this division—

required minimum number of directors means the number that is half the number of directors of which the board for the time being consists or, if that number is not a whole number, the next higher whole number.

430 Conduct of meetings and other business

Subject to this division, the board may conduct its business, including its meetings, in the way it considers appropriate.

431 Times and places of meetings

(1) Meetings of the board are to be held at the times and places that the board decides.

(2) However, the chairperson—

(a) may at any time convene a meeting; and

(b) must convene a meeting when asked by at least the required minimum number of directors.

432 Presiding at meetings

(1) The chairperson is to preside at all meetings at which the chairperson is present.

(2) If the chairperson is not present at a meeting, the deputy chairperson is to preside.

(3) If both the chairperson and deputy chairperson are not present at a meeting, the director chosen by the directors present at the meeting is to preside.

433 Quorum and voting at meetings

(1) At a meeting of the board—

(a) the required minimum number of directors constitute a quorum; and

(b) a question is to be decided by a majority of the votes of the directors present and voting; and

(c) each director present has a vote on each question arising for decision and, if the votes are equal, the director presiding also has a casting vote.

(2) Subsection (1)(a) has effect subject to section 416.

434 Participation in meetings

(1) The board may hold meetings, or allow directors to take part in its meetings, by using any technology that reasonably allows directors to hear and take part in discussions as they happen.

Example of use of technology—

teleconferencing

(2) A director who takes part in a meeting under subsection (1) is taken to be present at the meeting.

435 Resolutions without meetings

(1) If at least a majority of directors sign a document containing a statement that they are in favour of a resolution stated in the document, a resolution in those terms is taken to have been passed at a meeting of the board held—

(a) on the day on which the document is signed; or

(b) if the directors do not sign it on the same day, the day on which the last of the directors constituting the majority signs the document.

(2) If a resolution is, under subsection (1), taken to have been passed at a meeting of the board, each director must

immediately be advised of the matter and given a copy of the terms of the resolution.

(3) For subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by 1 or more directors, are taken to constitute a single document.

436 Minutes

The board must keep minutes of its proceedings.

Division 3 Other provisions about directors

437 Term of appointment of directors

A director is to be appointed by the Governor in Council for a term of not more than 5 years.

438 Terms of appointment not provided for under Act

(1) In relation to matters not provided for under this Act, a director holds office on the terms of appointment decided by the Governor in Council.

(2) Except as decided by the Governor in Council, a director is not entitled to receive any payment, any interest in property or other valuable consideration or benefit—

(a) by way of remuneration as a director; or

(b) in connection with retirement from office, or other termination of office, as a director.

439 Appointment of acting director

The Governor in Council may appoint a person to act as a director during any period, or all periods, when a director is absent from duty or is, for another reason, unable to perform the functions of the office.

440 Resignation

(1) A director, or person appointed under section 425 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.

441 Termination of appointment as director

(1) The Governor in Council may, at any time, terminate the appointment of all or any directors of the board for any reason or none.

(2) If a person who is a public service officer when appointed as a director ceases to be a public service officer, the person ceases to be a director.

Part 5 The chief executive officer

442 WorkCover's chief executive officer

(1) WorkCover is to have a chief executive officer.

(2) The chief executive officer is to be appointed by the Governor in Council, by gazette notice, on the board's recommendation.

(3) The chief executive officer is to be appointed under this Act and not under the *Public Service Act 2008*.

(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 2016*, section 471 or chapter 8, part 2.

443 Duties of chief executive officer

WorkCover's chief executive officer is, under the board, to manage WorkCover.

444 Things done by chief executive officer

Anything done in the name of, or for, WorkCover by its chief executive officer is taken to have been done by WorkCover.

445 Delegation by chief executive officer

(1) WorkCover's chief executive officer may delegate the chief executive officer's powers, including a power delegated to the chief executive officer, to an appropriately qualified WorkCover employee or employee of the employing office or of another government entity or non-Queensland government entity who performs work for WorkCover under a work performance arrangement.

(2) Subsection (1) has effect subject to any directions of the board further limiting the power to delegate.

446 Additional provisions relating to chief executive officer

(1) The board may appoint a person to act as chief executive officer—

(a) during a vacancy in the office; or

(b) during any period, or all periods, when the chief executive officer is absent from duty or is, for another reason, unable to perform the functions of the office.

(2) The chief executive officer may resign by signed notice given to the chairperson.

(3) The board may, at any time, terminate the appointment of the chief executive officer for any reason or none.

(4) The termination of the appointment of the chief executive officer does not affect a right to which the chief executive officer is entitled under the terms of the chief executive officer's appointment.

Part 6 Other employment provisions

447 Appointment of senior executives

(1) Senior executives of WorkCover may be appointed by the Governor in Council, by gazette notice, on the board's recommendation.

(2) A senior executive is to be appointed under this Act and not under the *Public Service Act 2008*.

(3) Subsection (2) does not affect the *Public Service Act 2008*, section 23.

(4) A person appointed as a senior executive must enter into a contract with WorkCover.

(5) The conditions of the contract are to be decided by the board.

(6) The contract must state the conditions of appointment, including—

(a) a term of the contract of not longer than 5 years; and

(b) the remuneration to which the person is entitled.

(7) The contract must be signed for WorkCover by the board's chairperson.

(8) Subsection (6)(a) does not prevent the senior executive from being reappointed.

(9) An industrial instrument does not apply to a person appointed as a senior executive.

(10) However, subsection (9) has no effect on the *Industrial Relations Act 2016*, section 471 or chapter 8, part 2.

448 WorkCover may enter into work performance arrangements

(1) WorkCover may enter into, and give effect to, a work performance arrangement with—

(a) the employing office; or

(b) the appropriate authority of another government entity or non-Queensland government entity.

(2) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.

(3) For example, a work performance arrangement may provide for—

(a) the appointment of a person to an office, and the holding of the office by the person, for the arrangement; and

(b) the authorising of a person to exercise powers for the arrangement; and

(c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.

(4) A person performing work for WorkCover under a work performance arrangement entered into under subsection (1)—

(a) is not employed by WorkCover; and

(b) remains an employee of the employing office, or an employee of the other government entity or non-Queensland government entity whose appropriate authority is a party to the arrangement.

(5) To remove any doubt, it is declared that WorkCover does not have power to employ a person performing work for WorkCover under a work performance arrangement entered into under subsection (1).

449 Superannuation schemes

(1) WorkCover may—

(a) establish or amend superannuation schemes; or

(b) join in establishing or amending superannuation schemes; or

(c) take part in superannuation schemes.

(2) The auditor-general may audit the schemes.

(3) Subsection (2) is subject to the *Auditor-General Act 2009*.

451 Employment and industrial relations plan

(1) WorkCover's board must prepare an employment and industrial relations plan.

(2) The plan must specify the arrangements for all major employment and industrial relations issues for WorkCover.

452 Application of equal opportunity provisions under Public Service Act 2008

WorkCover is a relevant EEO agency for the *Public Service Act 2008*, chapter 2.

Part 7 Financial provisions

453 WorkCover's capital adequacy

WorkCover is taken to be fully funded if WorkCover—

(a) is able to meet its liabilities for compensation and damages payable from its funds and accounts; and

(b) maintains capital adequacy as required under a regulation.

454 Application of financial legislation

WorkCover is—

(a) a statutory body under the *Financial Accountability Act 2009*; and

(b) a statutory body under the *Statutory Bodies Financial Arrangements Act 1982*.

455 Liability for State taxes

(1) WorkCover is not exempt from State tax merely because it represents the State.

(2) A regulation, or the Treasurer by certificate, may exempt WorkCover from liability to pay a State tax, other than a duty under the *Duties Act 2001*, completely or partly.

(3) State tax is not payable for anything done, including, for example, a transaction entered into or an instrument made, executed, lodged or given, because of, or for a purpose connected with or arising out of, chapter 15.

(4) The Treasurer may certify that a specified matter, instrument, transaction or thing is exempt from State tax under subsection (3), and the matter, instrument, transaction or thing is exempt from State tax.

(5) So far as the legislative power of the Parliament permits, the reference in subsection (3) to State tax includes a reference to tax imposed under an Act of another State.

456 Liability for Commonwealth tax equivalents

(1) WorkCover must pay amounts to the Treasurer for payment into the consolidated fund as required under the tax equivalents manual.

(2) For subsection (1), the tax equivalents manual applies as if WorkCover were a GOC.

(3) In this section—

tax equivalents manual means the tax equivalents manual issued under the *Government Owned Corporations Act 1993*, section 129.

457 Funds and accounts

(1) WorkCover may establish funds and accounts.

(2) WorkCover must pay into the funds and accounts all amounts received by it.

(3) WorkCover may pay out of a WorkCover fund—

(a) amounts in relation to policies, whether of accident insurance or other insurance business undertaken by or for WorkCover; or

(b) amounts for the administration of accident insurance or other insurance business undertaken by or for WorkCover; or

(c) amounts WorkCover considers appropriate for the performance of its functions; or

(d) other amounts that WorkCover may or must pay for any purpose under this or another Act.

458 Reserves

WorkCover may establish reserves it considers appropriate for the performance of its functions.

459 Procedures for borrowing

(1) WorkCover may borrow in accordance with its policies, as outlined in its statement of corporate intent, to minimise and manage any risk of investments and borrowings that may adversely affect its financial stability.

(2) If a proposed borrowing is in accordance with those policies, the *Statutory Bodies Financial Arrangements Act 1982* does not apply to the borrowing.

460 Payment to consolidated fund

(1) For any financial year, WorkCover may pay to the consolidated fund a proportion of a surplus in WorkCover's funds.

(2) WorkCover may only make a payment under this section if WorkCover is fully funded, and the payment does not stop WorkCover being fully funded.

(3) WorkCover's payment must not exceed profits after provision has been made for—

(a) payment of income tax and its equivalents; and

(b) exclusion of unrealised capital gains from upward revaluation of non-current assets.

(4) Within 4 months after the end of each financial year, the board must—

(a) recommend to the Minister whether or not WorkCover may make a payment; and

(b) if the board recommends WorkCover make a payment—recommend to the Minister the amount WorkCover should pay.

(5) The board must consult with the Minister before giving the recommendation.

(6) Within 1 month after receiving the recommendation, the Minister must—

(a) approve the recommendation; or

(b) direct the board to pay an amount the Minister specifies.

(7) The Minister must cause a copy of the direction to be published in the gazette within 21 days after it is given.

461 Additional financial reporting requirements

(1) As soon as practicable after the end of each financial year, WorkCover must give the Minister a report stating the extent to which WorkCover is fully funded.

(2) WorkCover must seek the advice of an appropriately qualified actuary in preparing the report.

Part 8 Authorised persons

Division 1 General

462 Function of authorised person

An authorised person of WorkCover has the function of conducting investigations and inspections to monitor compliance with the requirements of WorkCover in the discharge of its functions under this Act.

463 Authorised person subject to WorkCover’s directions

An authorised person is subject to WorkCover’s directions in exercising powers of an authorised person.

464 Powers of authorised persons

An authorised person has the powers given to the person under this Act or another Act.

465 Limitation on powers of authorised person

The powers of an authorised person may be limited—

(a) under a regulation; or

(b) under a condition of appointment; or

(c) by written notice given by WorkCover to the authorised person.

Division 2 Appointment of authorised persons and other matters

466 Appointment of authorised persons

(1) WorkCover may appoint a WorkCover employee or an employee of the employing office or of another government entity or non-Queensland government entity who performs work for WorkCover under a work performance arrangement as an authorised person.

(2) WorkCover may appoint the person as an authorised person only if WorkCover considers the person has the necessary expertise or experience to be an authorised person.

467 Authorised person's appointment conditions

(1) An authorised person holds office on the conditions stated in the instrument of appointment.

(2) An authorised person—

(a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and

(b) may resign by signed notice given to WorkCover; and

(c) if the conditions of appointment provide—ceases holding office as an authorised person on ceasing to hold another office stated in the appointment conditions (the ***main office***).

(3) However, an authorised person may not resign from the office of authorised person (the ***secondary office***) if a term of the authorised person's employment to the main office requires the authorised person to hold the secondary office.

468 Authorised person's identity card

(1) WorkCover must give an identity card to each authorised person.

(2) The identity card must—

(a) contain a recent photograph of the authorised person; and

(b) be signed by the authorised person; and

(c) identify the person as an authorised person for WorkCover; and

(d) include an expiry date; and

(e) be signed by WorkCover's chief executive officer.

(3) A person who ceases to be an authorised person must return the person's identity card to WorkCover within 5 business days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

469 Display of authorised person's identity card

(1) An authorised person may exercise a power in relation to someone else only if the authorised person—

(a) first produces his or her identity card for the person's inspection; or

(b) has the identity card displayed so it is clearly visible to the person.

(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

470 Protection from liability

(1) An authorised person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to an authorised person, the liability attaches instead to WorkCover.

Part 9 Other provisions about WorkCover

471 WorkCover's seal

(1) WorkCover's seal is to be kept in the custody directed by the board and may be used only as authorised by the board.

(2) The affixing of the seal to a document must be attested by—

(a) 2 or more directors; or

(b) at least 1 director and the chief executive officer; or

(c) a director or the chief executive officer and 1 or more persons authorised by the board.

(3) Judicial notice must be taken of the imprint of WorkCover's seal appearing on a document.

472 Authentication of documents

A document made by WorkCover, other than a document that is required by law to be sealed, is sufficiently authenticated if it is signed by—

(a) the chairperson of the board; or

(b) its chief executive officer; or

(c) a person authorised to sign the document by—

(i) resolution of the board; or

(ii) direction of its chief executive officer.

473 Judicial notice of certain signatures

Judicial notice must be taken of—

(a) the official signature of a person who is or has been chairperson of WorkCover's board, a WorkCover director or WorkCover's chief executive officer; and

(b) the fact that the person holds or has held the relevant office.

474 Giving of documents to board

If this Act authorises or requires a document to be given to WorkCover’s board, it may be given to the board’s chairperson.

475 Application of various other Acts

WorkCover is—

(a) a unit of public administration under the *Crime and Corruption Act 2001*; and

(b) a public authority under the *Ombudsman Act 2001*.

Chapter 8A WorkCover Employing Office

Part 1 Establishment and functions of employing office

475A Establishment of employing office

(1) The WorkCover Employing Office is established.

(2) The employing office consists of—

(a) the executive officer; and

(b) the employees of the employing office.

(3) The employing office is a separate entity from WorkCover.

475B Employing office represents the State

(1) The employing office represents the State.

(2) Without limiting subsection (1), the employing office has the status, privileges and immunities of the State.

475C Functions of employing office

(1) The main functions of the employing office are—

(a) entering into, for the State, a work performance arrangement with WorkCover under which employees of the employing office perform work for WorkCover; and

(b) employing, for the State, staff to perform work for WorkCover under the work performance arrangement; and

(c) doing anything incidental to the discharge of the functions mentioned in paragraphs (a) and (b).

(2) Also, the employing office has any other function conferred on the employing office under this or another Act.

(3) This section does not limit the employing office's power to enter into and give effect to a work performance arrangement under section 475G with a government entity, other than WorkCover, or a non-Queensland government entity.

Part 2 Executive officer

475D Appointment of executive officer

(1) There is to be an executive officer of the employing office.

(2) The executive officer is to be appointed by the Governor in Council.

(3) The executive officer is appointed under this Act and not under the *Public Service Act 2008*.

475E Executive officer acting for employing office

(1) The employing office acts through the executive officer.

(2) Anything done by the executive officer in the name of, or for, the employing office is taken to have been done by the employing office.

Part 3 Staff of employing office

475F Employing office may employ staff

(1) The employing office may, for the State, employ staff.

(2) A person employed under subsection (1) is an ***employee of the employing office***.

(3) The employing office may decide the terms of employment of the employees of the employing office.

(4) Subsection (3) applies subject to any relevant industrial instrument.

(5) Employees of the employing office are employed under this Act and not under the *Public Service Act 2008*.

475G Employing office may enter into work performance arrangements

(1) The employing office may, for the State, enter into and give effect to a work performance arrangement with—

(a) WorkCover; or

(b) the appropriate authority of another government entity or non-Queensland government entity.

(2) A work performance arrangement may make provision for all matters necessary or convenient to be provided under the arrangement.

(3) For example, a work performance arrangement may provide for—

(a) the appointment of a person to an office, and the holding of the office by the person, for the arrangement; and

(b) the authorising of a person to exercise powers for the arrangement; and

(c) whether payment is to be made for work done under the arrangement and, if so, what payment is to be made and who is to make the payment.

(4) A person performing work for WorkCover or other government entity or non-Queensland government entity under a work performance arrangement entered into under subsection (1)—

(a) is not employed by WorkCover or the other government entity or non-Queensland government entity; and

(b) remains an employee of the employing office.

(5) To remove any doubt, it is declared that WorkCover or another government entity or non-Queensland government entity does not have power to employ a person performing work for WorkCover or other government entity or non-Queensland government entity under a work performance arrangement entered into under subsection (1).

Part 4 Other provisions

475H Employing office is statutory body

(1) The employing office is a statutory body under—

(a) the *Financial Accountability Act 2009*; and

(b) the *Statutory Bodies Financial Arrangements Act 1982*.

(2) For applying the *Financial Accountability Act 2009* to the employing office as a statutory body—

(a) the executive officer is taken to be the chairperson of the employing office; and

(b) the *Financial Accountability Act 2009* is taken to require the executive officer to consider the annual financial statements and the auditor-general's report mentioned in the subsection as soon as practicable after they are received by the employing office; and

(c) the *Financial Accountability Act 2009* is taken to require the executive officer to consider any observations, suggestions or comments given to the executive officer under the *Auditor-General Act 2009* as soon as practicable after the executive officer receives them.

Chapter 9 The Minister

Part 1 The Minister and WorkCover

480 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 the policy is carried out in relation to WorkCover.

(3) Before giving the notification, the Minister must—

(a) consult with the board; and

(b) ask 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 gazette within 21 days after it is given; and

(b) tabled in the Legislative Assembly within 14 sitting days after it is given.

481 Reserve power of Minister to give directions in public interest

(1) The Minister may give the 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 the direction is complied with in relation to WorkCover.

(3) Before giving the direction, the Minister must—

(a) consult with the board; and

(b) ask 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 gazette within 21 days after it is given; and

(b) tabled in the Legislative Assembly within 14 sitting days after it is given.

481A 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; or

(d) scheme-wide rehabilitation and return to work programs for workers.

(2) A payment must be approved by the Governor in Council by gazette notice before it is made.

(3) The Minister must cause a copy of the approval to be tabled in the Legislative Assembly within 14 sitting days after it is given.

(4) This section does not limit section 385A.

482 Additional power to direct WorkCover

(1) This section applies to anything other than a commercial activity of WorkCover.

(2) The Minister may give WorkCover a written direction for the administration of this Act.

(3) Before giving the direction, the Minister must—

(a) consult with WorkCover's board; and

(b) ask the board to advise the Minister whether it considers complying with the direction would adversely affect the performance of its functions.

(4) Subsection (3) does not apply if the Minister's direction is in response to a written recommendation of the board about the relevant matter, whether or not the direction implements the recommendation.

(5) The board must comply with the direction.

(6) The Minister must cause a copy of the direction to be—

(a) published in the gazette within 21 days after it is given; and

(b) tabled in the Legislative Assembly within 14 sitting days after it is given.

483 Notice of suspected threat to full funding because of direction or notification

(1) This section applies if—

(a) the board is given a direction or notification by the Minister; and

(b) the board suspects that complying with the direction or notification will threaten WorkCover's ability to achieve or maintain full funding.

(2) The board must immediately give written notice to the Minister and the auditor-general of the suspicion and its reasons for its opinion.

(3) The notice must state that it is given under this section.

(4) The giving of the notice operates to suspend the direction or notification until the Minister gives a written direction to the board stating—

(a) whether the direction or notification mentioned in subsection (1) is to be—

(i) revoked and replaced with an alternative direction or notification; or

(ii) revoked; or

(iii) complied with by the board; and

(b) the reasons for the direction.

(5) The board must ensure the direction under subsection (4) is complied with, subject to subsection (7).

(6) The Minister must cause a copy of the written notice given by the board to the Minister and the auditor-general and the Minister's direction under subsection (4) to be—

(a) published in the gazette within 21 days after it is given; and

(b) tabled in the Legislative Assembly within 14 sitting days after it is given.

(7) This section applies to an alternative direction mentioned in subsection (4)(a)(i) in the way it applies to any other direction.

(8) This section does not apply to a direction or notification given for the purposes of section 481A.

484 WorkCover and WorkCover's board not otherwise subject to government direction

Other than as provided by this or another Act, WorkCover and its board are not subject to direction by or on behalf of the Government.

485 Minister not director etc.

(1) The Minister is not to be treated as a WorkCover director.

(2) The Minister does not incur civil liability for an act or omission done or omitted to be done honestly and without negligence under or for this Act in relation to WorkCover.

(3) A liability that would, apart from subsection (2), attach to the Minister attaches instead to the State.

(4) This section has effect despite the Corporations Act.

486 Monitoring and assessment of WorkCover

(1) The Minister may delegate the Minister's powers under section 414 to—

(a) for any provision of section 414—the chief executive of the department (the ***department chief executive***) or an appropriately qualified public service officer of the department; or

(b) for section 414(1)(a) or (b)—a person appropriately qualified to assess the matters mentioned in section 414(1)(a).

(2) The Minister may ask the department chief executive to investigate, and report to the Minister on, any matter relating to WorkCover.

(3) For an investigation under this section of a matter relating to WorkCover, the department chief executive may give WorkCover written directions.

(4) Without limiting subsection (3), the department chief executive may direct WorkCover—

(a) to give to the department chief executive any information about WorkCover that the department chief executive considers necessary or desirable in connection with the investigation; and

(b) to permit persons authorised by the department chief executive to have access to specified documents about 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 2 The Minister and codes of practice

486A Code of practice

(1) The Minister may make a code of practice that states—

(a) ways an insurer may perform its functions under this Act in relation to the management of its claims; and

(b) ways an insurer may exercise its powers under this Act in relation to the management of its claims; and

(c) ways an insurer may meet its obligations under this Act in relation to the management of its claims.

(2) To remove any doubt, a code of practice can not include a requirement that an insurer acts in a way that is inconsistent with this Act.

(3) The Regulator must recommend the making of a code of practice to the Minister.

(4) The Regulator must consult with the Minister before giving the recommendation.

(5) The Minister must notify the making of a code of practice.

(6) A code of practice expires 10 years after its commencement.

(7) The Regulator must ensure that a copy of each code of practice, and any document applied, adopted or incorporated by the code of practice, is made available for inspection without charge during normal business hours at the Regulator's office.

(8) If a code of practice is inconsistent with a regulation, the regulation prevails to the extent of the inconsistency.

(9) A notice mentioned in subsection (5) is subordinate legislation.

486B Effect of code of practice

(1) Unless otherwise stated in a code of practice, the code of practice does not state all that an insurer must do, or must not do, to perform its functions, exercise its powers and meets its obligations under this Act.

(2) An insurer, including WorkCover, commits an offence if the insurer—

(a) contravenes, or otherwise acts inconsistently with, the code of practice; and

(b) does not follow a way that is as effective as, or more effective than, the code of practice for complying with a requirement of this Act.

Maximum penalty—1,000 penalty units.

Chapter 10 Workers' compensation advisory committees

487 Establishment of committees

The Minister may establish 1 or more workers' compensation advisory committees.

488 Membership of committee

(1) A committee consists of the number of members appointed by the Minister.

(2) The members of a committee may include the following—

(a) a person who represents workers;

(b) a person who represents employers;

(c) a person who represents the Government;

(d) a person who represents self-insurers;

(e) the Regulator;

(f) a person who represents WorkCover;

(g) a person who has other experience the Minister considers appropriate.

489 Role of committee

(1) The role of a committee is to consider any matter referred to it by the Minister.

(2) The committee may make the recommendations to the Minister it considers appropriate about a matter within the scope of the matter referred.

Chapter 11 Medical assessment tribunals

Part 1 Preliminary

490 Object of ch 11

The object of this chapter is to provide for an independent and non-adversarial system of medical review and assessment of—

(a) injury and impairment sustained by workers or other persons for which compensation is payable under this Act or a former Act; and

(b) other personal injury sustained by persons for which payment of an amount is payable under an Act prescribed under a regulation.

490A Application of ch 11

(1) This chapter applies in relation to—

(a) an injury as defined under this Act sustained after the commencement of this Act on 1 July 2003; and

(b) despite section 603, an injury as defined under a former Act as in force when the injury was sustained.

(2) Subsection (1) does not affect section 36A.

(3) For subsection (1)(b), this section also applies, for some purposes, particular provisions of a former Act.

491 Interpretation

(1) For this chapter or a regulation made for this chapter, ***worker*** includes—

(a) a person to whom compensation is payable under this Act or a former Act for injury, including impairment or disfigurement; and

(b) a person to whom an amount is payable for any personal injury under an Act prescribed under a regulation.

Note—

This chapter deals with injury in terms of injury, impairment and disfigurement.

(2) For the application of this chapter or a regulation made for this chapter in relation to an injury mentioned in section 490A(1)(b), ***compensation***, ***disfigurement***, ***impairment*** and ***injury***, and any term used in an applicable provision of a former Act, have the same meaning as they have under the former Act.

Part 2 Tribunals

492 Medical assessment tribunals to be maintained

There are to be maintained for this Act and other Acts prescribed under a regulation the medical assessment tribunals that are prescribed under a regulation.

493 Panels for tribunals

(1) The Governor in Council, by gazette notice, may appoint, for a specified period of not more than 3 years, a panel of doctors for designation to a tribunal.

(2) Each appointee to a panel for a tribunal must be a specialist in the speciality for which the appointment is made.

(3) The Governor in Council, by gazette notice, may also appoint—

(a) an appointee to a panel for a tribunal to be chairperson of the tribunal; and

(b) at least 2 appointees to a panel for a tribunal to be deputy chairpersons of the tribunal.

494 Composition and constitution of tribunals

The composition and constitution of the medical assessment tribunals are as prescribed under a regulation.

495 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 an insurer.

496 Proceedings of tribunals

For each tribunal—

(a) the Regulator 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

499 Definitions for pt 3

In this part—

former tribunal means any of the following established under a former Act—

- a General Medical Board
- a General Medical Assessment Tribunal
- a specialty medical board
- a specialty medical assessment tribunal.

relevant document means a document relevant to a reference of a matter to a tribunal and, in particular, includes the following documents—

(a) an application for compensation;

(b) an application for a damages certificate under the repealed *WorkCover Queensland Act 1996*, section 270 before 1 July 2001;

(c) a notice of claim;

(d) medical reports;

(e) investigative or expert reports;

(f) information about medical treatment or investigations;

(g) statements made by a worker, the worker's employer or a witness;

(h) reasons for a decision made by the insurer under the Act or former Act relevant to the reference.

500 Reference to tribunals

(1) An insurer may refer the following matters in relation to an injury under this Act to the appropriate tribunal for decision on the medical matters involved—

(a) a worker's application for compensation for an alleged injury;

(b) a worker's capacity for work;

(d) a worker's permanent impairment under section 160;

(e) a worker's permanent impairment under section 179;

(f) a worker's level of dependency under section 193;

(fa) whether a worker has a serious personal injury that meets the chapter 4A eligibility criteria for the injury;

(fb) for a worker who the insurer decides is entitled to treatment, care and support payments for an interim period under section 232M, whether the worker's serious personal injury is likely to continue to meet the chapter 4A eligibility criteria for the injury after the interim period ends;

(fc) whether a particular treatment, care and support need resulting from the worker's serious personal injury is necessary and reasonable in the circumstances;

(g) a worker's permanent impairment reviewable under section 266.

(2) An insurer may also, in relation to an injury mentioned in section 490A(1)(b), refer to the appropriate tribunal, for decision on the medical matters involved, a matter that could have been referred to a former tribunal under a former Act.

500A How to make a reference

(1) An insurer refers a matter to a tribunal by—

(a) making a reference in the approved form; and

(b) giving the tribunal a copy of all relevant documents.

(2) The insurer must give the tribunal relevant documents even though otherwise protected by legal professional privilege.

(3) However, the insurer is not required to give the tribunal correspondence between the insurer and the insurer's lawyer that is protected by legal professional privilege.

501 Reference about application for compensation

(1) This section applies on a reference to a tribunal under section 500(1)(a).

(2) If the insurer has not admitted that an injury was sustained by a worker, and the nature of the injury, the tribunal must decide—

(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 resulting in permanent impairment and the insurer asks—the DPI for the injury.

(3) For section 130, the tribunal must decide—

(a) the degree of permanent impairment that could result from the injury; and

(b) the DPI for the injury.

(4) For section 131(4), 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 resulting in permanent impairment and the insurer asks—the DPI for the injury.

502 Reference about worker's capacity for work

(1) This section applies on a reference to a tribunal under section 500(1)(b).

(2) A reference under section 500(1)(b) may be made at any time and from time to time.

(3) The tribunal must decide—

(a) whether, when it makes its decision, there exists in the worker an incapacity for work resulting from the injury for which the application for compensation was made; and

(b) whether the incapacity—

(i) is total or partial; and

(ii) is permanent or temporary; and

(c) if the worker has sustained an injury resulting in permanent impairment and the insurer asks—the DPI for the injury.

504 Reference about worker's permanent impairment

(1) This section applies on a reference to a tribunal under section 500(1)(d).

(2) The tribunal must decide—

(a) the degree of permanent impairment that could result from the injury; and

(b) the DPI for the injury.

505 Reference about worker's permanent impairment

(1) This section applies on a reference to a tribunal under section 500(1)(e).

(2) The tribunal must decide—

(a) whether the worker has sustained a degree of permanent impairment; and

(b) if the worker has sustained a degree of permanent impairment—

(i) the degree of permanent impairment resulting from the injury; and

(ii) the DPI for the injury.

506 Reference about worker's level of dependency

(1) On a reference to a tribunal under section 500(1)(f), 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.

506A Reference about whether serious personal injury meets chapter 4A eligibility criteria

On a reference to a tribunal under section 500(1)(fa), the tribunal must decide whether the worker's injury is a serious personal injury that meets the chapter 4A eligibility criteria for the injury.

506B Reference about whether serious personal injury will continue to meet chapter 4A eligibility criteria after interim period ends

On a reference to a tribunal under section 500(1)(fb), the tribunal must decide whether the worker's serious personal injury is likely to continue to meet the chapter 4A eligibility criteria for the injury after the interim period ends.

506C Reference about whether particular treatment, care or support need is necessary and reasonable

On a reference to a tribunal under section 500(1)(fc), the tribunal must decide whether the particular treatment, care and support need resulting from the worker's serious personal injury is necessary and reasonable in the circumstances.

507 Reference about review of worker's permanent impairment

(1) This section applies on a reference to a tribunal under section 500(1)(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; and

(c) the additional DPI for the injury.

508A Reference for former Act

(1) This section applies on a reference to a tribunal under section 500(2).

(2) A provision of a former Act that authorised or regulated the matters that could be referred to a former tribunal, or a decision on those matters, applies to the reference.

(3) In the event of doubt, a regulation may declare a provision of a former Act to be a provision to which subsection (2) applies.

509 Limitation of tribunals' jurisdiction

(1) A tribunal has no jurisdiction to decide whether a person to whom an application for compensation relates is or is not, or was or was not, a worker at any time material to the application.

(2) A decision of a tribunal is not admissible in evidence as proof, or as tending to prove, that a person to whom an application for compensation relates, or who has sustained an injury, is or is not, or was or was not, a worker at any time material to the application.

510 Power of tribunal to examine worker

(1) On a reference to a tribunal about a non-fatal 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 registered person nominated by it.

(1A) It is entirely in the tribunal's discretion who may be present at a personal examination of the worker, but in any circumstances the only representative who may be present is a person nominated by the worker to be the worker's representative.

(2) Subsection (3) applies if a worker—

(a) fails, without reasonable excuse, to attend at the time and place of which the worker has been given at least 5 business days written notice by the secretary to the tribunal; or

(b) having attended, refuses to be examined by the tribunal, a member of the tribunal, or the doctor; or

(c) obstructs, or attempts to obstruct, the examination.

(3) Any entitlement the worker may have to compensation is suspended until—

(a) the worker undergoes the examination; or

(b) the tribunal, with the agreement of the secretary to the tribunal, exempts the worker from the examination.

Part 4 Proceedings for exercise of tribunals' jurisdiction

510A Definitions for pt 4

In this part—

relevant document see section 499.

representative means a person nominated by a worker to be the worker's representative in relation to a reference of a matter to a tribunal.

510B Tribunal may require insurer to give further information

(1) The tribunal may, by written notice, require the insurer to give the tribunal, within the period stated in the notice, any further information the tribunal needs to decide the matter referred to the tribunal.

(2) The insurer must comply with the notice.

510C Exchange of relevant documents before tribunal

(1) After an insurer refers a matter to a tribunal, relevant documents can only be exchanged between an insurer, the worker and the tribunal.

(2) To remove any doubt, it is declared that an employer who is not an insurer or any other person not mentioned in subsection (1) whose interests may be affected by a decision made by a tribunal can not be given copies of relevant documents after a matter is referred to a tribunal.

(3) The tribunal must give the worker a copy of a relevant document given by the insurer to the tribunal—

(a) if the document is given under section 500A—within 10 business days after a matter is referred to the tribunal; or

(b) otherwise—within 5 business days after the tribunal receives the document.

(4) At least 10 business days before the worker is scheduled to attend before the tribunal, the worker must give the tribunal and the insurer a copy of any relevant document the worker wants considered by the tribunal.

(5) At least 3 business days before the worker is scheduled to attend before the tribunal, the insurer may give the tribunal and the worker a written submission on the factual matters referred to in the relevant documents given by the worker under subsection (4).

(6) A tribunal may proceed to decide a matter even though an insurer has not given a written submission to the tribunal and the worker.

(7) A tribunal can not consider or rely on any relevant document given by the insurer or worker that has not been exchanged under this part.

(8) However, subsection (7) does not prevent the tribunal from relying on either of the following—

(a) a report resulting from an examination of a worker by a registered person nominated by the tribunal under section 510(1)(b);

(b) a medical image given to the tribunal by the worker.

Examples of medical images—

CT, MRI, ultrasound scan, X-ray

511 Right to appear and be heard before tribunal

(1) Despite any Act or law, this section is the only provision of law under which a person may be heard in relation to a matter referred to a tribunal, whether in relation to an injury mentioned in section 490A(1)(a) or (b).

(2) On a reference to a tribunal, the worker is entitled to be heard before the tribunal in person or by the worker's representative.

(3) Only the worker and any representative of the worker may be present or heard before the tribunal.

(4) To remove any doubt, it is declared that an insurer, employer, or any other person (not being the worker) whose interests may be affected by a decision made by a tribunal can not be present, represented or heard before a tribunal.

511A New medical information

(1) This section applies if—

(a) new information about a medical matter, other than information in a relevant document, comes to the tribunal's knowledge when a worker attends before the tribunal; or

(b) the tribunal receives a report resulting from an examination of a worker by a registered person nominated by the tribunal under section 510(1)(b).

(2) The tribunal is not required to give the information or report to an insurer or the worker's employer or to anyone else for any purpose, either before or after the tribunal makes its decision.

511B Record keeping by tribunal

(1) The tribunal must keep a record of—

(a) relevant documents exchanged in relation to a matter referred to the tribunal; and

(b) the reasons for its decision on the reference.

(2) However, the tribunal is not required to make a transcript or recording of the worker's attendance before the tribunal.

(3) A transcript or recording, if made, can only be disclosed to the worker and any representative of the worker.

(4) This section does not limit section 516.

512 Further reference on fresh evidence

(1) This section applies to any reference to a tribunal under any paragraph of section 500(1) relating to a worker's injury if the reference is not about a matter mentioned in section 266.

(2) The worker may ask the insurer to consider fresh medical evidence about the worker's injury within 12 months of the making of the original decision.

(3) The insurer 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.

(5) A decision of the review panel is final and may not be appealed against.

(6) If the review panel accepts the medical evidence, the insurer 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 DPI of the worker of less than 20%, the worker's entitlement does not extend to a further election under section 189 for the injury.

(8A) In relation to a reference to a tribunal under section 500(2), a provision of a former Act dealing with a further reference on fresh evidence applies and subsections (1) to (8) do not apply.

(9) In this section—

review panel means a panel consisting of the chairperson or deputy chairperson of the General Medical Assessment Tribunal and a member of the original panel.

513 Deferral of decisions

(1) A tribunal may, from time to time, defer its decision on a reference to it.

(2) However, a deferral must not be for longer than 3 months at any 1 time.

514 Tribunal may refer non-medical matters back to insurer

(1) If the tribunal considers that the terms of a reference to it involve—

(a) both medical and non-medical matters; or

(b) entirely non-medical matters;

the tribunal may refer the non-medical matters back to the insurer for a decision.

(2) To remove any doubt, it is declared that if the tribunal decides a medical matter mentioned in subsection (1)(a), section 515 applies to that decision.

(3) Section 513 applies to a reference back to the insurer under subsection (1).

515 Finality of tribunal's decision

(1) Either of the following decisions of the tribunal is final and can not be questioned in a proceeding before a tribunal or a court, except under section 512—

(a) a decision on a medical matter referred to the tribunal under section 500;

(b) a decision under section 514(1).

(2) Subsection (1) has no effect on the *Judicial Review Act 1991*.

516 Decisions of tribunal

(1) A tribunal must give a written decision for any matter referred to it with reasons for the decision.

(2) A tribunal must give a copy of its decision to the insurer and to—

(a) the worker; or

(b) the worker's representative.

517 Protection from liability

(1) A member of a tribunal does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.

(2) If subsection (1) prevents a civil liability attaching to a member of the tribunal, the liability attaches instead to the State.

Chapter 12 Enforcement

Part 1 Authorised persons and enforcement

Division 1 Power to enter

Subdivision 1 General powers of entry

518 Powers of entry

(1) For performing functions under this Act, an authorised person may at any time enter a place that is, or that the authorised person reasonably suspects is, a workplace.

(2) An entry may be made under subsection (1) with, or without, the consent of the person with management or control of the workplace.

(3) If an authorised person enters a place under subsection (1) and it is not a workplace, the authorised person must leave the place immediately.

(4) An authorised person may enter any place if the entry is authorised by a search warrant.

519 Notification of entry

(1) An authorised person may enter a place under section 518 without prior notice to any person.

(2) An authorised person must, as soon as practicable after entry to a workplace or suspected workplace, take all reasonable steps to notify the following persons of the entry and the purpose of the entry—

(a) the person conducting a relevant business or undertaking at the workplace;

(b) the person with management or control of the workplace.

(3) However, an authorised person is not required to notify any person if to do so would defeat the purpose for which the place was entered or cause unreasonable delay.

(4) In this section—

relevant business or undertaking means a business or undertaking in relation to which the authorised person is exercising the power of entry.

520 Persons assisting authorised persons

(1) A person (the ***assistant***), including an interpreter, may accompany an authorised person entering a place under section 518 to assist the authorised person if the authorised person considers the assistance is necessary.

(2) The assistant—

(a) may do the things at the place, and in the way, that the authorised person reasonably requires to assist the authorised person to exercise the authorised person's powers under this part; but

(b) must not do anything that the authorised person does not have power to do, except as permitted under a search warrant.

(3) Anything done lawfully by the assistant is taken for all purposes to have been done by the authorised person.

Subdivision 2 Search warrants

521 Search warrants

(1) An authorised person may apply to a magistrate for a search 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 search warrant only if the magistrate is 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 72 hours, at the place.

(5) The search warrant must state—

(a) that a stated authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person's powers under this part; and

(b) the offence for which the search warrant is sought; and

(c) the evidence that may be seized under the search warrant; and

(d) the hours of the day or night when the place may be entered; and

(e) the date, within 7 days after the search warrant's issue, the search warrant ends.

522 Electronic application

(1) An application under section 521 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised person reasonably considers it necessary because of—

(a) urgent circumstances; or

(b) other special circumstances, including, for example, the authorised person's remote location.

(2) The application—

(a) may not be made before the authorised person prepares a written application under section 521(2); but

(b) may be made before the application is sworn.

(3) The magistrate may issue the search warrant (the ***original warrant***) only if the magistrate is satisfied—

(a) it was necessary to make the application under this section; and

(b) the way the application was made was appropriate.

(4) After the magistrate issues the original warrant—

(a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised person, including, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised person; or

(b) otherwise—

(i) the magistrate must tell the authorised person the information mentioned in section 521(5); and

(ii) the authorised person must complete a form of warrant, including by writing on it the information mentioned in section 521(5) provided by the magistrate.

(5) The copy of the original warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.

(6) The authorised person must, at the first reasonable opportunity, send to the magistrate—

(a) the written application complying with section 521(2); and

(b) if the authorised person completed a form of warrant under subsection (4)(b)—the completed form of warrant.

(7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—

(a) attach the documents to the original warrant; and

(b) give the original warrant and documents to the clerk of the court of the Magistrates Court.

(8) Despite subsection (5), if—

(a) an issue arises in a proceeding about whether an exercise of a power was authorised by a search warrant issued under this section; and

(b) the original warrant is not produced in evidence;

the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a search warrant authorised the exercise of the power.

(9) This section does not limit section 521.

523 Entry procedure

(1) This section applies if an authorised person is intending to enter a place under a search warrant issued under this subdivision.

(2) Before executing a search warrant, the authorised person named in the warrant or an assistant to the authorised person must do or make a reasonable attempt to do the following things—

(a) identify himself or herself to a person who is an occupier of the place and is present by producing the authorised person's identity card or another document evidencing the authorised person's appointment;

(b) give the person a copy of the warrant;

(c) tell the person the authorised officer is authorised by the warrant to enter the place;

(d) give any person at the place an opportunity to allow the authorised person immediate entry without using force.

(3) However, the authorised person or an assistant to the authorised person is not required to comply with subsection (1) if he or she reasonably believes that immediate entry to the place is needed to ensure—

(a) the safety of any person; or

(b) that the effective execution of the search warrant is not frustrated.

524 Copy of search warrant to be given to person with management or control of place

(1) If the person who has or appears to have management or control of a place is present at the place when a search warrant is being executed, the authorised person must—

(a) identify himself or herself to that person by producing his or her identity card for inspection; and

(b) give that person a copy of the execution copy of the warrant.

(2) In this section—

execution copy includes a duplicate warrant mentioned in section 522(5).

Subdivision 3 Limitation on entry powers

525 Places used for residential purposes

Despite anything else in this part, the powers of an authorised person under this part in relation to entering a place are not exercisable in relation to any part of a place that is used only for residential purposes except—

(a) with the consent of the person with management or control of the place; or

(b) under the authority conferred by a search warrant; or

(c) for the purpose only of gaining access to a suspected workplace, but only—

(i) if the authorised person reasonably believes that no reasonable alternative access is available; and

(ii) at a reasonable time having regard to the times at which the authorised person believes work is being carried out at the place to which access is sought.

Division 2 Specific powers after entry

Subdivision 1 General

526 General powers

(1) An authorised person who enters a place under this part may do all or any of the following—

(a) search any part of the place;

(b) inspect, examine, take measurements of or film any part of the place or anything at the place;

(c) take for examination a thing, or a sample of or from a thing, at the place;

(d) place an identifying mark in or on anything at the place;

(e) take to, into or onto the place and use any person, equipment and materials the authorised person reasonably requires for exercising the authorised person's functions under this part;

(f) take an extract from, or copy, a document at the place, or take the document to another place to copy;

(g) produce an image or writing at the place from an electronic document or, to the extent it is not practicable, take a thing containing an electronic document to another place to produce an image or writing;

(h) remain at the place for the time necessary to achieve the purpose of the entry.

(2) The authorised person may take a necessary step to allow the exercise of a power under subsection (1).

(3) If the authorised person takes a document from the place to copy it, the authorised person must copy the document and return it to the place as soon as practicable.

(4) If the authorised person takes from the place an article or device reasonably capable of producing a document from an electronic document, the authorised person must produce the document and return the article or device as soon as practicable.

(5) In this section—

examine includes analyse, test, account, measure, weigh, grade, gauge and identify.

film includes photograph, videotape and record an image in another way.

527 Power to require reasonable help

(1) An authorised person who enters a place under this part may make a requirement (a ***help requirement***) of an occupier of the place or a person at the place to give the authorised person reasonable help to exercise a power under section 526, including, for example, to produce a document or to give information.

(2) When making the help requirement, the authorised person must give the person an offence warning for the requirement.

528 Offence to contravene help requirement

(1) A person of whom a help requirement under section 527 has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) It is a reasonable excuse for an individual not to comply with a help requirement if complying might tend to incriminate the individual or expose the individual to a penalty.

(3) However, subsection (2) does not apply if a document or information the subject of the help requirement is required to be held or kept by the person under this Act.

Subdivision 2 Seizure

529 Power to seize evidence etc.

(1) An authorised person who enters a place under this part, other than under a search warrant, may seize anything, including a document, at the place if the authorised person reasonably believes the thing is evidence of an offence against this Act.

(2) An authorised person who enters a place with a search warrant may seize the evidence for which the warrant was issued.

(3) An authorised person who enters a place with a search warrant may also seize anything else at the place if the authorised person reasonably believes—

(a) the thing is evidence of an offence against this Act; and

(b) the seizure is necessary to prevent the thing being hidden, lost or destroyed or used to continue or repeat the offence.

530 Receipt for seized things

(1) As soon as practicable after an authorised person seizes a thing under this subdivision, 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 in a conspicuous position and in a reasonably secure way at the place of seizure.

(3) The receipt must describe generally each thing seized and its condition.

(4) This section does not apply to a thing if it is impracticable or would be unreasonable, given the thing's nature, condition and value, to give the receipt required by this section.

531 Access to seized thing

(1) Until a thing seized under this subdivision is returned, the authorised person who seized the thing must allow an owner of the thing—

(a) to inspect it at any reasonable time and from time to time; and

(b) if it is a document—to copy it.

(2) Subsection (1) does not apply if it is impracticable or would be unreasonable to allow the inspection or copying.

(3) The inspection or copying must be allowed free of charge.

532 Return of seized thing

(1) The authorised person must return a thing seized under this subdivision to an owner—

(a) generally—at the end of 6 months after the seizure; or

(b) if a proceeding for an offence involving the thing is started within the 6 months—at the end of the proceeding and any appeal from the proceeding.

(2) Despite subsection (1), if the thing was seized as evidence, the authorised person must return the thing seized to an owner as soon as practicable after the authorised person is satisfied—

(a) its continued retention as evidence is no longer necessary; and

(b) it is lawful for the owner to possess it.

(3) Nothing in this section affects a lien or other security over the seized thing.

Division 3 Other powers of authorised person etc.

532A Power to require name and address

(1) This section applies if an authorised person—

(a) finds a person committing an offence against this Act; or

(b) finds a person in circumstances that lead the authorised person to reasonably suspect the person has just committed an offence against this Act; or

(c) has information that leads the authorised person to reasonably suspect a person has just committed an offence against this Act.

(2) The authorised person may require the person to state the person's name and residential address.

(3) The authorised person may also require the person to give evidence of the correctness of the stated name or address if, in

the circumstances, it would be reasonable to expect the person to—

(a) be in possession of evidence of the correctness of the stated name or address; or

(b) otherwise be able to give the evidence.

(4) When making a personal details requirement, the authorised person must give the person an offence warning for the requirement.

(5) A requirement under this section is a ***personal details requirement***.

532B Offence to contravene personal details requirement

(1) A person of whom a personal details requirement has been made must comply with the requirement unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) A person may not be convicted of an offence under subsection (1) unless the person is found guilty of the offence in relation to which the personal details requirement was made.

(3) In this section—

person details requirement see section 532A(5).

532C Power to require information or documents from particular persons

(1) This section applies if an authorised person reasonably believes 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 contravention of this Act the authorised person reasonably believes has been committed.

(2) The authorised person may require the person to give the information or produce for inspection the documents to the authorised person at a reasonable time and place nominated by the authorised person and allow the authorised person to make a copy of the documents.

(3) To remove any doubt, it is declared that under subsection (2), an authorised person may require the information to be given, or the documents to be produced immediately, at the place the requirement is made, if the requirement is reasonable in the circumstances.

(4) When making a requirement under subsection (2), the authorised person must give the person an offence warning for the requirement.

(5) The person must comply with a requirement under subsection (2), unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(6) It is a reasonable excuse for an individual not to comply with a requirement under subsection (2) if complying might tend to incriminate the individual or expose the individual to a penalty.

(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).

532D Keeping and inspection of particular 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—100 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—100 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.

Division 4 Damage and compensation

532E Duty to avoid inconvenience and minimise damage

In exercising a power under this part, an authorised person must take all reasonable steps to cause as little inconvenience, and do as little damage, as possible.

Note—

See also section 532G.

532F Notice of damage

(1) This section applies if an authorised person or an assistant to an authorised person damages a thing when exercising or purporting to exercise a power under this part.

(2) However, this section does not apply to damage the authorised person reasonably considers is trivial or if the authorised person reasonably believes—

(a) there is no-one apparently in possession of the thing; or

(b) the thing has been abandoned.

(3) The authorised person must give notice of the damage to the person who appears to the authorised person to be an owner, or person in control, of the thing.

(4) However, 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 it is left in a conspicuous position and in a reasonably secure way.

(5) The authorised person may delay complying with subsection (3) or (4) if the authorised person reasonably suspects complying with the subsection may frustrate or otherwise hinder an investigation by the authorised person.

(6) The delay may be only for so long as the authorised person continues to have the reasonable suspicion and remains in the vicinity of the place.

(7) If the authorised person believes the damage was caused by a latent defect in the thing or other circumstances beyond the control of the authorised person or the assistant, the authorised person may state the belief in the notice.

(8) The notice must state—

(a) particulars of the damage; and

(b) that the person who suffered the damage may claim compensation under section 532G.

532G Compensation

(1) A person may claim compensation if the person incurs loss because of the exercise, or purported exercise, of a power by

or for an authorised person including a loss arising from compliance with a requirement made of the person under this part.

(2) The compensation may be claimed from—

(a) for the exercise, or purported exercise, of a power by or for an authorised person of the Regulator—the State; or

(b) for the exercise, or purported exercise, of a power by or for an authorised person of WorkCover—WorkCover.

(3) The compensation may be claimed and ordered in a proceeding—

(a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or

(b) for an alleged offence against this Act the investigation of which gave rise to the claim for compensation.

(4) A court may order the payment of compensation only if it is satisfied it is just to make the order in the circumstances of the particular case.

(5) In considering whether it is just to order compensation, the court must have regard to any relevant offence committed by the claimant.

(6) A regulation may prescribe other matters that may, or must, be taken into account by the court when considering whether it is just to order compensation.

(7) Section 532E does not provide for a statutory right of compensation other than is provided by this section.

(8) In this section—

loss includes costs and damage.

Division 5 Offences in relation to authorised persons

532H Offence to hinder or obstruct authorised person

(1) A person must not obstruct an authorised person exercising a power, or someone helping an authorised person exercising a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

(2) If a person has obstructed an authorised person, or someone helping an authorised person, and the authorised person decides to proceed with the exercise of the power, the authorised person must warn the person that—

(a) it is an offence to cause an obstruction unless the person has a reasonable excuse; and

(b) the authorised person considers the person's conduct an obstruction.

(3) In this section—

obstruct includes assault, hinder, resist, attempt to obstruct and threaten to obstruct.

532I Impersonating an authorised person

A person must not impersonate an authorised person.

Maximum penalty—100 penalty units.

532J Giving authorised person false or misleading information

A person must not, in relation to the administration of this Act, give an authorised person information, or a document containing information, that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

Division 6 Recovery of costs

532K Costs of investigation

(1) This section applies if a person is convicted by a court of an offence against this Act.

(2) The court may order the person to pay to the Regulator or WorkCover the reasonable costs of any investigation about the offence, including reasonable costs of preparing for the prosecution.

(3) This section does not limit the orders for costs the court may make on the conviction.

Part 2 Fraud and false and misleading statements

533 Offences involving fraud

(1) A person must not in any way defraud or attempt to defraud an insurer.

Maximum penalty—500 penalty units or 5 years imprisonment.

(2) If conduct that constitutes an offence defined in subsection (1) is recurrent so that, but for this subsection, each instance of the conduct would constitute a separate offence, 2 or more instances of the conduct are to be taken to constitute but 1 offence committed over a period specified in the complaint laid in relation to the conduct, and may be charged and be dealt with on 1 complaint.

534 False or misleading information or documents

(1) This section applies to a statement made or document given—

(a) to the Regulator or WorkCover for the purpose of its functions under this Act; or

(b) to an entity or person as a self-insurer; or

(c) to a registered person for the purpose of an application for compensation or a claim for damages.

(2) A person must not state anything to the Regulator, WorkCover, a self-insurer or a registered person the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units or 1 year's imprisonment.

(3) A person must not give the Regulator, WorkCover, a self-insurer or a registered person a document containing information the person knows is false or misleading in a material particular.

Maximum penalty—150 penalty units or 1 year's imprisonment.

(4) Subsection (3) does not apply to a person who, when giving the document—

(a) informs the Regulator, WorkCover, the self-insurer or the registered person, to the best of the person's ability, how it is false or misleading; and

(b) gives the correct information to the Regulator, WorkCover, the self-insurer or the registered person, if the person has, or can reasonably obtain, the correct information.

(5) It is enough for a complaint against a person for an offence against subsection (2) or (3) to state the information or document was false or misleading to the person's knowledge, without specifying which.

535 Particular acts taken to be fraud

(1) This section applies if a person—

(a) lodges an application for compensation with an insurer; and

(b) engages in a calling; and

(c) without reasonable excuse, does not inform the insurer, in the way stated under section 136, of the person’s engagement in the calling.

(2) If compensation is paid by the insurer under the application to the person or anyone else—

(a) after the start of the engagement in the calling; and

(b) before the insurer is informed in the way stated under section 136 of the engagement in the calling;

the person is taken to have defrauded the insurer of the payments under section 533.

(3) If payments to which subsection (2) applies are not made, the person is taken to have attempted to defraud the insurer under section 533.

536 Duty to report fraud or false or misleading information or documents

(1) This section applies if—

(a) an employer who is not a self-insurer reasonably believes that a person is defrauding, or attempting to defraud, WorkCover; or

(b) an employer who is a self-insurer reasonably believes that a person is defrauding, or attempting to defraud, the self-insurer; or

(c) WorkCover reasonably believes that a person is defrauding, or attempting to defraud, WorkCover.

(2) Without limiting subsection (1), this section also applies if—

(a) an employer who is not a self-insurer reasonably believes 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 reasonably believes 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; or

(c) WorkCover reasonably believes 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.

(3) The employer who is not a self-insurer must, without delay, give WorkCover the information the employer has in relation to the defrauding, attempting to defraud, stating of the thing or giving of the document.

Maximum penalty—50 penalty units.

(4) The employer who is a self-insurer must, without delay, give the Regulator 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.

(5) WorkCover must, without delay, give the Regulator the information it has in relation to the defrauding, attempting to defraud, stating of the thing or giving of the document.

Maximum penalty—50 penalty units.

537 Fraud and related offences end entitlement to compensation and damages

(1) This section applies if a person is convicted of any of the following offences committed against an insurer in relation to an application for compensation or a claim for damages—

(a) an offence under section 533;

(b) an offence or an attempt to commit an offence under the Criminal Code, section 123, 408C or 488.

(2) Any entitlement the person may have to compensation or damages for the injury, and any existing claim for compensation or damages, ends.

(3) If, in the proceeding for the offence, the prosecution proves the person obtained payment of compensation or damages by

the insurer, by conduct that is the offence, then, whether or not a penalty is imposed, the court must, on application by the insurer, order the person to repay the insurer all amounts of compensation or damages paid to or on account of the person as a result of the commission of the offence.

(4) The Regulator may represent WorkCover or the self-insurer for subsection (3).

(5) An order made by a court under subsection (3) may be enforced as if it were an order made by a court in civil proceedings for a debt.

(6) Any costs incurred by an insurer in relation to a proceeding for damages to which subsection (3) applies are to be recovered on a solicitor and own client basis from the person convicted under section 533.

(7) Subsection (2) does not apply to a person only because the person is taken under section 535 to have—

(a) attempted to defraud an insurer; or

(b) defrauded an insurer of an amount not more than the equivalent of 1 week of the person's normal weekly earnings.

Chapter 13 Reviews and appeals

Part 1 Internal review of proposed decisions

538 Internal review by insurer

(1) Before an insurer makes any of the following decisions, the insurer must undertake an internal review of the proposed decision—

(a) a decision to reject an application for compensation;

(aa) a decision not to provide a service under section 232AB;

(b) a decision under section 232M that a worker is not entitled to treatment, care and support payments;

(c) a decision to refuse a service request, or approve a service request on conditions, under section 232P;

(d) a decision to refuse a payment request under section 232R;

(e) a decision under section 232S that the insurer is not satisfied that a worker's serious personal injury is likely to continue to meet the chapter 4A eligibility criteria for the injury after the interim period ends;

(f) a decision under section 232S that a worker's entitlement to treatment, care and support payments ends before the end of the interim period;

(g) a decision to not accept liability to make treatment, care and support payments under section 232ZD;

(h) a decision to amend approved services for an eligible worker under section 232ZG;

(i) a decision to suspend, under section 232ZH, a worker's entitlement to treatment, care and support payments for all or part of a period the worker is absent from Australia;

(j) a decision to terminate compensation;

(k) a decision under section 325C to refuse an examination application.

(2) The review must be made by a person who is in a more senior position than the person who proposes to make the decision.

Part 2 Regulator's review of decisions

539 Object of pt 2

The object of this part is to provide a non-adversarial system for prompt resolution of disputes.

540 Application of pt 2

(1) This part applies to the following—

(a) a decision by WorkCover—

(i) not to give an exemption from insuring under this Act under section 49; or

(ii) to set the premium payable under a policy under section 54; or

(iii) to issue a reassessment premium notice under section 56; or

(iv) to refuse to waive or reduce a penalty under section 57, 66, 109A or 229; or

(v) to refuse to reassess a default assessment under section 58; or

(vi) to refuse to waive or reduce additional premium under section 64; or

(vii) to waive or not to waive section 131(1) or (2); or

(viii) to allow or reject an application for compensation; or

(viiia) to allow or reject an application under section 132A or 132B; or

(ix) to terminate or suspend payment of compensation; or

(ixa) to increase or decrease a weekly payment of compensation under chapter 3; or

(x) to refuse to vary an entitlement under section 171, 172 or 173; or

(xi) to apportion compensation under chapter 3, part 11; or

(xii) to allow or refuse an entitlement under section 212, 216 or 219; or

(xiia) under section 232M, that a worker is not entitled to treatment, care and support payments; or

(xiiaa) to refuse a worker's entitlement to be referred to an accredited rehabilitation and return to work program of WorkCover under section 220(3); or

(xiiab) that a worker is no longer entitled to participate in an accredited rehabilitation and return to work program of WorkCover under section 220(4); or

(xiib) to refuse a service request, or approve a service request on conditions, under section 232P; or

(xiic) to refuse a payment request under section 232R; or

(xiid) that, under section 232S, WorkCover is not satisfied that a worker's serious personal injury is likely to continue to meet the chapter 4A eligibility criteria for the injury after the interim period ends; or

(xiie) that, under section 232S, a worker's entitlement to treatment, care and support payments ends before the end of the interim period; or

(xiif) not to accept liability to make treatment, care and support payments under section 232ZD; or

(xiig) to amend approved services for an eligible worker under section 232ZG; or

(xiih) to suspend, under section 232ZH, a worker's entitlement to treatment, care and support payments for all or part of a period the worker is absent from Australia; or

(xiii) for section 239A(4) that a claimant has or has not sustained an injury; or

(xiv) to refuse an examination application under section 325C;

(b) a decision by a self-insurer—

(i) to waive or not to waive section 131(1) or (2); or

(ii) to allow or reject an application for compensation; or

(iia) to allow or reject an application under section 132A or 132B; or

(iii) to terminate or suspend payment of compensation; or

(iiia) to increase or decrease a weekly payment of compensation under chapter 3; or

(iv) to refuse to vary an entitlement under section 171, 172 or 173; or

(v) to apportion compensation under chapter 3, part 11; or

(vi) to allow or refuse an entitlement under section 212, 216 or 219; or

(via) under section 232M, that a worker is not entitled to treatment, care and support payments; or

(viaa) to refuse a worker's entitlement to be referred to an accredited rehabilitation and return to work program of the self-insurer under section 220(3); or

(viab) that a worker is no longer entitled to participate in an accredited rehabilitation and return to work program of the self-insurer under section 220(4); or

(vib) to refuse a service request, or approve a service request on conditions, under section 232P; or

(vic) to refuse a payment request under section 232R; or (vid) that, under section 232S, the self-insurer is not satisfied that a worker's serious personal injury is likely to continue to meet the chapter 4A eligibility criteria for the injury after the interim period ends; or

(vie) that, under section 232S, a worker's entitlement to treatment, care and support payments ends before the end of the interim period; or

(vif) not to accept liability to make treatment, care and support payments under section 232ZD; or

(vig) to amend approved services for an eligible worker under section 232ZG; or

(vih) to suspend, under section 232ZH, a worker's entitlement to treatment, care and support payments for all or part of a period the worker is absent from Australia; or

(vii) for section 239A(4) that a claimant has or has not sustained an injury; or

(viii) to refuse an examination application under section 325C;

(c) a failure by WorkCover or a self-insurer to make a decision—

(i) on an application under section 132A, 132B or 134 within the time stated in the section; or

(ia) under section 232M(4), on request from a worker, within the time stated in section 232M(3); or

(ib) under section 232P(3) within the time stated in the section; or

(ic) on a payment request within the time stated in section 232R(1); or

(id) on a review under section 232S within the time stated in the section; or

(ie) under section 232ZD(5) within the time stated in the section; or

(ii) for section 239A(4) within the time stated in section 239A(5); or

(iii) under section 325C(1) within the period stated in the section.

(2) WorkCover or the self-insurer (the ***decision-maker***) must give written reasons for the decision or for the failure to make a decision.

(3) The decision-maker need not give reasons for a decision mentioned in subsection (1)(a)(ii) or (iii).

(4) The reasons for the decision must—

(a) address the matters prescribed by regulation; and

(b) be accompanied by information about the rights of review under this Act for the decision.

(5) The decision or the failure to make a decision may be reviewed only by the Regulator.

541 Who may apply for review

A claimant, worker or an employer aggrieved by a decision or the failure to make a decision may apply for review.

542 Applying for review

(1) An application for review must be made within 3 months after the person applying for review (the ***applicant***) receives written notice of the decision or the failure to make a decision and the reasons for the decision or failure, unless subsection (4) applies.

(2) For subsection (1), the applicant may, at any time but not more than once, ask the Regulator to allow further time to apply for review.

(3) The Regulator may grant the extension if it is satisfied that special circumstances exist.

(4) If the notice did not state the reasons for the decision or the failure to make a decision—

(a) the applicant must ask the decision-maker for the reasons within 20 business days after receiving the notice; and

(b) the decision-maker must give written reasons within 5 business days after the applicant asks for the reasons; and

(c) the application for review must be made within 3 months after the applicant receives the reasons, regardless of whether the reasons addressed the matters prescribed under a regulation.

(5) The application for review—

(a) must be made in the approved form and given to the Regulator; 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 Regulator must, within 10 business days after receiving the application, give the applicant and the decision-maker written notice that the application has been received.

543 Right of appearance

(1) The applicant may appear before the Regulator 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 Regulator by telephone or another form of communication.

544 Decision-maker must give information to Regulator

(1) The Regulator may, by written notice, require the decision-maker to give the Regulator—

(a) within 5 business days after receiving the notice—

(i) all relevant information and documents in relation to the application that is in the decision-maker's possession; or

(ii) the information asked for by the Regulator; or

(iii) if the Regulator believes on reasonable grounds that the reasons given by the decision-maker for the decision-maker's decision have not addressed the matters prescribed under a regulation for section 540(4)—reasons for the decision that address those matters; or

(b) within the period stated in the notice, any further information the Regulator needs to decide the matter.

(2) The decision-maker must comply with the notice.

(3) The decision-maker must pay the cost of obtaining the further information.

545 Review of decision or failure to make a decision

(1) The Regulator must, within 25 business days after receiving the application, review the decision and decide (the ***review decision***) to—

(a) confirm the decision; or

(b) vary the decision; or

(c) set aside the decision and substitute another decision; or

(d) set aside the decision and return the matter to the decision-maker with the directions the Regulator considers appropriate.

(1A) The Regulator may act under subsection (1)(d) only if the Regulator—

(a) has considered information that was not available to, or known by, the decision-maker when the decision-maker made its decision; or

(b) believes on reasonable grounds that the decision-maker did not have satisfactory evidence or information to make its decision; or

(c) believes on reasonable grounds that the decision-maker has not observed natural justice in making its decision.

(2) If an application is about the failure to make a decision, the Regulator 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 Regulator considers appropriate.

(3) The decision-maker to whom the directions are given must comply with the directions.

(4) The Regulator may extend the time in subsection (1)—

(a) with the applicant's consent, to allow the applicant a right of appearance or to make representations under section 543; or

(b) with the applicant's consent, to obtain information under section 544; or

(c) if the applicant applies to the Regulator in writing for time to give the Regulator further information.

(5) If the Regulator acts under subsection (1)(b) or (c) or (2)(a), the decision is taken for this Act, other than this part, to be the decision of the decision-maker.

546 Notice of review decision

(1) Within 10 business days after making a review decision, the Regulator must give the applicant and the decision-maker written notice of the review decision.

(2) However, if the decision relates to a matter mentioned in section 540(1)(a)(vii) to (xiv) or (1)(b) or (c), the Regulator 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 the industrial commission within 20 business days after the applicant receives notice of the decision, unless the Regulator has acted under section 545(1)(d).

(3AA) The reasons for the decision must address the matters prescribed under a regulation.

(3A) A decision of the Regulator under section 545 to return a matter to the decision-maker can not be appealed.

(4) If the Regulator does not make a review decision within the time allowed under section 545(1) or (4), the applicant may appeal to an industrial magistrate against the Regulator's failure to make the decision.

546A Matter returned to decision-maker

(1) This section applies if the Regulator returns a matter under section 545 to a decision-maker.

(2) The decision-maker must, within the time specified by the Regulator—

(a) make a decision; and

(b) give the applicant and the Regulator written notice of the fresh decision, including—

(i) the reasons for the decision; and

(ii) the applicant's rights of review and appeal; and

(c) if the decision relates to a matter mentioned in section 540(1)(a)(vii) to (xiv) or (1)(b) or (c), give a copy of the fresh decision to the claimant or worker and to the employer.

547 Reimbursement of costs of examination and report

(1) This section applies if the Regulator sets aside or varies a decision by the decision-maker to reject an application for compensation by a claimant or worker under chapter 3.

(2) The decision-maker must reimburse the claimant or worker for the cost of an examination by, and report from, a registered person obtained by the claimant or worker if the Regulator 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 commission

548 Application of div 1

(1) This division applies to the following decisions—

(a) a review decision, other than a decision to return a matter to a decision-maker under section 545;

(b) a decision by an insurer under chapter 3 or 4, other than—

(i) a decision mentioned in section 540(1); or

(ii) a decision about an entitlement to additional lump sum compensation under section 193A.

(2) A decision mentioned in subsection (1)(b) to which this division applies is a ***non-reviewable decision***.

548A Meaning of *appeal body*

(1) An ***appeal body*** for this division is the industrial commission.

(2) However, the ***appeal body*** is an industrial magistrate—

(a) for a decision of the Regulator under section 107E; or

(b) for a decision of the Regulator about a matter mentioned in section 540(1)(a)(i) to (vi); or

(c) for a non-reviewable decision.

549 Who may appeal

(1) A claimant, worker or employer aggrieved by the decision (the ***appellant***) may appeal to an appeal body against the decision of the Regulator or the insurer (the ***respondent***).

(2) An insurer aggrieved by a decision of the Regulator to confirm, vary or set aside a decision of the insurer mentioned in section 540(1)(a)(i) to (vi) may appeal to an appeal body against the decision of the Regulator.

(3) If the appellant is an employer—

(a) the claimant or worker may, if the claimant or worker wishes, be a party to the appeal; and

(b) an insurer may, if the insurer wishes, be a party to the appeal if the appeal is against a decision of the Regulator to confirm, vary or set aside a decision of the insurer mentioned in section 540(1)(a)(i) to (vi).

(4) If the appellant is WorkCover, an employer may, if the employer wishes, be a party to the appeal.

550 Procedure for appeal

(1) The appeal must be made—

(a) if the appeal is about a review decision—within 20 business days after the appellant receives the notice of the review decision; or

(b) if the appeal is about a non-reviewable decision—within 20 business days after the appellant receives the notice of the decision stating the reasons for the decision.

(2) For subsection (1)(b), if the notice of the decision did not state the reasons for the decision, the appellant must ask the

respondent for the reasons for the decision within 20 business days after receiving the notice.

(3) However, the appellant may ask the respondent to allow further time to appeal.

(4) The appeal may be started only by filing a written notice of appeal with the appeal body.

(4A) If the appeal body is the industrial commission, the notice of appeal must be filed in the industrial registry.

(5) If the appeal body is an industrial magistrate, the notice of appeal must be filed at—

(a) the Magistrates Court nearest to the place where the appellant resides or, if the appellant is an employer, carries on business; or

(b) a Magistrates Court agreed to between the respondent and the appellant.

(6) The appellant must, within 10 business days after filing the notice of appeal, serve a copy of the notice on—

(a) if the appeal is about a review decision—the Regulator; or

(b) if the appeal is about a non-reviewable decision—the insurer.

(7) If the appellant is an employer, the appellant must also serve a copy of the notice on the claimant or worker.

(8) If a notice of appeal required to be filed in a Magistrates Court mentioned in subsection (5)(a) is filed in another Magistrates Court, the registrar of the other Magistrates Court may send any relevant documents to the registrar of the appropriate Magistrates Court.

(9) If a notice of appeal required to be filed in a Magistrates Court is filed in the industrial registry, the industrial registrar may send any relevant documents to the registrar of the appropriate Magistrates Court.

(10) If a notice of appeal required to be filed in the industrial registry is filed in a Magistrates Court, the registrar of the

Magistrates Court may send any relevant documents to the industrial registrar.

551 Appeal about amount of premium

(1) This section applies if an appeal is about an amount of premium specified in a premium notice.

(2) The notice of appeal must state fully the grounds of appeal and the facts relied on.

(3) The appellant is limited to the grounds of appeal stated in the notice.

(4) The appellant must pay the premium specified in the notice before the appellant files the notice of appeal.

552 Notice of time and place for hearing

The registrar of the industrial commission or 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.

552A Conference

(1) If the appeal is to the industrial commission, the industrial commission may, before the hearing of the matter, call a conference of the parties.

(2) The parties must attend the conference.

552B Legal representation at appeal or conference

A party may be represented by a lawyer at a conference called under section 552A or at the hearing of an appeal, but only with—

(a) the agreement of the parties; or

(b) the appeal body's leave.

553 Application of Uniform Civil Procedure Rules 1999 and Industrial Relations (Tribunals) Rules 2011

(1) The *Uniform Civil Procedure Rules 1999*, chapter 7, part 2 and chapter 9, part 4 and the *Industrial Relations (Tribunals) Rules 2011* apply to an appeal under this division with necessary changes.

(2) However, if there is an inconsistency between a provision of the rules mentioned in subsection (1) and a provision of this division, the provision of this division prevails to the extent of the inconsistency.

554 Exchanging evidence before hearing

(1) At least 10 business days before the hearing, each party must give each other party any relevant document the party wants to adduce as evidence at the hearing.

(2) At the hearing, a party can not rely on a document that was not given to the other party as required by subsection (1), unless the appeal body agrees.

555 Adjourned hearing

(1) The appeal body may, at any time before or after the start of the hearing, adjourn the hearing if—

(a) the appeal body is satisfied the hearing could be held more conveniently at a future time; or

(b) if the appeal body is an industrial magistrate, the appeal body is satisfied that the hearing could be held more conveniently at another place or before another industrial magistrate—

(i) having regard to the difficulty or expense of producing witnesses; or

(ii) for another appropriate reason.

(2) If subsection (1)(b) applies—

(a) the appeal body must send the relevant documents to the registrar of the appropriate Magistrates Court; and

(b) the other industrial magistrate has jurisdiction to decide the matter as if it had been brought before that magistrate.

556 Additional medical evidence

(1) This section applies if—

(a) the condition of a claimant or worker who has, or is said to have, sustained an injury is relevant to the appeal; or

(b) the cause, nature or extent of the injury or incapacity arising from the injury is relevant to the appeal.

(2) The appeal body 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 appeal body may also, as the appeal body 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 appeal body; or

(b) having attended, refuses to be examined by a registered person; or

(c) obstructs, or attempts to obstruct, the examination.

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

557 Correcting defects in proceedings

(1) For the proper hearing of an appeal, the appeal body may order—

(a) anything necessary be supplied; or

(b) defects or errors be corrected.

(2) The appeal body 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 appeal body's discretion, except to the extent provided under a regulation.

(5) All parties concerned must comply with the order.

558 Powers of appeal body

(1) In deciding an appeal, the appeal body 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 appeal body considers appropriate.

(2) If the appeal body acts under subsection (1)(b) or (c), the decision is taken for this Act, other than this part, to be the decision of the insurer.

(3) Costs of the hearing are in the appeal body's discretion, except to the extent provided under a regulation.

559 Decision of appeal body

The appeal body must give a written copy of the decision to each party.

560 Recovery of costs

(1) If the appeal body makes an order for costs, the amount ordered to be paid is a debt payable to the party in whose favour the order is made.

(2) The order may be filed in the registry of a court having jurisdiction for the recovery of a debt of the amount.

(3) On being filed, the order—

(a) is taken to be an order properly made by the court; and

(b) may be enforced as an order made by the court.

Division 1A Appeal to industrial court

560A Application of div 1A

This division applies to the following decisions—

(a) a decision of the industrial commission under chapter 4, part 6;

(b) a decision of an industrial magistrate or the industrial commission under division 1.

561 Appeal to industrial court

(1) A party aggrieved by the industrial magistrate's or the industrial commission's decision may appeal to the industrial court.

(2) The *Industrial Relations Act 2016* applies to the appeal.

(3) The appeal is by way of rehearing on the evidence and proceedings before the industrial magistrate or the industrial

commission, unless the court orders additional evidence be heard.

(4) The court's decision is final.

562 Powers of industrial court

(1) In deciding an appeal, the industrial court may—

(a) confirm the decision; or

(b) vary the decision; or

(c) set aside the decision and substitute another decision.

(2) If, on an appeal in relation to a decision mentioned in section 560A(a), the court acts under subsection (1)(b) or (c), the decision of the court is taken for this Act, other than this division, to be the decision of the industrial commission.

(3) If, on an appeal in relation to a decision mentioned in section 560A(b), the court acts under subsection (1)(b) or (c), the decision of the court is taken for this Act, other than this division, to be the decision of the insurer.

563 Costs of appeal to industrial court

(1) On an appeal, the industrial court may order a party to pay costs incurred by another party only if satisfied the party made the application vexatiously or without reasonable cause.

(2) Costs of the order are to be in accordance with the *Industrial Relations (Tribunals) Rules 2011*, rule 70.

564 Recovery of costs

(1) If the industrial court makes an order for costs, the amount ordered to be paid is a debt payable to the party in whose favour the order is made.

(2) The order may be filed in the registry of a court having jurisdiction for the recovery of a debt of the amount.

(3) On being filed, the order—

(a) is taken to be an order properly made by the court; and

(b) may be enforced as an order made by the court.

Division 1B Provisions about particular appealed decisions under divs 1 and 1A

565 Decision about amount of premium

(1) If the decision appealed against is about an amount of premium, the premium assessed by an industrial magistrate or the industrial court is the premium payable by the employer.

(2) If the premium paid by the employer as a condition of the appeal to an industrial magistrate is more than the premium assessed by the industrial magistrate or industrial court, WorkCover must refund the difference to the employer.

566 Decision about payment of compensation

(1) This section applies if the industrial commission or the industrial court decides that an insurer is not liable to make payments of compensation to a person.

(2) The person who received compensation is not required to refund payment to the insurer.

(3) Subsection (2) is subject to section 537.

Division 2 Appeal to court of competent jurisdiction

567 Application of div 2

This division applies to the following decisions made by the Regulator—

(a) a decision under section 77 relating to the issue of a self-insurer's licence;

(b) a decision under section 80 relating to the renewal of a self-insurer's licence;

(c) a decision under section 81 relating to the amount of levy payable by a self-insurer;

(d) a decision under section 87(2) relating to the procedures followed in calculating a self-insurer's outstanding liability;

(e) a decision under section 96 relating to the cancellation of a self-insurer's licence;

(f) a decision under section 103 or 105J to refuse to return all or part of a former self-insurer's section 84 security.

568 Who may appeal

An employer or self-insurer aggrieved by the decision may appeal against the decision.

569 Starting appeals

(1) The appeal may be made to a court with jurisdiction in Brisbane.

(2) The court that has jurisdiction must be decided according to the amount of—

(a) for an appeal against a decision mentioned in section 567(a), (b), (c), (d) or (e)—the employer's premium or self-insurer's deemed levy; or

(b) for an appeal against a decision mentioned in section 567(f)—the section 84 security in dispute.

(3) A court has jurisdiction if the court has jurisdiction for recovery of a debt of the amount.

(4) An appeal may only be made within 20 business days after notice of the decision is given to the employer or self-insurer.

(5) The appeal may only be started by—

(a) filing a written notice of appeal with the court stating fully the grounds of the appeal and the facts relied on; and

(b) serving a copy of the notice on the Regulator.

570 Powers of court on appeal

(1) In deciding an appeal, the court—

(a) has the same powers as the decision-maker; and

(b) is not bound by the rules of evidence.

(2) An appeal is by way of rehearing.

(3) The court may—

(a) confirm the decision; or

(b) set aside the decision and substitute another decision the court considers appropriate; or

(c) set aside the decision and return the matter to the Regulator with the directions the court considers appropriate.

(4) Despite subsections (1) to (3), the court can not decide to issue or renew a licence to be a self-insurer under section 71(2) or 72(2).

571 Effect of decision of court on appeal

If a court substitutes another decision, the substituted decision is taken for this Act, other than this part, to be the Regulator's decision.

Chapter 14 Miscellaneous

Part 1 Access to documents and information

Division 1 Information and documents about pre-existing injuries and medical conditions of prospective worker

571A Definitions for div 1

In this division—

employment process means any process for considering and selecting a person for employment.

false or misleading disclosure means any disclosure that would lead a prospective employer to reasonably believe that the duties the subject of the employment would not aggravate the prospective worker's pre-existing injury or condition.

pre-existing injury or medical condition, for an employment process, means an injury or medical condition existing during the period of the employment process that a person suspects or, ought reasonably to suspect, would be aggravated by performing the duties the subject of the employment.

prospective employer means a person conducting an employment process to select a prospective worker for employment.

prospective worker means a person subject to an employment process for selection for employment.

571B Obligation to disclose pre-existing injury or medical condition

(1) If requested by a prospective employer, a prospective worker must disclose to the prospective employer the prospective worker's pre-existing injury or medical condition, if any.

(2) Subsection (1) applies only if the request is made in writing and includes the following information—

(a) the nature of the duties the subject of the employment;

(b) that if the prospective worker knowingly makes a false or misleading disclosure, under section 571C, the prospective worker or any other claimant will not be entitled to compensation or to seek damages for any event that aggravates the pre-existing injury or medical condition.

(3) However, subsection (1) does not apply if the prospective worker is engaged, as a result of the employment process, by the prospective employer before the worker has had a reasonable opportunity to comply with subsection (1).

571C False or misleading disclosure

(1) This section applies if a prospective worker—

(a) has a pre-existing injury or medical condition; and

(b) knowingly makes a false or misleading disclosure under section 571B in relation to the injury or medical condition; and

(c) is employed under the employment process.

(2) The prospective worker or any other claimant is not entitled to compensation or to seek damages for any event that aggravates the pre-existing injury or medical condition.

Division 2 Other documents and information

572 Claimant or worker entitled to obtain certain documents

(1) A person who is a claimant or worker for any provision of this Act may, by written notice, ask the Regulator or the insurer (the ***document holder***) to give the person a copy of documents required to be kept by the document holder that relate to the person's application for compensation or claim for damages.

(2) The document holder must give the claimant or worker a copy of the documents requested within 20 business days after the claimant or worker gives the notice, unless the document holder has a reasonable excuse for not doing so.

(3) Without limiting subsection (2), it is a reasonable excuse for the document holder not to give the document or part of the document if—

(a) the document or part is protected by legal professional privilege; or

(b) the document or part would alert the claimant or worker to the document holder's reasonable suspicion of fraud in relation to the application for compensation or claim for damages; or

(c) the document holder believes the matter contained in the document would meet the requirements of the *Right to Information Act 2009*, schedule 3.

572A Access to particular documents for employment purposes prohibited

(1) A person must not, for a purpose relating to the employment of a worker by the person or another person—

(a) obtain or attempt to obtain a workers' compensation document about the worker; or

(b) use or attempt to use a workers' compensation document about the worker.

Maximum penalty—100 penalty units.

(2) However, subsection (1) does not apply to a workers' compensation document relating to the worker's capacity to work if the document is necessary to secure the worker's rehabilitation or early return to work under chapter 4.

(3) In this section—

employment means any process for selecting a person for employment or for deciding whether the employment of a person is to continue.

worker means a person who is or was a claimant or worker for any provision of this Act or a former Act.

workers' compensation document, about a worker, means any document relating to the worker's application for compensation or claim for damages under this Act or a former Act.

573 Permissible disclosure of information

(1) The Commissioner of State Revenue appointed under the *Taxation Administration Act 2001* may disclose to the Regulator or WorkCover any information—

(a) the commissioner has about anything under the *Payroll Tax Act 1971*; and

(b) that relates to any matter under this Act or touching the administration of this Act.

(1A) The chief executive of the department within which the *Work Health and Safety Act 2011* is administered may disclose to the Regulator or WorkCover any information the chief executive has relating to any matter under this Act or touching the administration of this Act.

(2) The Regulator or WorkCover may disclose to the Commissioner of State Revenue any information it has about anything under the *Payroll Tax Act 1971* or touching the administration of that Act.

(3) The Regulator or WorkCover may disclose, to the chief executive of the department within which the *Work Health*

and Safety Act 2011 is administered, statistical or other information that would help in the performance of its administrative functions.

(3A) The Regulator may, if asked by an insurer, disclose to the insurer any information it has that is relevant to a claim against the insurer.

(4) An insurer may, if asked by another insurer (the ***other insurer***), disclose to the other insurer any information it has that is relevant to a claim against the other insurer.

(5) An insurer must, if asked by the Regulator, disclose to the Regulator statistical or other information in the way required by the Regulator, but only to discharge the Regulator's functions under this Act.

(6) Subsections (1) to (5) apply despite a provision of this or another Act.

(7) If a person has information because the person is, or was, a prescribed person, the person must not disclose the information, unless the disclosure—

(a) is for the Regulator, WorkCover or this Act; or

(b) is required or authorised by this or another Act; or

(c) is authorised by the Regulator or WorkCover's chief executive officer, generally or in a particular case.

(8) In this section—

former Authority means the Workers' Compensation Regulatory Authority established under this Act as in force before the commencement of this definition.

prescribed person means—

(a) the Regulator; or

(b) a director or employee of WorkCover; or

(c) a director or employee of the former Authority.

574 Information from commissioner of police service

(1) The commissioner of the police service may, on the written request of the Regulator or WorkCover's chief executive officer, give to the Regulator or WorkCover information mentioned in subsection (2) about a person the Regulator or WorkCover reasonably suspects to have committed an offence against this Act.

(2) The information that may be given is—

(a) the person's criminal history; and

(b) any brief of evidence compiled by the Queensland Police Service on anything mentioned in the person's criminal history; and

(c) any document about any complaint made against the person.

(3) For this section, the *Criminal Law (Rehabilitation of Offenders) Act 1986* does not apply.

(4) Information given to the Regulator or WorkCover by the commissioner of the police service under this section must not be used for any purpose other than an investigation or prosecution under this Act.

575 Information use immunity

Information obtained from a person in relation to an application for compensation or a claim for damages can not be used against the person in a proceeding for an offence under any other Act, other than a proceeding in which it is alleged the information was false or misleading.

576 Information not actionable

(1) This section applies to an action for defamation, or a proceeding for other redress, about the disclosure of information in the possession of the Regulator or an insurer, or traceable to that possession.

(2) Action can not be brought against the Regulator or the insurer, or a person acting for any of them, by a person claiming to be aggrieved about the disclosure in relation to—

(a) a claimant's physical or mental condition; or

(b) a claimant's capacity or incapacity for work; or

(c) the credibility of any of the following—

(i) an employer;

(ii) an insurer;

(iii) a claimant;

(iv) a contributor;

(v) another person involved in the claim, if the disclosure is relevant to the claim.

(3) Subsections (1) and (2) apply to—

(a) information in the possession of WorkCover only to the extent the information came into WorkCover's possession—

(i) under its powers and functions under the Act; or

(ii) because of a disclosure by the Regulator under section 573(3A) or an insurer under section 573(4); and

(b) information in the possession of a self-insurer only to the extent the information came into the self-insurer's possession—

(i) under its powers and functions under section 92 or 92A; or

(ii) because of a disclosure by the Regulator under section 573(3A) or an insurer under section 573(4).

(4) In this section—

claimant means a person for whose injury, or purported injury, compensation or damages is sought, is being paid or has been paid.

information includes opinion and comment.

Part 1A Information provisions for building and construction industry

576A Definitions for pt 1A

In this part—

building and construction industry see the *Building and Construction Industry (Portable Long Service Leave) Act 1991*, section 3AA.

construction project means a project involving construction work, if the total of all costs relating directly or indirectly to the construction work is at least $80,000.

Examples of costs relating to construction work—

costs of labour, materials, plant, equipment, design, project management, consultancy, prefabricated goods, commissioning, installation

construction work means work in the building and construction industry.

principal contractor, for a construction project, see section 576B.

relevant contractor, for a construction project, means a person who has made a contract with someone else for the performance of construction work, or the provision of a service in the building and construction industry, for the construction project.

576B Who is the *principal contractor* for a construction project

(1) For this part, a person who commissions a construction project is the ***principal contractor*** for the construction project.

(2) However, if the person mentioned in subsection (1) engages another person as the principal contractor for the construction project and authorises the person engaged to have the management and control of the construction project, the person engaged is the ***principal contractor*** for the construction project.

(3) If 2 or more persons are the principal contractor for the construction project under subsection (1) or (2), those persons must perform the functions, or exercise the powers, of the principal contractor by acting jointly.

576C Principal contractor may require relevant contractor to give document confirming insurance status

(1) This section applies in relation to a relevant contractor for a construction project who is an employer.

(2) The principal contractor for the construction project may, by written notice, ask the relevant contractor to give the principal contractor a copy of the following document (the ***required document***)—

(a) if the relevant contractor is a self-insurer—the relevant contractor's licence to be a self-insurer;

(b) otherwise—

(i) a certificate of currency for the relevant contractor's policy of insurance required under section 48; or

(ii) evidence of an exemption under section 49 and a certificate of currency for the relevant contractor's policy of insurance for the relevant contractor's workers under another law.

(3) The relevant contractor must, unless the relevant contractor has a reasonable excuse, give the principal contractor the required document within 10 business days after being given the notice under subsection (2).

Maximum penalty—25 penalty units.

(4) In this section—

certificate of currency, for a policy of insurance, means a certificate issued by the insurer stating at least each of the following—

(a) the name of the policy holder;

(b) the policy holder's ABN or ACN;

(c) the policy number;

(d) the name of the insurer;

(e) the amount and type of insurance;

(f) the period of insurance for which the certificate is issued.

576D Injury data for construction projects

(1) WorkCover may—

(a) compile injury data for a construction project, to the extent the data relates to relevant contractors for the construction project who are not self-insurers; and

(b) give the injury data to the principal contractor for the construction project.

(2) The Regulator may, on the request of the principal contractor for the construction project, give the principal contractor injury data for the construction project, to the extent the data relates to relevant contractors who are self-insurers.

(3) In this section—

injury data, for a construction project, means the following information about each relevant contractor for the construction project—

(a) the relevant contractor's name;

(b) the number and type of injuries sustained by workers on the project for which applications for compensation have been made under section 132;

(c) the date the injuries were sustained;

(d) the address of the site at which the injuries were sustained.

576E Restriction on disclosure by principal contractor of information obtained under this part

(1) This section applies to a person who is or has been the principal contractor, or a director or employee of the principal contractor, for a construction project.

(2) The person must not disclose any information received under this part if it identifies, directly or indirectly, any person to whom it relates.

Maximum penalty—100 penalty units.

Part 2 Audits

577 Audit of wages and contracts

(1) The Regulator may engage the services of a person (an ***authorised auditor***) who, in the Regulator's opinion, has appropriate qualifications and experience to carry out an audit of—

(a) wages paid by or on behalf of a self-insurer to, or on account of, workers employed by the self-insurer; and

(b) contracts let by or on behalf of a self-insurer for performance of work.

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

(a) wages paid by or on behalf of an employer to, or on account of, workers employed by the employer; and

(b) contracts let by or on behalf of an employer for performance of work.

(3) For conducting an audit, an authorised auditor is entitled, at all reasonable times, to full and free access to the documents prescribed under a regulation for section 532D(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 3 Proceedings

578 Proceedings for offences against ch 8

(1) This section applies to a proceeding for an offence against chapter 8.

(1A) Subject to subsections (2) to (4), a proceeding for an offence against chapter 8 is to be taken in a summary way under the *Justices Act 1886* before an industrial magistrate on the complaint of—

(a) the Regulator; or

(b) a person authorised for the purpose by the Regulator; or

(c) the Attorney-General.

(2) A proceeding for a prescribed offence may, at the election of the prosecution, be taken—

(a) in a summary way under the *Justices Act 1886*; or

(b) on indictment.

(3) A proceeding must be before a magistrate if it is a proceeding—

(a) with a view to the summary conviction of a person on a charge of a prescribed offence; or

(b) for an examination of witnesses in relation to a charge for a prescribed offence.

(4) However, if a proceeding for a prescribed offence is brought before a justice who is not a magistrate, jurisdiction is limited

to taking or making a procedural action or order under the *Justices of the Peace and Commissioners for Declarations Act 1991*.

(5) A proceeding for an offence in a summary way must start—

(a) within 1 year after the commission of the offence; or

(b) within 6 months after the commission of the offence comes to the complainant's knowledge;

whichever is the later.

(6) If—

(a) a person charged with a prescribed offence, in relation to which a proceeding is taken by way of a summary proceeding, asks, at the start of the proceeding, that the charge be prosecuted on indictment; or

(b) the magistrate hearing and deciding a charge of a prescribed offence is of the opinion that the charge ought to be prosecuted on indictment;

the magistrate—

(c) must not hear and decide the charge as a summary offence; but

(d) must proceed by way of an examination of witnesses in relation to an indictable offence.

(7) If a magistrate acts under subsection (6)—

(a) any plea of the person charged, made at the start of the proceeding, must be disregarded; and

(b) any evidence brought in the proceeding before the magistrate decided to act under subsection (6) 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).

(8) The maximum penalty that may be imposed on a summary conviction of a prescribed offence is 100 penalty units or 1 year's imprisonment.

(9) A prescribed offence is—

(a) for a prescribed offence for which the maximum penalty of imprisonment is less than 5 years—a misdemeanour; or

(b) otherwise—a crime.

(10) In this section—

prescribed offence means an offence against this Act for which the maximum penalty of imprisonment is 2 years imprisonment or more.

579 Summary proceedings for offences other than against ch 8

(1) This section applies to a proceeding for an offence against this Act other than chapter 8.

(1A) A proceeding for a prescribed offence is to be taken in a summary way under the *Justices Act 1886* before an industrial magistrate on the complaint of—

(a) the Regulator; or

(b) a person authorised for the purpose by the Regulator; or

(c) the Attorney-General.

(2) A proceeding for an offence other than a prescribed offence is to be taken in a summary way under the *Justices Act 1886* before an industrial magistrate on the complaint of—

(a) the Regulator or WorkCover; or

(b) a person authorised for the purpose by the Regulator or WorkCover; or

(c) the Attorney-General.

(3) A proceeding must start—

(a) within 1 year after the commission of the offence; or

(b) within 6 months after the commission of the offence comes to the knowledge of—

(i) for a proceeding mentioned in subsection (1A)—the Regulator; or

(ii) for a proceeding mentioned in subsection (2)—the Regulator or WorkCover;

whichever is the later.

(4) All penalties recovered under a proceeding are to be paid—

(a) if a proceeding was brought by the Regulator—to the Regulator; or

(b) if a proceeding was brought by WorkCover—to WorkCover.

(5) A person aggrieved by a decision of the industrial magistrate in the proceeding may appeal against the decision to a District Court judge under the *Justices Act 1886*.

(6) In this section—

prescribed offence means—

(a) an offence against section 486B(2); or

(b) an offence against chapter 12, part 2; or

(c) an offence against section 136 connected with an offence against section 533.

580 Recovery of debts under this Act

(1) Every amount—

(a) payable to WorkCover as a premium, additional premium or charge; or

(b) recoverable by WorkCover on any account whatever;

is a debt owed to WorkCover by the person liable to pay the premium, additional premium or charge, or from whom the amount is recoverable.

(2) An amount payable to the Regulator as a levy or additional amount or recoverable by the Regulator on any account whatever, is a debt owed to the Regulator by the person liable to pay the levy or additional amount, or from whom the amount is recoverable.

(3) The Regulator or WorkCover may recover a debt—

(a) on the complaint of the Regulator or WorkCover's chief executive officer under the *Justices Act 1886*, before an industrial magistrate; or

(b) by action for debt.

(4) If, for a contravention of this Act, there exists—

(a) a right to recover an amount as a debt; and

(b) a right to proceed for a penalty as for an offence;

the amount may be recovered as a debt even though the proceeding for the penalty has not been taken.

(5) Payment of a penalty does not relieve a person from liability to be assessed and to pay a premium or from liability to pay another amount under this Act.

581 Self-insurer recovery of debts

A self-insurer may recover a debt owed to the self-insurer because of payments made by the self-insurer under section 92 or 92A—

(a) on the complaint of the self-insurer under the *Justices Act 1886*, before an industrial magistrate; or

(b) by action for debt.

582 Powers of industrial magistrate

(1) For this Act, an industrial magistrate has all the powers conferred on an industrial magistrate by the *Industrial Relations Act 2016* 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 summonsing of witnesses and the hearing of an appeal.

(3) A regulation under subsection (2) prevails over any inconsistent rule of court or regulation mentioned in subsection (1).

583 Evidence

(1) The Regulator may issue certificates for subsection (2).

(2) A certificate stating the following matters is evidence of the matters in any proceeding about anything arising under this Act—

(a) that commission of an offence against this Act came to the knowledge of the Regulator or delegate issuing the certificate on a specified date;

(b) that an address to which any notice or other document was sent by post to any person is that person's place of business, place of residence or postal address last known to the Regulator or self-insurer;

(c) that a worker has a specified DPI;

(d) that a worker has a specified DPI establishing the worker's access to damages;

(e) that a specified amount is due and payable to a self-insurer and unpaid by a specified person for an overpayment of compensation;

(f) that a specified amount is due and payable on account of an amount paid by a self-insurer to, or on account of, a specified person;

(g) that a specified amount was paid by a self-insurer to or on account of a specified person for a specified matter, date or purpose.

(3) WorkCover's chief executive officer may issue certificates for subsection (4).

(4) A certificate stating the following matters is evidence of the matters in any proceeding about anything arising under this Act—

(a) that—

(i) notice of acceptance of a risk, or of assessment or reassessment of a premium, was duly sent on a specified date to a specified person; and

(ii) a specified amount of premium was demanded by the notice;

(b) that—

(i) a default assessment, or a decision on an objection made to a default assessment, was duly made; and

(ii) notice of the assessment or decision was duly sent on a specified date to a specified person at an address that is the person's place of business, place of residence or postal address last known to WorkCover; and

(iii) a specified amount of premium was demanded by the notice of default assessment, or of decision on objection;

(c) that commission of an offence against this Act came to the knowledge of WorkCover's chief executive officer or delegate issuing the certificate on a specified date;

(d) that an address to which any notice or other document was sent by post to any person is that person's place of business, place of residence or postal address last known to WorkCover;

(e) that a worker has a specified DPI;

(f) that a worker has a specified DPI establishing the worker's access to damages;

(g) that no objection has been received from a specified person against a default assessment within 15 business days after notice of the assessment was given to the person;

(h) that a specified amount is due and payable to WorkCover and unpaid by a specified person for a premium or a charge;

(i) that a specified amount is due and payable to WorkCover and unpaid by a specified person for an overpayment of compensation;

(j) that a specified person who is stated in the certificate to be an employer has contravened section 48, and how the person has contravened the section;

(k) that a specified amount is due and payable to WorkCover and unpaid by a specified person who is stated in the certificate to be an employer who has contravened section 48 in relation to a specified person;

(l) that a specified amount is due and payable on account of an amount paid by WorkCover to, or on account of, a specified person;

(m) that a specified amount was paid by WorkCover to or on account of a specified person for a specified matter, date or purpose.

(5) 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.

(6) 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 Regulator or WorkCover's chief executive officer on a specified day.

(7) Evidence that an 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 the insurer.

Part 4 Regulations

584 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.

(3) A regulation may prescribe an amount, including, for example, an amount of a fee, levy or damages, as a multiple of QOTE.

Part 5 Other provisions

584A Reviews of workers' compensation scheme

(1) The Minister must ensure a review of the operation of the workers' compensation scheme is completed at least once in every 5 year period.

(2) The Minister must prepare a report about the outcome of the review and, as soon as practicable after the review is completed, table the report in the Legislative Assembly.

(3) The first review under this section must be completed no later than 30 June 2013.

585 Entitlements to compensation under contract of employment prohibited and void

(1) A contract of employment can not include a provision for accident pay, or other payment, on account of a worker sustaining an injury.

(2) A provision of a contract of employment is of no force or effect to the extent it provides for payment of accident pay, or other payment, on account of a worker sustaining an injury.

(3) In this section—

contract of employment means a contract with a worker or a contract with an individual in the circumstances mentioned in schedule 2, part 1 but does not include an industrial instrument.

586 Approval of forms

(1) WorkCover's chief executive officer may approve forms in relation to contracts of insurance for use under this Act.

(2) The Regulator may approve other forms for use under this Act.

(3) Subsection (4) applies if a person—

(a) is required or permitted to do something in an approved form under section 50, 132, 133, 133A, 325B or 542 (the ***relevant provision***); or

Example—

a requirement to send a report or give written notice in an approved form

(b) is required under this Act to make an application for a policy in the approved form (also the ***relevant provision***).

(4) Without limiting the *Electronic Transactions (Queensland) Act 2001*, the person is taken to have complied with the relevant provision when—

(a) the person does the thing by giving the information required on the approved form by phone, or another method, acceptable to the receiver of the approved form (the ***receiver***); and

(b) if the person's signature is required on the approved form, the requirement is met under subsection (5); and

(c) if the relevant provision requires or permits the approved form to be accompanied by a document when given to the receiver, the person gives the document to the receiver within the reasonable period decided by the receiver.

(5) A requirement that the person sign the approved form as mentioned in subsection (4)(b) is met if—

(a) a method is used to identify the person and to indicate the person's approval of the information communicated under subsection (4)(a); and

(b) having regard to all the relevant circumstances when the method was used, the method was as reliable as was appropriate for the purposes for which the information was communicated; and

(c) the receiver consents to the requirement being met by using the method mentioned in paragraph (a).

586A Entering into an agreement for transfer of employees to assist administration of compensation scheme

(1) This section applies if the chief executive and WorkCover's chief executive officer consider it is necessary or desirable, to assist the administration of the workers' compensation scheme, to transfer employees—

(a) from the department to WorkCover; or

(b) from WorkCover to the department.

(2) The chief executive and WorkCover's chief executive officer may enter into an agreement providing for the transfer (***transfer agreement***).

(3) A transfer agreement must be signed by both the chief executive and WorkCover's chief executive officer.

(4) The chief executive and WorkCover's board must comply with a transfer agreement.

586B Effect of transfer of employee

(1) This section applies if a transfer agreement is entered into under section 586A for the transfer of an employee—

(a) from the department or WorkCover (the ***former employer***); and

(b) to WorkCover or the department (the ***new employer***).

(2) From the date of transfer stated in the transfer agreement, the employee—

(a) ceases to be an employee of the former employer; and

(b) is employed by the new employer, under the relevant industrial instrument applying to that employer.

(3) Also, the following applies for the employee—

(a) the employee retains and is entitled to all rights, benefits and entitlements that have accrued to the employee because of the employee's employment before the transfer;

(b) the employee's accruing rights, including to superannuation or recreation, sick, long service or other leave, are not affected;

(c) continuity of service is not interrupted, except that the employee is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service;

(d) the employment does not constitute a termination of employment or a retrenchment or redundancy;

(e) the employee is not entitled to a payment or other benefit because he or she is no longer employed by the former employer.

(4) Subsection (5) applies if the total remuneration to which the employee was entitled for the employment with the former employer is higher than the total remuneration payable under the relevant industrial instrument for a person starting in the position with the new employer to which the employee has been transferred.

(5) The employee's total remuneration must not be increased until the employee's total remuneration aligns with the total remuneration payable under the relevant industrial instrument to a person who has held the position for the same amount of time.

(6) This section has effect despite any other law or instrument.

587 Service of documents

For the *Acts Interpretation Act 1954*, section 39, the address of a person's place of residence or business includes the person's postal address.

588 Repeal

The *WorkCover Queensland Act 1996* is repealed.

Chapter 15 Transitional provisions for Act No. 27 of 2003

Part 1 Interpretation

589 Definitions for ch 15

In this chapter—

Q-COMP means the former division of WorkCover called Q-COMP that was responsible for the regulatory functions of the scheme.

repealed Act means the *WorkCover Queensland Act 1996*.

transferred person means a person to whom section 594 applies.

590 Other savings preserved

This chapter does not limit the *Acts Interpretation Act 1954*, section 20.

Part 2 Legal succession

591 Continuation of WorkCover Queensland

WorkCover Queensland mentioned as being established under section 380 is a continuation of WorkCover Queensland established under section 330 of the repealed Act.

592 Authority is legal successor of Q-COMP

(1) On the commencement of this section, the Authority is the successor in law of Q-COMP with the intent that—

(a) the assets and liabilities of WorkCover that, before the commencement, were managed by Q-COMP become the assets and liabilities of the Authority; and

(b) anything that, before the commencement, was under the control of Q-COMP becomes under the control of the Authority; and

(c) a proceeding relating to a decision or action of Q-COMP or an officer of Q-COMP that has not ended before the commencement may, after the commencement, be continued by or against the Authority; and

(d) if a proceeding could have been taken relating to a decision or action of Q-COMP or an officer of Q-COMP before the commencement, the proceeding may be taken by or against the Authority after the commencement; and

(e) any application received by Q-COMP before the commencement is, from the commencement, taken to be an application received by the Authority; and

(f) the Authority otherwise stands in the place of Q-COMP.

(2) From the commencement of this section, in an Act, instrument or document, a reference to WorkCover in its regulatory capacity under the repealed Act may, if the context permits, be taken as a reference to the Authority.

Part 3 Transfer to the Authority

593 Transfer of general manager of Q-COMP

On the commencement of this section, the person who immediately before the commencement was Q-COMP's general manager becomes the Authority's chief executive officer on the same conditions of appointment, including salary, as applied to the person immediately before the commencement.

594 Transfer of staff of Q-COMP to Authority

(1) On the commencement of this section, a person who immediately before the commencement was employed in Q-COMP—

(a) becomes an employee of the Authority; and

(b) stops being an employee of WorkCover and becomes a public service officer.

(2) A transferred person may claim against the Authority all entitlements owing to the person as an employee of WorkCover.

(3) A transferred person's long service leave entitlements are to be calculated as if service with WorkCover and as a public service officer were continuous service as a public service officer.

595 Preserved employment conditions

(1) A transferred person is taken to be employed by the Authority on the same conditions of employment, including salary, as applied to the person immediately before the transfer.

(2) A person employed by the Authority who is not a transferred person is to be employed on the same conditions of employment, including salary, as a transferred person.

596 Transferred persons' superannuation on becoming public service officers

A transferred person may continue as a contributor to or member of the superannuation scheme to which the person contributed or was the member of before the commencement of this section.

Part 4 Insurance

597 Merit bonuses and demerit charges

(1) Merit bonuses and demerit charges are applicable to policies entered into before the repeal of the *Workers' Compensation Act 1990* as if it had not been repealed.

(2) In this section—

demerit charges means demerit charges under the repealed *Workers' Compensation Regulation 1992*, section 13A.

merit bonuses means merit bonuses under the repealed *Workers' Compensation Act 1990*, section 52.

598 Other contracts of insurance

From the commencement of this section, a contract of insurance, other than a policy, issued under a former Act is taken to be a contract of insurance issued by WorkCover.

599 Previous non-policy compensation arrangement with State

(1) This section applies to amounts that would have been payable by a government entity to the workers' compensation board under the repealed *Workers' Compensation Act 1990*, section 198, if the Act had not been repealed.

(2) The government entity must pay the amounts to WorkCover.

(3) In this section—

government entity has the meaning given by this Act as in force immediately before the commencement of the *Statutory Bodies Legislation Amendment Act 2007*, section 129.

Part 5 Self-insurance

600 Licences

(1) A licence issued to a self-insurer by WorkCover under the repealed Act is taken to be a licence issued to a self-insurer by the Authority under this Act.

(2) Without limiting section 592(1), any application under chapter 2, part 5 of the repealed Act is taken to be an application to the Authority under a corresponding provision of this Act.

601 Number of full-time workers

(1) Section 101(a) or 102(b) of the repealed Act as in force immediately before 3 March 1999, continues to apply to the renewal of a self-insurer's licence if the self-insurer—

(a) was licensed as a self-insurer immediately before 3 March 1999; or

(b) lodged an application to be licensed as a self-insurer on or before 3 March 1999.

(2) Subsection (1) stops applying to a self-insurer if the self-insurer's licence is subsequently cancelled.

Part 6 Injuries

603 Injury under former Act

(1) This section applies if a worker sustained an injury before the commencement of this section.

(2) A former Act, as in force when the injury was sustained, applies in relation to the injury.

(3) Section 558 of the repealed Act continues to apply in relation to a former Act mentioned in the section.

(4) However, a person entitled to lump sum compensation, weekly payments or dependant allowances under a former Act is entitled to the benefit of every increase in QOTE.

(5) In this section—

injury means injury as defined in the former Act.

604 Ex gratia payments

(1) WorkCover may make an ex gratia lump sum payment in relation to a person who sustained an injury, on or after 1 July 1999 but before 1 July 2000, that resulted in death or could result in a WRI of 20% or more.

(2) The payment may be made only if the person is not a worker within the meaning of the repealed Act as in force immediately before 1 July 2000 but would be a worker within the meaning of—

(a) the repealed Act as in force on 1 July 2000; or

(b) this Act.

(3) A payment under this section must be in the amount decided by WorkCover, but may not be more than the amount that would be payable if the person were a worker.

Part 7 Injury management

605 Rehabilitation coordinators

A person who was a rehabilitation coordinator under the repealed Act immediately before the commencement of this section is, on the commencement, taken to be a rehabilitation coordinator under this Act.

606 Workplace rehabilitation policy and procedures

Workplace rehabilitation policy and procedures applying under the repealed Act immediately before the commencement of this section are, on the commencement, taken to be workplace rehabilitation policy and procedures under this Act.

Part 8 Medical assessment tribunals

607 Continuation of tribunals

Each medical assessment tribunal in existence under the repealed Act immediately before the commencement of this section continues in existence as the corresponding tribunal under this Act.

Part 9 Offences

608 Offences

(1) Proceedings for an offence against the repealed Act may be started or continued as if this Act had not been passed.

(2) However, section 579 applies as if the proceeding were for an offence under this Act.

Part 10 Reviews and appeals

609 Decisions by WorkCover or self-insurer

Chapter 9 of the repealed Act, as in force immediately before 1 July 1999, continues to apply to a decision made by WorkCover or a self-insurer before 1 July 1999 as if the *WorkCover Queensland Amendment Act 1999*, section 45, had not been enacted.

Part 11 Miscellaneous

610 Claim for loss of consortium

To remove any doubt, the repeal of section 316 of the repealed Act does not affect the preservation of the entitlement to seek damages for loss of consortium in relation to an injury.

611 Spouse of worker dying before 1 April 2004

(1) This section applies in relation to a death of a worker that happens after the commencement of this section but before 1 April 2004.

(2) For this Act, the spouse of the deceased worker includes a person who, although not legally married to the deceased worker—

(a) lived with the worker as the worker's husband or wife for a continuous period of at least 1 year immediately before the commencement of this section; and

(b) continued to live with the worker as the worker's husband or wife until the worker died.

Chapter 16 Transitional provisions for Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004

612 Definitions for ch 16

In this chapter—

amending Act means the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004*.

613 Workers, employers and injuries

Sections 11, 30 and 32, as in force immediately before the commencement of this section, continue to apply in relation to an injury sustained by a worker before the commencement as if the amending Act had not been enacted.

614 Excess period

Sections 65 and 66, as in force immediately before the commencement of this section, continue to apply in relation to an injury sustained by a worker before 1 July 2005 as if the amending Act had not been enacted.

615 Employers who pay own claims

The amendments of this Act made by sections 15 to 17 of the amending Act apply only in relation to an injury sustained by a worker on or after 1 January 2005.

616 Entitlement to compensation

The following provisions, as in force immediately before 1 January 2005, continue to apply in relation to an injury sustained by a worker before 1 January 2005 as if the amending Act had not been enacted—

- section 105
- chapter 3, part 6, part 10, division 4 and part 11
- section 585.

617 Decision about application for compensation

Section 134, as in force immediately before the commencement of this section, continues to apply to an application for compensation made before the commencement.

618 When entitlement to compensation stops

Section 144B applies only in relation to an injury sustained by a worker on or after the commencement of the section.

619 Weekly payment for total incapacity

The provisions of chapter 3, part 9, division 4, as in force immediately before the commencement of this section, continue to apply in relation to an injury sustained by a worker before the commencement as if the amending Act had not been enacted.

620 Recovery of compensation claim costs from third party

The provisions of chapter 3, part 13 apply only in relation to an application for compensation made on or after the commencement of this section.

621 Public hospitalisation

The provisions of chapter 4, part 2, division 3, subdivision 2 apply only to the hospitalisation of a worker as an in-patient at a public hospital on or after the commencement of this section.

622 Damages for particular services

Chapter 5, part 10, as in force immediately before the commencement of this section, continues to apply to a proceeding for damages only if the trial in the proceeding was started before the commencement.

623 Review of decisions of insurer

(1) The provisions of chapter 13, parts 1 and 2, as in force immediately before the commencement of this section, continue to apply to a decision of WorkCover or a self-insurer made before the commencement as if the amending Act had not been enacted.

(2) In this section—

decision includes failure to make a decision.

624 Appeal of review decision

Sections 548, 549 and 554, as in force immediately before the commencement of this section, continue to apply to a review decision of the Authority made before the commencement as if the amending Act had not been enacted.

625 Appeals generally

The provisions of chapter 13, part 3, division 1, as in force immediately before the commencement of this section, continue to apply to a decision mentioned in section 548 as if the amending Act had not been enacted.

Chapter 17 Transitional provision for Industrial Relations and Other Acts Amendment Act 2005

626 Compensation under contracts of employment

(1) Section 585, as inserted by the *Industrial Relations and Other Acts Amendment Act 2005*, applies only to—

(a) a contract of employment entered into on or after the commencement of this section; or

(b) for a contract of employment entered into before the commencement of this section—an amendment to the contract of employment made on or after the commencement that inserts into the contract a provision about accident pay, or other payment, on account of a worker sustaining an injury.

(2) In this section—

contract of employment see section 585.

Chapter 18 Transitional provisions for Workers’ Compensation and Rehabilitation and Other Acts Amendment Act 2005

627 Definition for ch 18

In this chapter—

amending Act means the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005*.

628 Latent onset injuries that are terminal conditions

The provisions of chapter 3, part 3, division 5 only apply if a worker's application for compensation is lodged on or after the commencement of this section.

629 Maximum statutory compensation

Section 140, as in force immediately before the commencement of this section, continues to apply in relation to an injury sustained by a worker before the commencement as if the amending Act had not been enacted.

630 Weekly payment for total incapacity

The provisions of chapter 3, part 9, division 4, as in force immediately before the commencement of this section, continue to apply in relation to an injury sustained by a worker before the commencement as if the amending Act had not been enacted.

631 Compensation on worker's death

The amendments of this Act made by sections 25 to 27 of the amending Act apply only in relation to an injury sustained by a worker that results in the death of a worker on or after the commencement of this section.

632 Appointment of rehabilitation and return to work coordinator

(1) This section applies if—

(a) before the commencement of this section, an employer did not have an obligation to appoint a rehabilitation and return to work coordinator; and

(b) on the commencement of this section, the employer has an obligation to appoint a rehabilitation and return to work coordinator.

(2) The employer must appoint a rehabilitation and return to work coordinator on or before 1 July 2006.

633 Existing rehabilitation coordinators

A person who was a rehabilitation coordinator immediately before the commencement of this section is taken to be a rehabilitation and return to work coordinator on the commencement.

634 Workplace rehabilitation policy and procedures

(1) This section applies if—

(a) before the commencement of this section, an employer did not have an obligation to have workplace rehabilitation policy and procedures; and

(b) on the commencement of this section, the employer has an obligation to have workplace rehabilitation policy and procedures.

(2) The employer must have workplace rehabilitation policy and procedures on 1 July 2006.

635 Medical assessment tribunals

(1) Each medical assessment tribunal in existence immediately before the commencement of this section continues in existence after the commencement as if it were established under chapter 11.

(2) Each appointment of a person to a medical assessment tribunal that is in force immediately before the commencement of this section continues after the commencement.

636 Application of Industrial Relations (Tribunals) Rules

The amendment of this Act made by section 45 of the amending Act applies only to an appeal started on or after the commencement of this section.

637 Incorrect reference in s 625

It is declared that the reference to chapter 3, part 3, division 1 in section 625, as inserted by the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2004* and before its amendment by the amending Act, is taken always to have been a reference to chapter 13, part 3, division 1.

Chapter 19 Transitional provisions for Workers' Compensation and Rehabilitation Amendment Act 2006

638 Definitions for ch 19

In this chapter—

amended chapter 11 means chapter 11 as amended by the *Workers' Compensation and Rehabilitation Amendment Act 2006*.

commencement means the commencement of this section.

reference see section 639.

639 Meaning of *reference*

(1) A ***reference*** means a reference of a matter to a tribunal under section 500.

(2) For subsection (1), a reference made before the commencement in relation to an injury under a former Act is, from the commencement and despite section 603, taken to have been made under section 500(2).

640 Reference to tribunal before commencement—worker scheduled to attend after commencement

(1) This section applies if—

(a) a reference is made before the commencement; and

(b) the worker to whom the reference relates has been scheduled to attend before the tribunal after the commencement.

(2) The amended chapter 11, other than sections 500A and 510C, apply to the reference.

(3) This section applies regardless of the date of a worker's injury and despite section 603.

641 Reference to tribunal before commencement—worker not yet scheduled to attend after commencement

(1) This section applies if—

(a) a reference is made before the commencement; and

(b) on the commencement, the worker to whom the reference relates has not been scheduled to attend before the tribunal after the commencement.

(2) The amended chapter 11, other than section 500A, applies to the reference.

(3) This section applies regardless of the date of a worker's injury and despite section 603.

642 Reference to tribunal after commencement

(1) This section applies if a reference is made after the commencement.

(2) The amended chapter 11 applies to the reference regardless of the date of a worker's injury and despite section 603.

643 Existing decisions of tribunals

(1) Subsections (2) and (3) apply if, before the commencement—

(a) a tribunal made, or purported to make, a decision on a reference; and

(b) an insurer, employer, or any other person whose interests may have been affected by the decision was not present or heard before the tribunal.

(2) It is declared that a decision of a tribunal is taken to be, and to always have been, valid to the extent that the decision may not have been valid because a person mentioned in subsection (1)(b) was not present or heard before the tribunal.

(3) However, this section does not make valid a decision of a tribunal that has been set aside by the Court of Appeal before the commencement for the reason mentioned in subsection (2).

(4) Subsection (5) applies to a tribunal that, before the commencement, exercised or purported to exercise jurisdiction under chapter 11, as in force from time to time before the commencement, on a reference of any description in relation to an injury under a former Act.

(5) It is declared that the tribunal had, and is taken always to have had, that jurisdiction.

Chapter 20 Transitional provisions for Statutory Bodies Legislation Amendment Act 2007

644 Rights and entitlements of particular employees

(1) This section applies to a person who—

(a) becomes an employee of the employing office; and

(b) was an employee of WorkCover—

(i) immediately before the commencement of this section; and

(ii) immediately before becoming an employee of the employing office.

(2) On becoming an employee of the employing office, the person is taken to be employed under section 475F on the conditions on which the person would have been employed by WorkCover, immediately before the person became an employee of the employing office, if WorkCover had never become an employer under the *Workplace Relations Act 1996* (Cwlth).

(3) Also—

(a) the person keeps all rights and entitlements, including entitlements to receive long service, recreation and sick leave and any similar entitlements, that—

(i) have accrued or were accruing to the person as an employee of WorkCover; and

(ii) would have accrued to the person if WorkCover had never become an employer under the *Workplace Relations Act 1996* (Cwlth); and

(b) if the person is a member of a superannuation scheme—

(i) the person keeps all entitlements accrued or accruing to the person as a member of the scheme; and

(ii) the person's membership of the scheme is not affected.

(4) Without limiting subsection (3), for working out the person's rights and entitlements, including entitlements to receive long service, recreation and sick leave and any similar entitlements, employment of the person by the employing office is a continuation of employment of the person by WorkCover.

(5) If the person was a seconded employee immediately before becoming an employee of the employing office, the arrangement under which the person was performing work for a government entity, other than WorkCover, or for a non-Queensland government entity may continue until the arrangement ends, and, if the arrangement does continue—

(a) subsection (2) does not apply to the person; and

(b) on the ending of the arrangement, the person is taken to be employed under section 475F on the conditions on which the person would have been employed by WorkCover, on the ending of the arrangement, if—

(i) the person had continued to be an employee of WorkCover; and

(ii) WorkCover had never become an employer under the *Workplace Relations Act 1996* (Cwlth).

(6) Subsections (2) and (5)(b) do not limit section 475F(3) and (4).

(7) In this section—

employee of WorkCover includes a seconded employee.

seconded employee means an employee of WorkCover performing work for another government entity or non-Queensland government entity under an arrangement entered into, before the commencement of this section, by WorkCover with the appropriate authority of the other government entity or non-Queensland government entity.

645 Application of industrial instruments

The employing office is taken to be bound by the industrial instruments that bound WorkCover immediately before it became an employer under the *Workplace Relations Act 1996* (Cwlth).

646 Amending Act does not affect particular powers of WorkCover

Nothing in the *Statutory Bodies Legislation Amendment Act 2007*, part 12, affects the powers of WorkCover under section 388.

647 Continued application of repealed s 448

(1) Section 448, as in force immediately before the commencement of this section, continues to apply in relation to persons employed by WorkCover under the repealed section immediately before the commencement while that employment continues.

(2) This section does not limit section 646.

Chapter 21 Transitional provisions for Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2007

648 Definition for ch 21

In this chapter—

amending Act means the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2007*.

649 Decision about application for compensation

Section 134, as in force immediately before 1 January 2008, continues to apply to an application for compensation made before 1 January 2008 as if the amending Act had not been enacted.

650 Weekly payment for total incapacity

The provisions of chapter 3, part 9, division 4, as in force immediately before 1 January 2008, continue to apply in relation to an injury sustained by a worker before 1 January 2008 as if the amending Act had not been enacted.

651 Additional lump sum compensation for certain workers

Section 192, as in force immediately before 1 January 2008, continues to apply in relation to an injury sustained by a worker before 1 January 2008 as if the amending Act had not been enacted.

652 Reduction of amount payable on death

The amendment of this Act made by sections 17 and 18 of the amending Act applies only in relation to an injury sustained by a worker, including an injury sustained before 1 January 2008, that results in the death of a worker on or after 1 January 2008.

653 More than 1 injury from an event

Sections 245 and 246, as in force immediately before 1 January 2008, continue to apply in relation to an injury sustained by a worker before 1 January 2008 as if the amending Act had not been enacted.

654 Compensation claim costs and third parties

Chapter 3, part 13, as in force immediately before 1 January 2008, continues to apply in relation to an injury sustained by a worker before 1 January 2008 as if the amending Act had not been enacted.

Chapter 22 Transitional provision for Criminal Code and Other Acts Amendment Act 2008

655 References in s 537 to Criminal Code offences

Section 537(1)(b) applies as if it included a reference to the *Criminal Code*, sections 430 and 494 as in force at any time before their repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

Chapter 23 Transitional provision for Transport and Other Legislation Amendment Act 2008, part 12, division 5

656 Validation of particular applications made by phone

(1) An application mentioned in section 132 or 542 that was made by phone before the commencement is taken to be, and to always have been, as valid as if it were made after the commencement.

(2) In this section—

commencement means the commencement of this section.

Chapter 24 Transitional and declaratory provisions for Workplace Health and Safety and Other Legislation Amendment Act 2008

657 Worker with terminal condition—application for compensation lodged on or after 28 October 2008

The provisions of chapter 3, part 3, division 5 and part 11, as amended by the *Workplace Health and Safety and Other Legislation Amendment Act 2008*, only apply if a worker's application for compensation for a latent onset injury that is a terminal condition is lodged on or after 28 October 2008.

658 Worker with terminal condition—application for compensation lodged before 28 October 2008

(1) This section applies if—

(a) a worker lodged an application for compensation for a latent onset injury that is a terminal condition before 28 October 2008; and

(b) the worker had received a payment of lump sum compensation under section 128B for the latent onset injury; and

(c) the worker dies because of the latent onset injury on or after 28 October 2008.

(2) The worker's dependants are entitled to compensation under chapter 3, part 3, division 5 as if the worker's application for compensation had been lodged on or after 28 October 2008.

Chapter 25 Transitional provisions for Electrical Safety and Other Legislation Amendment Act 2009

660 Definition for ch 25

In this chapter—

amending Act means the *Electrical Safety and Other Legislation Amendment Act 2009*.

661 Matters published in industrial gazette

(1) This section applies if, before the commencement, a matter was published in the industrial gazette as required or permitted by a provision of this Act (***relevant provision***) as in force before the commencement.

(2) The matter continues to have been published for the relevant provision after the commencement despite the amendment of that provision by the amending Act.

(3) A reference to the publication of a matter under the relevant provision in another Act is taken to include a reference to the publication of the matter in the industrial gazette as continued in effect under subsection (2).

(4) In this section—

commencement means the commencement of this section.

industrial gazette means the Queensland Government Industrial Gazette.

Chapter 26 Transitional provisions for the Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2010

663 Definitions for ch 26

In this chapter—

amending Act means the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2010*.

amending section means a section of the amending Act that amends this Act.

new, in relation to a provision, means the provision as inserted or amended by the amending Act.

old, in relation to a provision, means the provision as it existed before being amended or omitted by the amending Act.

664 Existing excess period insurance protected

New section 67 has no effect on a policy of insurance entered into under old section 67 but applies to all insurance entered with WorkCover after the commencement of new section 67.

665 Reinsurance

New section 86 applies to any reinsurance that happens after the commencement of amending section 6.

666 Compensation on death of worker under 21

New section 202(1)(b) only applies if a worker dies as a result of an injury sustained after the commencement of amending section 8.

667 Responsibility for worker's rehabilitation

New sections 220 and 221 have effect in relation to any injured worker from the commencement of amending sections 9 and 10.

668 Provisions about conferences, offers and costs

(1) This section applies for the application of each provision as amended or inserted by a relevant amending section in relation to a claim made by a claimant and in existence immediately before the commencement of the relevant amending section.

(2) The provision as amended or inserted has effect in relation to the claim if, before the commencement of the relevant amending section—

(a) the claimant has not started proceedings in a court for the claim; and

(b) the compulsory conference required under chapter 5, part 6 has not been held.

(3) In this section—

relevant amending section means—

(a) section 17; or

(b) section 25; or

(c) section 26; or

(d) section 27; or

(e) section 28; or

(f) section 29; or

(g) section 32.

669 Provisions about, civil liability and assessment of damages

(1) Subsection (2) applies in relation to the following provisions—

(a) provisions inserted by section 21;

(b) new section 305H(1)(f) and (3) inserted by section 22.

(2) The provisions only apply in relation to—

(a) an injury sustained by a worker after the commencement of the provisions; or

(b) an injury sustained by a worker before the commencement of the provisions if—

(i) the injury is a latent onset injury diagnosed after the commencement of the provisions; or

(ii) the injury is—

(A) an injury to which section 235A applies; and

(B) the worker first consulted a relevant health practitioner after the commencement of the provision.

(3) To remove any doubt, it is declared that subsection (2) does not affect a provision that is, or to the extent that it is, only renumbered and relocated into part 8 or part 9 by the amending Act.

(4) In this section—

relevant health practitioner means a relevant health practitioner as defined under section 235A.

Chapter 27 Transitional provision for Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010

671 Appeals commenced before amendment of s 548A

Chapter 13, part 3, as amended by the *Civil and Criminal Jurisdiction Reform and Modernisation Amendment Act 2010*, applies only to an appeal commenced after the commencement of this section.

Chapter 28 Transitional provisions for Electrical Safety and Other Legislation Amendment Act 2011

672 Provision for QWAs

(1) The pre-amended Act continues to apply to a QWA under the *Industrial Relations Act 1999* as if a reference in the pre-amended Act to a QWA were a reference to a QWA continued in force under the *Industrial Relations Act 1999*, section 775.

(2) In this section—

pre-amended Act means this Act as in force immediately before its amendment by the *Electrical Safety and Other Legislation Amendment Act 2011*.

673 Appeal of decision under s 561

Section 561, as in force immediately before the commencement of this section, continues to apply to a decision mentioned in section 560A made before the commencement as if the *Electrical Safety and Other Legislation Amendment Act 2011* had not been enacted.

Chapter 29 Transitional provision for Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013

674 Provision about workers and employers

(1) Sections 11 and 30, and schedule 2, as in force immediately before 1 July 2013, continue to apply to an injury sustained by a worker after 17 November 2004 but before 1 July 2013 as if the amending Act had not been enacted.

(2) In this section—

amending Act means the *Industrial Relations (Transparency and Accountability of Industrial Organisations) and Other Acts Amendment Act 2013*.

Chapter 30 Transitional provisions for Criminal Law and Other Legislation Amendment Act 2013

675 Definition for ch 30

In this chapter—

commencement means the commencement of this section.

676 Application of s 71 to current applications by single employers

(1) Subsection (2) applies to an application for the issue or renewal of a licence to be a self-insurer that—

(a) was made by a single employer before the commencement; and

(b) has not been decided under section 71 at the commencement.

(2) The Authority must decide the application under section 71 as in force after the commencement.

(3) Subsection (4) applies to the following—

(a) a decision of the Authority under section 77 relating to—

(i) a submission made by a single employer under section 77 before the commencement for which the Authority has not made a decision under section 77(4) at the commencement; or

(ii) a submission made by a single employer under section 77 after the commencement (if the period within which the submission may be made under that section ends after the commencement);

(b) a decision of the Authority under section 80 relating to—

(i) a submission made by a single employer under section 80 before the commencement for which the Authority has not made a decision under section 80(4) at the commencement; or

(ii) a submission made by a single employer under section 80 after the commencement (if the period within which the submission may be made under that section ends after the commencement).

(4) The Authority must make the decision on the basis of section 71 as in force after the commencement as if that had been the law in force when the matter the subject of the submission was decided.

677 Application of s 72 to current applications by group employers

(1) Subsection (2) applies to an application for the issue or renewal of a licence to be a self-insurer that—

(a) was made by a group employer before the commencement; and

(b) has not been decided under section 72 at the commencement.

(2) The Authority must decide the application under section 72 as in force after the commencement.

(3) Subsection (4) applies to the following—

(a) a decision of the Authority under section 77 relating to—

(i) a submission made by a group employer under section 77 before the commencement for which the Authority has not made a decision under section 77(4) at the commencement; or

(ii) a submission made by a group employer under section 77 after the commencement (if the period within which the submission may be made under that section ends after the commencement);

(b) a decision of the Authority under section 80 relating to—

(i) a submission made by a group employer under section 80 before the commencement for which the Authority has not made a decision under section 80(4) at the commencement; or

(ii) a submission made by a group employer under section 80 after the commencement (if the period within which the submission may be made under that section ends after the commencement).

(4) The Authority must make the decision on the basis of section 72 as in force after the commencement as if that had been the law in force when the matter the subject of the submission was decided.

Chapter 31 Transitional provisions for the Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013

Part 1 Amendments commencing on introduction of Bill

678 Injuries sustained before commencement

(1) This section applies if a worker sustained an injury before the commencement.

(2) The pre-amended Act continues to apply in relation to the injury as if the amendment Act had not been enacted.

(3) Without limiting subsection (2)—

(a) the amount of compensation payable in relation to the injury must be worked out under the pre-amended Act; and

(b) chapter 5 of the pre-amended Act applies in relation to damages for the injury.

(4) In this section—

amendment Act means the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013*.

commencement means the commencement of this section.

pre-amended Act means this Act as in force before the commencement.

Part 2 Amendments commencing on assent

Division 1 Preliminary

679 Definitions for pt 2

In this part—

amended Act means this Act as in force at the commencement.

amendment Act means the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013*.

commencement means the commencement of this section.

former Authority means the Workers' Compensation Regulatory Authority established under the pre-amended Act.

former board means the former Authority's board of directors established under section 335 of the pre-amended Act.

former entity means—

(a) the former Authority; or

(b) the former board; or

(c) the chief executive officer of the former Authority appointed under section 355 of the pre-amended Act.

pre-amended Act means this Act as in force before the commencement.

Division 2 Existing injuries

680 Injuries sustained before commencement

(1) This section applies if a worker sustained an injury before the commencement.

(2) The pre-amended Act continues to apply in relation to the injury as if the amendment Act had not been enacted.

(3) Without limiting subsection (2)—

(a) the amount of compensation payable in relation to the injury must be worked out under the pre-amended Act; and

(b) chapter 5 of the pre-amended Act applies in relation to damages for the injury.

(4) In this section—

injury has the meaning given by section 32 of the pre-amended Act.

Division 3 Abolition of former Authority and transfer of assets etc.

681 Abolition of former Authority etc.

(1) At the commencement—

(a) the former Authority and the former board are abolished; and

(b) the members of the former board stop being members of the board; and

(c) the appointment and employment of the chief executive officer of the former Authority ends.

(2) Subsection (1)(b) or (c) does not affect the member's or chief executive officer's appointment in any other office.

(3) This section is subject to section 683.

682 Employees of former Authority to be employed by department

(1) This section applies to a person who, immediately before the commencement, was employed by the former Authority.

(2) From the commencement—

(a) the person ceases to be an employee of the former Authority; and

(b) is employed by the department under the department's relevant industrial instrument.

(3) Also, the following applies for the person—

(a) the person retains and is entitled to all rights, benefits and entitlements that have accrued to the person because of the person's previous employment as an employee of the former Authority;

(b) the person's accruing rights, including to superannuation or recreation, sick, long service or other leave, are not affected;

(c) continuity of service is not interrupted, except that the person is not entitled to claim the benefit of a right or entitlement more than once in relation to the same period of service;

(d) the employment does not constitute a termination of employment or a retrenchment or redundancy;

(e) the person is not entitled to a payment or other benefit because he or she is no longer employed by the former Authority.

(4) If a person employed under subsection (2) was employed by the former Authority under a contract, the person is taken to be employed by the department under the contract under which the person was employed before the commencement.

(5) Subsection (6) applies if a person mentioned in subsection (2) was entitled to total remuneration for the employment with the former Authority that is higher than the total remuneration payable under the relevant industrial instrument for a person starting in the position with the department to which the person has been transferred.

(6) The person's total remuneration must not be increased until the person's total remuneration aligns with the total remuneration payable under the relevant industrial instrument to a person who has held the position for the same amount of time.

(7) Subject to this section, the chief executive may issue a direction to a person to facilitate the transition of employees from the former Authority to the department.

(8) A person given a direction must comply with the direction.

(9) This section has effect despite any other law or instrument.

(10) In this section—

employee, of the former Authority, does not include the chief executive officer appointed under the section 355 of the pre-amended Act.

683 Continuation of former board until 30 June 2014 for particular purposes

(1) The former board continues in existence until 30 June 2014 for—

(a) performing a function, or exercising a power delegated to the former board by the Regulator; and

(b) approving amounts under section 107E on behalf of the Regulator; and

(c) preparing a report under section 332, 333 or 334 of the pre-amended Act for operations of the former Authority before commencement; and

(d) the following—

(i) keeping the Minister reasonably informed of the operation of the workers' compensation scheme;

(ii) preparing and providing to the Minister reports and information that the Minister requires about the operation of the workers' compensation scheme;

(iii) assisting the Regulator perform the functions stated in section 327 in a proper, effective and efficient way;

(iv) monitoring the performance and outcomes of medical assessment tribunals;

(v) keeping the Minister informed, on its own initiative or if the Minister asks, about the board's responsibilities and functions under this section.

(2) For subsection (1)(b), the board is taken to have been delegated the power mentioned in that section by the Regulator.

(3) Anything done by the former board under a delegation mentioned in subsection (1)(a) or (2) is taken to have been done by the Regulator.

(4) The following provisions of the pre-amended Act apply in relation to the board performing a function, or exercising a power, mentioned in subsection (1) as if the amendment Act had not been enacted—

(a) chapter 7, part 4, divisions 2 and 3;

(b) any other provision of the pre-amended Act relevant to the board performing functions.

(5) A provision mentioned in subsection (4) applies—

(a) as if any reference in the provision to the Authority's chief executive officer were a reference to the Regulator; and

(b) with any other necessary changes.

684 State is legal successor

(1) The State is the successor in law of the Authority.

(2) Subsection (1) is not limited by another provision of this division.

685 Assets and liabilities etc. of former Authority

At the commencement—

(a) the assets and liabilities of the former Authority immediately before the commencement become assets and liabilities of the State; and

(b) any agreements, undertakings or other arrangements to which the former Authority is a party, in force immediately before the commencement—

(i) are taken to have been entered into by State; and

(ii) may be enforced against or by State.

686 Proceeding not yet started against former entity

(1) This section applies if, immediately before the commencement, a proceeding could have been started by or against a former entity within a particular period (the ***prescribed period***).

(2) The proceeding may be started, within the prescribed period, by or against—

(a) for an appeal against a review decision of the former Authority—the Regulator; or

(b) otherwise—the State.

687 Proceeding to which former entity was a party

(1) This section applies to a proceeding that, immediately before the commencement, had not ended and to which a former entity was a party.

(2) At the commencement, the following entity becomes a party to the proceeding in place of the former entity—

(a) for an appeal against a review decision of the former entity—the Regulator;

(b) otherwise—the State.

688 Records of former entity

The records of a former entity are, from the commencement, records of—

(a) if the record relates to a function of a former entity under this Act that, from the commencement, is a function of the Regulator—the Regulator; or

(b) if the record relates to a function of a former entity under this Act that, from the commencement, is a function of WorkCover—WorkCover; or

(c) otherwise—the State.

689 References to former entity

In an instrument, a reference to a former entity is taken, if the context permits, to be a reference to—

(a) if the reference relates to a function of the former entity under this Act that, from the commencement, is a function of the Regulator—the Regulator; or

(b) if the reference relates to a function of the former entity under this Act that, from the commencement, is a function of WorkCover—WorkCover; or

(c) otherwise—the State.

690 Offences relating to former entity

(1) This section applies if—

(a) under a provision of the pre-amended Act, a person who did or omitted to do an act in relation to a former entity or something done or required to be done by a former entity, committed an offence; and

(b) the provision is—

(i) amended by the amendment Act so that it no longer applies in relation to the former entity, or something done or required to be done by the former entity; or

(ii) is repealed by the amendment Act.

(2) A proceeding for the offence may be continued or started, and the provisions of the pre-amended Act that are necessary or convenient to be used in relation to the proceeding continue to apply, as if the amendment Act had not been enacted.

(3) For subsection (2), the *Acts Interpretation Act 1954*, section 20 applies, but does not limit the subsection.

(4) Subsection (2) applies despite the Criminal Code, section 11.

691 Existing applications and requests made to former entity

(1) This section applies to an application or request to a former entity under this Act made, but not decided, before the commencement.

(2) The application or request is taken to have been made to the Regulator and must be dealt with by the Regulator under this Act, including as provided for in this chapter.

(3) For the purpose of working out any time period relevant to dealing with the application or request—

(a) the application or request is taken to have been made to the Regulator when it was made to the former entity; and

(b) anything done by a former entity in relation to the application is taken to have been done by the Regulator when the former entity did the thing.

(4) Anything done by or in relation to the former entity in relation to the application or request is taken to have been done by or in relation to the Regulator.

(5) If, because of the operation of section 680, the pre-amended Act applies in relation to an application or request, the pre-amended Act applies—

(a) as if a reference to a former entity was a reference to the Regulator; and

(b) with any other necessary changes.

692 Table of costs

The table of costs decided by the Authority under the pre-amended Act and in effect immediately before the commencement—

(a) continues in effect; and

(b) is, from the commencement, taken to have been decided by WorkCover under the amended Act.

693 Cost of hospitalisation

(1) A gazette notice published by the Authority for section 217 of the pre-amended Act and in effect immediately before the commencement—

(a) continues in effect; and

(b) is, from the commencement, taken to have been published by WorkCover under section 217 of the amended Act.

(2) A gazette notice published by the Authority for section 218A of the pre-amended Act and in effect immediately before the commencement—

(a) continues in effect; and

(b) is, from the commencement, taken to have been published by WorkCover under section 218A of the amended Act.

694 Directions of Minister

(1) This section applies to a direction given by the Minister under section 476, 477 or 479 of the pre-amended Act that has not been fully complied with immediately before the commencement.

(2) The direction ceases to have effect at the commencement.

695 Monitoring and assessment of former Authority

(1) This section applies to an investigation started, but not finished, under section 478 of the pre-amended Act before the commencement.

(2) The investigation, and any requirement applying in relation to the investigation, ends at the commencement.

696 Other things done or started by the former entity

(1) This section applies to anything done or started by a former entity under an Act (the ***Act***)—

(a) whose effect had not ended, or that has not been finished, immediately before commencement; and

(b) that, at the commencement, is something that the Regulator can do under the Act; and

(c) that is not otherwise dealt with by a provision of the Act.

Example of a thing started by the former Authority—

the procedure for cancelling a self-insurer's licence under section 96 of the pre-amended Act

(2) The thing done or started by the former entity—

(a) continues to have effect; and

(b) from the commencement, is taken to have been done or started by the Regulator; and

(c) for a thing started by a former entity—may be completed by the Regulator.

697 Other things required to be done by or in relation to the former entity

(1) This section applies to anything required to be done by, or in relation to, a former entity under an Act (the ***Act***), if—

(a) the requirement to do the thing has not been complied with at the commencement; and

(b) at the commencement, the thing is something that the Regulator is required to do, or may require another person to do, under the Act; and

(c) compliance with the requirement to do the thing is not otherwise dealt with by a provision of this Act.

Example of requirement to which this section may apply—

a requirement to give advice or information to the former Authority (see, for example, section 68A of the pre-amended Act)

(2) The requirement to do the thing—

(a) continues to have effect; and

(b) from the commencement, is taken to be a requirement of, or applying in relation to, the Regulator.

698 Evidentiary provisions

Sections 375(3), 376, 377 and 583(1) and (2) of the pre-amended Act continue to apply as if the amendment Act had not been enacted.

Division 4 Other provisions

699 Insurer's responsibility for worker's rehabilitation

(1) Section 220(2) applies in relation to a worker who lodges a notice of claim, whether the claim is lodged before or after the commencement.

(2) However, section 220(2) does not apply if a proceeding for damages in relation to the worker's injury has started before the commencement.

700 Disclosing pre-existing injury

Section 571B applies only in relation to an employment process, within the meaning of section 571A, started after the commencement.

701 Authorised persons

(1) A person who, immediately before the commencement, was an authorised person appointed under section 370 of the pre-amended Act is taken to be an authorised person appointed under section 330—

(a) until the end of the term of appointment under the pre-amended Act; and

(b) on the conditions of the appointment under the pre-amended Act that are consistent with this Act.

(2) The Regulator must issue the authorised person an identity card under section 333 as soon as practicable after the commencement.

702 Requirement of authorised person under previous s 519

(1) This section applies to a requirement made by an authorised person under section 519(2) of the pre-amended Act if the time for complying with the requirement has not passed at the commencement.

(2) The requirement—

(a) continues to have effect; and

(b) from the commencement, is taken to be a requirement made by an authorised person under section 532C(2).

703 Requirement of authorised person under previous s 520

(1) This section applies to a requirement made by an authorised person under section 520(3)(b) of the pre-amended Act if the time for complying with the requirement has not passed at the commencement.

(2) The requirement—

(a) continues to have effect; and

(b) from the commencement, is taken to be a requirement made by an authorised person under section 532D(3)(b).

704 Existing warrants

(1) This section applies to a warrant issued under the pre-amended Act, chapter 12, part 1 (the ***previous warrant***) if, immediately before the commencement, the warrant was in effect and had not been executed.

(2) The previous warrant—

(a) continues to have effect according to its terms; and

(b) is taken to be a search warrant issued under section 521.

705 Dealing with seized property

(1) This section applies to a thing seized under the pre-amended Act, section 524, that has not been finally dealt with under the pre-amended Act before commencement.

(2) The thing is taken to have been seized under section 529.

(3) A receipt given for the thing under the pre-amended Act is taken to be a receipt given for the thing under section 530.

(4) For applying this Act to the seizure, the period mentioned in section 532 is taken to have started when the thing was seized under the pre-amended Act.

706 Protection from liability

(1) Section 374 of the pre-amended Act continues to apply, despite its repeal by the amendment Act, in relation to an act done or omission made by the authorised person before commencement.

(2) For subsection (1), the reference in section 374(2) of the pre-amended Act to the Authority is taken to be a reference to the State.

Chapter 32 Transitional provisions for Workers’ Compensation and Rehabilitation and Other Legislation Amendment Act 2015

Part 1 Preliminary

707 Definitions for ch 32

In this chapter—

amendment Act means the *Workers’ Compensation and Rehabilitation and Other Legislation Amendment Act 2015*.

former, for a provision, means the provision as in force from time to time before the repeal or amendment of the provision by the amendment Act.

Part 2 Amendments commencing on 31 January 2015

708 Definitions for pt 2

In this part—

pre-amended Act means this Act as in force before 31 January 2015.

transitional period means the period starting on 31 January 2015 and ending on the date of assent of the amendment Act.

709 Injuries sustained before 31 January 2015

(1) This section applies if a worker sustained an injury before 31 January 2015.

(2) The pre-amended Act continues to apply in relation to the injury as if the amendment Act had not been enacted.

(3) Without limiting subsection (2)—

(a) the amount of compensation payable in relation to the injury must be worked out under the pre-amended Act; and

(b) chapter 5 of the pre-amended Act applies in relation to damages, or a proceeding for damages, for the injury.

(4) Also, if an insurer made a decision on an application in relation to the injury under former section 132A during the transitional period, a worker aggrieved by the decision may apply to have the decision reviewed under chapter 13.

710 Application under s 132A during transitional period

(1) This section applies if, during the transitional period—

(a) an injury was sustained by a worker; and

(b) an application was made under section 132A to have the worker's injury assessed under section 179 to decide if the worker's injury has resulted in a DPI.

(2) Former section 132A applies to the application, despite its amendment by the amendment Act.

(3) However, if the worker is aggrieved by the insurer's decision on the application, the worker may apply to have the decision reviewed under chapter 13.

(4) Nothing in this section affects another provision of this Act about deciding—

(a) whether a person was a worker; or

(b) whether a worker sustained an injury; or

(c) the date an injury was sustained.

711 Decision under s 189 not affected

(1) This section applies if—

(a) a decision was made, or taken to have been made, by a worker under section 189 before the date of assent of the amendment Act; and

(b) the injury to which the decision relates was sustained during the transitional period.

(2) The enactment of the amendment Act does not affect the decision.

Part 3 Amendments commencing on introduction

712 Firefighter diagnosed with specified disease before commencement

Section 36D, as inserted by the amendment Act, does not apply to a person who was diagnosed by a doctor for the first time with a specified disease before the commencement.

713 Particular WorkCover contracts covering volunteers

(1) This section applies to a contract of insurance entered into with WorkCover for chapter 1, part 4, division 3, subdivision 1 that—

(a) was in force at any time during the transitional period; and

(b) covered a volunteer firefighter.

(2) The contract is taken to have covered the payment of damages to a specified volunteer firefighter who, during the transitional period, sustained an injury that was a specified disease.

(3) In this section—

introduction day means the day the Bill for the amendment Act was introduced into the Legislative Assembly.

transitional period means the period starting on the introduction day and ending on the date of assent of the amendment Act.

Part 4 Amendments commencing on assent

714 Review or appeal of existing decisions

(1) This section applies if, during the relevant period—

(a) a decision mentioned in former section 540(1) was made; or

(b) a decision mentioned in former section 548 was made.

(2) Section 542, as amended by the amendment Act, applies to the decision mentioned in subsection (1)(a).

(3) Section 550, as amended by the amendment Act, applies to the decision mentioned in subsection (1)(b).

(4) In this section—

relevant period means the period starting on 28 April 2015 and ending immediately before the commencement.

715 Existing applications under former s 571D

(1) This section applies to an application for a copy of a prospective worker's claims history summary that was made to the Regulator under former section 571D but not decided before the commencement.

(2) The application may continue to be decided by the Regulator under former section 571D as if it had not been repealed.

(3) To remove any doubt, it is declared that the Regulator may refuse the application under former section 571D.

716 Saving of former s 571D(3)

(1) This section applies if the Regulator provides or has provided a copy of a worker's claims history summary to a prospective employer under former section 571D, including that section as continued in effect under section 715.

(2) Former section 571D(3) continues to apply, despite its repeal by the amendment Act, to the prospective employer.

Part 5 Amendments commencing by proclamation

717 Application of s 193A

Despite section 709, section 193A applies to an injury sustained by a worker on or after 15 October 2013 and before 31 January 2015.

Chapter 33 Transitional provisions for Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016

718 Definitions for chapter

In this chapter—

2015–2016 financial year means the financial year that started on 1 July 2015.

2016–2017 financial year means the financial year starting on 1 July 2016.

new, for a provision, means the provision as in force immediately after the commencement.

719 Application of s 71(4)

Section 71(4) applies to a single employer who stops holding a licence to be a self-insurer after the commencement.

720 Security under section 84

Section 84, as amended by the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016*, applies to an application by an employer to be licensed as a self-insurer made before the commencement that has not been decided at the commencement.

721 QOTE for 2016–17 financial year

(1) Section 107 does not apply for the 2016–2017 financial year.

(2) QOTE for the 2016–2017 financial year is $1,456.90.

(3) The percentage difference in QOTE for the 2016–2017 financial year compared to QOTE for the 2015–2016 financial year is 0%.

722 No automatic variation of compensation payable for 2016–2017 financial year

(1) For sections 205 and 206, for the 2016–2017 financial year—

(a) QOTE is taken not to have varied; and

(b) each payment or amount mentioned in section 205(1) is taken not to have varied.

(2) If, before the commencement, the Regulator notified, under section 205(3), a variation for the 2016–2017 financial year, the notice is revoked and is taken not to have been made.

723 Entitlement to compensation for 2016–2017 financial year

(1) This section applies if—

(a) before the commencement, an amount (the ***lower amount***) a person is entitled to be paid as compensation under this Act was decreased from 1 July 2016 because—

(i) QOTE for the 2016–2017 financial year was less than QOTE for the 2015–2016 financial year; or

(ii) the amount was varied under section 205; and

(b) from the commencement, because of the operation of sections 721 and 722, the amount (the ***higher amount***) the person would have been entitled to be paid from 1 July 2016 did not decrease.

(2) The person is entitled to be paid the higher amount from 1 July 2016.

(3) From the commencement, an ex gratia amount paid to the person by an insurer to compensate for the decrease in the person's entitlement mentioned in subsection (1)(b) is taken to

have been paid to the person because of the person's entitlement to be paid the higher amount under subsection (2).

(4) Subsection (3) applies to an ex gratia amount to the extent the ex gratia amount is equal to or less than the difference between the higher amount and the lower amount of the person's entitlement for the relevant period.

(5) In this section—

relevant period means the period starting on 1 July 2016 and ending on the day before the commencement.

724 Serious personal injuries

This Act, as amended by the *Workers' Compensation and Rehabilitation (National Injury Insurance Scheme) Amendment Act 2016*, applies in relation to a serious personal injury sustained by a worker on or after 1 July 2016.

725 Existing or new claims for damages

(1) This section applies to—

(a) a claim for damages started under chapter 5 before the commencement if, at the commencement—

(i) settlement for damages has not been agreed; and

(ii) a court has not started hearing a proceeding for the claim; and

(b) a claim for damages started under chapter 5 after the commencement.

(2) New sections 10 and 236B apply to the claim.

726 Application of new ss 578 and 579 to existing offences

(1) New sections 578 and 579 apply to a proceeding for an offence committed before the commencement if a proceeding for the offence has not been finally dealt with before the commencement.

(2) If a proceeding for the offence has started, but has not been finally dealt with, before the commencement, the proceeding may be continued if it was started—

(a) by a person who may start the proceeding under new section 578 or 579; and

(b) within the period within which the person may bring a proceeding for the offence under new section 578 or 579.

Chapter 34 Transitional provisions for Workers' Compensation and Rehabilitation (Coal Workers' Pneumoconiosis) and Other Legislation Amendment Act 2017

727 Application of ch 3, pt 3, div 5

(1) Chapter 3, part 3, division 5 applies to a worker—

(a) whether the worker's injury was sustained before or after the commencement; and

(b) whether the application for compensation for the injury was lodged before or after the commencement.

(2) However, if the worker's injury was sustained before the commencement, chapter 3, part 3, division 5 applies to the worker only if the worker's injury had not, before the commencement, been assessed under section 179.

728 Application of ch 3, pt 10, div 5

Chapter 3, part 10, division 5 applies to a worker—

(a) whether the worker's injury was sustained before or after the commencement; and

(b) whether the application for compensation for the injury was lodged before or after the commencement.

729 Working out worker's pneumoconiosis score before commencement

(1) This section applies for the purpose of applying chapter 3, part 3, division 5 or part 10, division 5 to a worker whose injury was sustained before the commencement.

(2) To remove any doubt, it is declared that nothing in this Act prevents the worker's pneumoconiosis score being worked out, after the commencement, as at a day before the commencement.

Chapter 35 Transitional provisions for Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2019

730 Definitions for chapter

In this chapter—

former, for a provision, means the provision as in force before the commencement.

new, for a provision, means the provision as in force from the commencement.

731 Requirement for employment to be significant contributing factor to psychiatric or psychological disorder

(1) New section 32 applies in relation to a psychiatric or psychological disorder only if the injury to which the disorder relates was sustained by a worker after the commencement.

(2) Former section 32 continues to apply in relation to a psychiatric or psychological disorder if the injury to which the disorder relates was sustained by a worker before the commencement.

732 Requirement for certification of terminal condition

(1) New section 39A applies in relation to a terminal condition only if the latent onset injury to which the condition relates was sustained by a worker on or after 31 January 2015.

(2) Former section 39A continues to apply in relation to a terminal condition if the latent onset injury to which the condition relates was sustained by a worker before 31 January 2015.

733 Expression of percentage difference in QOTE for financial year rounded to nearest second decimal place

(1) This section applies if, before the commencement, the Regulator notified under former section 107(2)(b) the percentage difference in QOTE for a financial year compared to QOTE for the previous financial year.

(2) The notification of the percentage difference is, and is taken to have always been, as valid as it would have been if the percentage difference had been notified under new section 107(3).

(3) Anything done, or omitted to be done, under a notice under former section 107(2) is, and is taken to have always been, as valid as it would have been if the percentage difference in the notice had been notified under new section 107(3).

734 Payment of compensation by employer who is self-insurer

The prohibition under new section 109(4) against an employer who is a self-insurer paying a worker an amount, either in compensation or instead of compensation, that is payable under the Act by the employer as a self-insurer for an injury sustained by the worker applies only if the worker’s injury was sustained after the commencement.

735 Discretion of insurer to waive time limit for applying for compensation

The discretion of an insurer to waive the time limit under new section 131 for lodging an application for compensation applies only if the application was made after the commencement.

736 Report of injury by employer who is self-insurer

The obligation under new section 133 of an employer who is a self-insurer and whose worker sustains an injury to complete a report in the approved form and give the report to the insurer applies only if the worker’s injury was sustained after the commencement.

737 Obligation of employer who is self-insurer to report payment to insurer

The obligation under new section 133A of an employer who is a self-insurer and whose worker sustains an injury to give a written notice to the insurer if the employer pays the worker an amount, either in compensation or instead of compensation, that is payable by the employer under the Act for an injury sustained by the worker, applies only if the worker’s injury was sustained after the commencement.

738 Insurer's obligation to refer worker who has stopped receiving compensation to return to work program

The obligation of an insurer under new section 220(2)(c) to refer a worker, who has stopped receiving compensation for an injury under section 144A, 168 or 190(2), to an accredited rehabilitation and return to work program of the insurer applies only if the worker stopped receiving the compensation after the commencement.

739 Employer's obligation to give insurer details of rehabilitation and return to work coordinator appointed before commencement

(1) This section applies if an employer appointed a rehabilitation and return to work coordinator before the commencement.

(2) The employer must give the insurer the prescribed details of the coordinator, as defined in new section 226(8), within 12 months after the commencement.

(3) New section 226(4) applies to the employer as if the coordinator were appointed on the commencement.

740 Insurer's obligation to provide support for worker with psychiatric or psychological injury

The obligation of an insurer under new chapter 4, part 5A to provide support to a worker who has made an application for compensation for a psychiatric or psychological injury applies only if the worker's injury was sustained after the commencement.

741 Expressions of regret and apologies made before commencement

(1) This section applies if—

(a) a person gives a notice of a claim to an insurer after the commencement; and

(b) an expression of regret or apology was made in relation to the claim before the commencement.

(2) Chapter 5, part 14 applies in relation to the expression of regret or apology.

Chapter 36 Transitional provision for Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2020

742 Application of ch 1, pt 4, div 6, sdiv 3BA and s 135A

The following provisions apply only in relation to an application for compensation lodged on or after the commencement—

(a) chapter 1, part 4, division 6, subdivision 3BA;

(b) section 135A.

Schedule 1 Regulations

section 584

1 fixing and varying premiums, rates of premium, bonuses and demerit charges in relation to policies, including providing for an increase in the rate or a charge if, because of an employer's carelessness or another reason WorkCover considers sufficient, the risk carried by WorkCover is greater than that usually carried in cases of accident insurance of a similar description

2 provision for payment of additional premiums in relation to policies, and fixing the rates of additional premiums, in cases where employers fail to give to WorkCover the prescribed annual returns within the time decided and notified by WorkCover

3 authorising WorkCover to assess premiums to be paid, as WorkCover directs, by—

(a) employers; or

(b) other persons with whom WorkCover has made contracts of insurance; or

(c) persons required to give returns; or

(d) persons whom WorkCover believes to be employers;

and to increase, reduce and enforce payment of the assessments

4 the time in which and place where a premium is to be paid to WorkCover

5 acceptance by WorkCover of risk under contracts of insurance other than policies, the conditions or provisions to be contained or implied in the contracts, the nature and extent of risk covered by the contracts

6 the proper conduct of WorkCover's insurance business

7 returns to be given to WorkCover, including—

(a) the persons who must give the returns, whether employers or other persons; and

(b) the time and how the returns must be given

8 the acceptance by WorkCover of payment of premium by instalments, including—

(a) payment of interest; and

(b) the rate and calculation of interest; and

(c) security to WorkCover for payment of instalments and interest;

and the result of and remedies on a failure to make payment due or to honour obligations under a security given to WorkCover for payment of the premium

9 the mode of service of process in legal proceedings, or of a notice or document, for this Act that is not provided for under chapter 14

10 the evidentiary value and if necessary, the admissibility into evidence, in a proceeding before a court, tribunal or person for this Act of a certificate, or copy of or extract from a document kept under this Act for anything under this Act, that is not provided for under chapter 14

11 the management of a claim for which there is more than one defendant

12 costs, including costs before and after a proceeding is started, and the type and amount of costs that may be claimed by or awarded to a claimant during any stage before or after the start of a proceeding

13 imposing a penalty for a contravention of a regulation of not more than 20 penalty units

Schedule 2 Who is a worker in particular circumstances

section 11

Part 1 Persons who are workers

1 A person who works a farm as a sharefarmer is a worker if—

(a) the sharefarmer does not provide and use in the sharefarming operations farm machinery driven or drawn by mechanical power; and

(b) the sharefarmer is entitled to not more than $^{1}/_{3}$ of the proceeds of the sharefarming operations under the sharefarming agreement with the owner of the farm.

2 A salesperson, canvasser, collector or other person (***salesperson***) paid entirely or partly by commission is a worker, if the commission is not received for or in connection with work incident to a trade or business regularly carried on by the salesperson, individually or by way of a partnership.

3 A contractor, other than a contractor mentioned in part 2, section 4 of this schedule, is a worker if—

(a) the contractor makes a contract with someone 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.

4 A person who is party to a contract of service with another person who lends or lets on hire the person's services to someone else is a worker.

5 A person who is party to a contract of service with a labour hire agency or a group training organisation that arranges for the person to do work for someone else under an arrangement made between the agency or organisation and the other person is a worker.

6 A person who is party to a contract of service with a holding company whose services are let on hire by the holding company to another person is a worker.

7 A person (an ***intern***), other than a person mentioned in chapter 1, part 4, division 3, subdivision 1, 2, 3 or 4, is a worker if the person—

(a) is performing work for a business or undertaking without payment of wages to gain practical experience in the type of work performed by the business or undertaking, or to seek to obtain a qualification; and

(b) would be a worker if the work performed by the person were for the payment of wages.

Part 2 Persons who are not workers

1 A person is not a worker if the person performs work under a contract of service with—

(a) a corporation of which the person is a director; or

(b) a trust of which the person is a trustee; or

(c) a partnership of which the person is a member; or

(d) the Commonwealth or a Commonwealth authority.

2 A person who performs work under a contract of service as a professional sportsperson is not a worker while the person is—

(a) participating in a sporting or athletic activity as a contestant; or

(b) training or preparing for participation in a sporting or athletic activity as a contestant; or

(c) performing promotional activities offered to the person because of the person's standing as a sportsperson; or

(d) engaging on any daily or other periodic journey in connection with the participation, training, preparation or performance.

3 A member of the crew of a fishing ship is not a worker if—

(a) the member's entitlement to remuneration is contingent upon the working of the ship producing gross earnings or profits; and

(b) the remuneration is wholly or mainly a share of the gross earnings or profits.

4 A person who, in performing work under a contract, other than a contract of service, supplies and uses a motor vehicle for driving tuition is not a worker.

5 A person participating in an approved program or work for unemployment payment under the *Social Security Act 1991* (Cwlth), section 601 or 606 is not a worker.

6 A person is not a worker if—

(a) the person works for another person under a contract; and

(b) a personal services business determination is in effect for the person performing the work under the *Income Tax Assessment Act 1997* (Cwlth), section 87-60.

Schedule 3 Who is an employer in particular circumstances

section 30

1 A person who lends or lets on hire the services of a worker who is party to a contract (regardless of whether the contract is a contract of service) with that person continues to be the worker’s employer while the worker’s services are lent or let on hire.

2 If a labour hire agency or group training organisation arranges for a worker who is party to a contract (regardless of whether the contract is a contract of service) with the agency or organisation to do work for someone else, the agency or organisation continues to be the worker’s employer while the worker does the work for the other person under an arrangement made between the agency or organisation and the other person.

3 If a holding company lets on hire the services of a worker who is party to a contract (regardless of whether the contract is a contract of service) with the holding company, the holding company continues to be the worker’s employer while the worker’s services are let on hire.

4 The owner of the farm is the employer of a person who works the farm as a sharefarmer, and any worker employed by the sharefarmer, if—

(a) the sharefarmer does not provide and use in the sharefarming operations farm machinery driven or drawn by mechanical power; and

(b) the sharefarmer is entitled to not more than $^{1}/_{3}$ 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—

(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.

8 A person is the employer of an intern if—

(a) the person is conducting a business or undertaking; and

(b) the intern performs work for the person without payment of wages to gain practical experience in the type of work performed by the business or undertaking, or to seek to obtain a qualification; and

(c) the intern would be a worker if the work performed by the intern were for the payment of wages.

Schedule 4 Adjacent areas

section 113(9)

1 Definitions

In this schedule—

continental shelf has the same meaning as in the *Seas and Submerged Lands Act 1973* (Cwlth).

territorial sea has the same meaning as in the *Seas and Submerged Lands Act 1973* (Cwlth).

2 Adjacent areas

(1) The adjacent area for New South Wales, Victoria, South Australia or Tasmania is so much of the area described in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth), schedule 1 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 *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth), schedule 1 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 *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth), section 8(2)) other than the territorial sea within the Coral Sea area; and

(c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 4 February 1983 under the *Seas and Submerged Lands Act 1973* (Cwlth), section 7; and

(d) the space above and below the areas described in paragraphs (a), (b) and (c).

(3) The adjacent area for Western Australia is so much of the area described in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth), schedule 1 in relation to Western Australia as—

(a) is within the outer limits of the continental shelf; and

(b) is not within the Joint Petroleum Development Area;

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 *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth), schedule 1 in relation to the Northern Territory as—

(i) is within the outer limits of the continental shelf; and

(ii) is not within the Joint Petroleum Development Area; and

(b) the offshore area for the Territory of Ashmore and Cartier Islands (within the meaning of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth), section 8(1)) 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.

(6) A reference in this section to the area described in the *Offshore Petroleum and Greenhouse Gas Storage Act 2006* (Cwlth), schedule 1 in relation to a State or Territory is a reference to the scheduled area for the State or Territory under the schedule.

Schedule 4A Specified diseases

sections 36B and 36D

Column 1	Column 2
Disease	**Minimum number of years**
primary site brain cancer	5 years
primary site bladder cancer	15 years
primary site kidney cancer	15 years
primary non-Hodgkins lymphoma	15 years
primary leukaemia	5 years
primary site breast cancer	10 years
primary site testicular cancer	10 years
multiple myeloma	15 years
primary site prostate cancer	15 years
primary site ureter cancer	15 years
primary site colorectal cancer	15 years
primary site oesophageal cancer	25 years

Schedule 5 Period of limitation

section 302(1)(b)

1 Worker who requests or is given notice of assessment

(1) This section applies if—

(a) less than 6 months before the end of the general limitation period, an insurer gives a worker a notice of assessment for an injury; or

(b) before the end of the general limitation period—

(i) a worker asks an insurer to have the worker's injury assessed to decide if the injury has resulted in a DPI; and

(ii) the insurer has not given the worker a notice of assessment for the injury.

(2) A proceeding for damages for the injury may be brought—

(a) within 6 months after the insurer gives the notice of assessment for the injury; or

(b) if, before the end of the period mentioned in paragraph (a), the worker advises the insurer that the worker does not agree with the DPI stated in the notice of assessment for the injury—within 6 months after a tribunal decides the DPI.

2 Application for compensation subject to review or appeal

(1) This section applies if, before the end of the general limitation period—

(a) a claimant lodges an application for compensation for an injury; and

(b) the application is or has been the subject of a review or appeal under chapter 13; and

(c) the application has not been accepted.

(2) A proceeding for damages for the injury may be brought—

(a) within 6 months after the claimant's application is accepted; or

(b) if, before the end of the period mentioned in paragraph (a), the claimant asks the insurer to have the injury assessed to decide if the injury has resulted in a DPI—

(i) within 6 months after the insurer gives a notice of assessment for the injury; or

(ii) if, before the end of the period mentioned in subparagraph (i), the worker advises the insurer that the worker does not agree with the DPI stated in the notice of assessment for the injury—within 6 months after a tribunal decides the DPI.

3 Application for certificate of dependency

(1) This section applies if, before the end of the general limitation period, a claimant applies for a certificate under section 132B stating the claimant is a dependant of a deceased worker.

(2) A proceeding for damages for the deceased worker's injury may be brought by the claimant within 6 months after the insurer issues the certificate.

(3) Subsection (2) applies whether or not the certificate is issued following a review or appeal under chapter 13.

Schedule 6 Dictionary

section 7

accept, for awarded treatment, care and support damages, for chapter 4A, part 5, see section 232U.

acceptance period, for awarded treatment, care and support damages, for chapter 4A, part 5, see section 232U.

accident insurance see section 8.

accredited rehabilitation and return to work program, of an insurer, means a rehabilitation and return to work program managed by the insurer that is accredited by the Regulator.

accredited workplace see section 45.

aggravation includes acceleration.

aircraft includes a machine, glider or apparatus designed to fly by gaining support from the atmosphere.

amount, for chapter 3, part 1A, see section 107A.

amount payable—

(a) generally, means an amount due and payable; and

(b) for an amount payable under an industrial instrument, see section 107B.

appeal body, for chapter 13, part 3, division 1, see section 548A.

apology, for chapter 5, part 14, see section 320G.

approved form see section 586.

approved service, for an eligible worker, for chapter 4A, see section 232I.

arrangement, for schedules 2 and 3, includes agreement, promise, scheme, transaction, understanding and undertaking (whether express or implied).

attendant care and support services, for chapter 4A, see section 232I.

authorised person means—

(a) for chapter 7—a person appointed as an authorised person by the Regulator under section 330; or

(b) for chapter 8—a person appointed as an authorised person by WorkCover under 466; or

(c) otherwise—a person mentioned in paragraph (a) or (b).

awarded, in relation to treatment, care and support damages, for chapter 4A, part 5, see section 232U.

board, for chapter 8 and chapter 9, part 1, means WorkCover's board.

building and construction industry, for chapter 14, part 1A, see section 576A.

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.

chapter 4A eligibility criteria, for a serious personal injury, means criteria for the injury prescribed under section 232M(2)(a).

chest image means an x-ray or other medical image of a person's chest.

chest x-ray examination means an examination of an x-ray taken of a person's chest—

(a) for the purpose of screening for indications of a coal mine dust lung disease; and

(b) to the extent the examination is for the purpose of screening for indications of pneumoconiosis—performed in accordance with the ILO classification guidelines.

chief executive (health) means the chief executive of the department in which the *Medicines and Poisons Act 2019* is administered.

Editor's note—

Schedule 6, definition *chief executive (health)* incorporates an uncommenced amendment—see 2019 Act No. 26 sch 2.

chief executive officer means WorkCover's chief executive officer appointed under section 442.

claimant—

(a) generally, means a person who lodges an application for compensation; and

(b) for chapter 5, see section 233.

classification group employer means 2 or more employers that are in—

(a) a pre-existing stable business relationship—

  (i) of at least 2 years; or

  (ii) for an entity that has been in existence for less than 2 years—since the entity's inception; and

(b) the same industry or business classification specified by WorkCover by gazette notice.

coal mine dust lung disease means a respiratory disease caused by exposure to coal dust.

Examples—

- chronic obstructive pulmonary disease
- coal workers' pneumoconiosis
- dust-related diffuse fibrosis
- mixed dust pneumoconiosis

compensation see section 9.

compensation under this part, for chapter 3, part 8, see section 143.

community service obligations of WorkCover, see section 409.

complying notice of claim means a notice of claim that complies with section 275.

compulsory conference see section 289.

construction project, for chapter 14, part 1A, see section 576A.

construction work, for chapter 14, part 1A, see section 576A.

contracted hospital see section 215.

contract of service includes an apprenticeship contract or traineeship contract under the *Vocational Education, 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.

contribution claim, for chapter 5, see section 233.

contribution notice see section 278A.

contributor means a person added as a contributor under section 278A.

contributory negligence see the *Law Reform Act 1995*, section 10.

conviction means a finding of guilt, or the acceptance of a plea of guilty, by a court.

councillor has the meaning given by the *Local Government Act 2009*.

court means the court having jurisdiction in relation to the amount or matter referred to.

damages see section 10.

dependant see section 27.

dependency claim means a claim in relation to a fatal injury brought on behalf of a deceased's dependants or estate.

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.

dismiss, for chapter 4, part 6, see section 232A.

doctor means a registered medical practitioner.

DPI, for an injury of a worker, means an estimate, expressed as a percentage, of the degree of the worker's permanent impairment assessed and decided in accordance with the GEPI.

due date means the day an amount becomes payable under this Act or under a premium notice.

dust-related condition see the *Civil Liability Act 2003*, schedule 2.

duty, for chapter 5, part 8, see section 305.

duty of care, for chapter 5, part 8, see section 305.

elect, in relation to a worker seeking treatment, care and support damages for the worker's injury, for chapter 4A, part 5, see section 232U.

elective hospitalisation see section 215.

eligibility criteria, for chapter 4A, see section 232M(2)(a).

eligibility period, for an eligible worker, for chapter 4A, see section 232L(3).

eligible employee see section 36EC.

eligible person see section 23.

eligible worker, for chapter 4A, see section 232I.

employ, for chapter 1, part 4, division 6, subdivision 3B, see section 36B.

employee of the employing office see section 475F(2).

employee organisation means an organisation of employees.

employer see section 30.

employing office means the WorkCover Employing Office established under section 475A.

employment process, for chapter 14, part 1, division 1, see section 571A.

event see section 31.

examination application see section 325B(1).

excess period see section 65.

excluded treatment, care or support, for chapter 4A, see section 232K.

executive officer means the executive officer of the employing office appointed under section 475D.

exit date, for a non-scheme employer, means the date on which an employer becomes a non-scheme employer.

expression of regret, for chapter 5, part 14, see section 320C.

false or misleading disclosure, for chapter 14, part 1, division 1, see section 571A.

firefighter see section 36B.

first responder see section 36EB.

former Act means—

(a) the *Workers’ Compensation Act 1916*; or

(b) the *Workers’ Compensation Act 1990*; or

(c) the *WorkCover Queensland Act 1996*.

former coal worker see section 325A.

former position, for chapter 4, part 6, see section 232A.

former tribunal, for chapter 11, part 3, see section 499.

fully funded, in relation to WorkCover, means fully funded as provided by section 453.

funding agreement, for chapter 4A, see section 232Q(2).

future loss for chapter 5, part 9, see section 306.

general damages, for chapter 5, part 9, see section 306.

general limitation period see section 302(1)(a).

GEPI means the Guidelines for the Evaluation of Permanent Impairment made under section 183.

government entity has the meaning given by the *Public Service Act 2008*, section 24, and includes a GOC.

group employer means a classification group employer or related bodies corporate group employer.

group training organisation, for schedules 2 and 3, means a group training organisation under the *Vocational Education, Training and Employment Act 2000*.

hospital see section 215.

hospitalisation, of a worker, means the admission of the worker in a private hospital or public hospital for medical treatment for the worker's injury.

ILO classification guidelines means the document called 'Guidelines for the use of the ILO International Classification of Radiographs of Pneumoconioses', revised edition 2011, published by the International Labour Office.

impairment see section 37.

increased pneumoconiosis score see section 128I(1)(b) and (2)(c).

Industrial Act see section 107A.

industrial deafness means loss of hearing (other than total loss of hearing in either ear) caused by excessive noise.

industrial instrument means—

(a) an industrial instrument under the *Industrial Relations Act 2016*; or

(b) a federal industrial instrument.

injured worker, for chapter 4, part 6, see section 232A.

injury—

(a) generally—see section 32; or

(b) for chapter 4, part 6—see section 232A.

injury scale value see section 306O.

insurer**—**

(a) generally—means WorkCover or a self-insurer; or

(b) in relation to a claimant or worker whose employer for the purposes of the injury is a self-insurer—means the self-insurer; or

(c) in relation to any person otherwise entitled to compensation for the injury—means WorkCover.

interim period, for an eligible worker, for chapter 4A, see section 232I.

intern see schedule 2, part 1, section 7.

intoxicated, in relation to a person, means that the person is under the influence of alcohol or a drug to the extent that the person's capacity to exercise proper care and skill is impaired.

labour hire agency, for schedules 2 and 3, means an entity, other than a holding company, that conducts a business that includes the supply of services of workers to others.

latent onset injury means an insidious disease.

local government group employer means a group employer whose members are all local governments.

local government self-insurer means a self-insurer that is a single local government or a local government group employer.

lodgement age, in relation to an injury sustained by a worker, means the age of the worker when the worker lodges an application under section 132 for compensation for the injury.

loss of earnings for chapter 5, part 9, see section 306.

lung disease examination, of a person, means an examination of the person that includes each of the following procedures, whether carried out at the same time or at different times—

(a) a chest x-ray examination;

(b) an examination of the person's respiratory function;

(c) if the results of 1 or more previous respiratory function examinations of the person are available—a comparative assessment of the person's respiratory function.

maximum statutory compensation, means an amount equal to the amount of compensation payable under chapter 3, part 6.

medical assessment tribunal means a medical assessment tribunal established under chapter 11.

medical condition means a condition of a medical nature that is not an injury under section 32.

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.

member of the family, of a deceased worker, see section 28.

minor injury means an injury of a person that does not require the hospitalisation of the person as an in-patient to properly treat the injury.

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-Queensland government entity means—

(a) the Commonwealth or a State other than Queensland; or

(b) an agency or instrumentality of the Commonwealth or a State other than Queensland.

non-reviewable decision see section 548.

non-scheme employer means an employer that—

(a) on or after the commencement of the *Workers' Compensation and Rehabilitation and Other Acts Amendment Act 2005*, section 14, is granted a licence under the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth), part VIII; and

(b) would, if the licence had not been granted, be required to have the employer's liability provided for—

(i) under a licence as a self-insurer under chapter 2, part 4; or

(ii) under a WorkCover policy.

non-scheme member see section 105K.

normal weekly earnings see section 106.

notice of assessment means a notice of assessment of permanent impairment issued by an insurer under section 185.

notice of claim means a notice under section 275 that a claimant intends to seek damages for an injury sustained by the claimant.

nurse practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the nursing profession, other than as a student, whose registration is endorsed as being qualified to practice as a nurse practitioner.

NWE means normal weekly earnings.

obvious risk, for section 305H, see section 305I.

occupier, of a place, includes the following—

(a) if there is more than 1 person who apparently occupies the place—any 1 of the persons;

(b) any person at the place who is apparently acting with the authority of a person who apparently occupies the place;

(c) if no-one apparently occupies the place—any person who is an owner of the place.

of, a place, includes at or on the place.

offence warning, for a requirement by an authorised person, means a warning that, without a reasonable excuse, it is an offence for the person of whom the requirement is made not to comply with it.

offer—

(a) for chapter 3, part 10, division 3—see section 187; or

(b) for chapter 5—see section 233.

OHS report, for chapter 2, part 4, means a report about occupational health and safety performance prepared under the *Work Health and Safety Act 2011*, schedule 2, part 3.

outstanding liability see section 87(1)(b).

owner, of a thing that has been seized under chapter 12, part 1, division 2, subdivision 2, includes a person who would be entitled to possession of the thing had it not been seized.

party, for chapter 5, see section 233.

payment request, for chapter 4A, see section 232Q(3).

period of insurance means the period of accident insurance cover specified in a policy, policy renewal certificate or premium notice.

permanent impairment see section 38.

personal injury, to a person, includes damage to or destruction of—

(a) a prosthesis actually fitted to the person; or

(b) an assistive device, being crutches, spectacles or medical aids, while in actual use by the person for a purpose for which the device is intended.

person under a legal disability, for chapter 4A, part 5, see section 232U.

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.

pneumoconiosis band see section 128G(3).

pneumoconiosis score see section 36F.

policy means a policy for a contract of accident insurance, and includes a policy under a former Act.

pre-existing injury or medical condition, for chapter 14, part 1, division 1, see section 571A.

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.

previous respiratory function examination, in relation to a lung disease examination of a person, means an examination of the person's respiratory function that was carried out—

(a) by a person qualified and competent to conduct the examination; and

(b) before the lung disease examination is carried out.

principal contractor, for a construction project for chapter 14, part 1A, see section 576B.

private hospital see section 215.

private patient see section 215.

prospective employer, for chapter 14, part 1, division 1, see section 571A.

prospective worker, for chapter 14, part 1, division 1, see section 571A.

psychiatrist means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in the specialty of psychiatry, other than as a student.

public hospital see section 215.

public patient see section 215.

QOTE, for a financial year, see section 10A(1).

reasonably means on grounds that are reasonable in all the circumstances.

redemption payment means a payment under section 171, 172 or 173.

registered means—

(a) in relation to a person mentioned in the definition *medical treatment*, paragraph (a) who is held out as providing, or qualified to provide, medical treatment—registered under the law of the place where the medical treatment is provided as a person lawfully entitled to provide the medical treatment in that place; or

(b) in relation to an audiologist—certified by the Audiological Society of Australia.

registered person means a registered person of a description mentioned in the definition *medical treatment*.

Regulator see section 326(2).

Regulator's office means the office of the department in which the Regulator predominantly works.

rehabilitation see section 40.

rehabilitation and return to work coordinator see section 41.

related bodies corporate group employer means 2 or more employers who are related bodies corporate.

related body corporate has the meaning given by the Corporations Act.

relevant contractor, for a construction project for chapter 14, part 1A, see section 576A.

relevant document, for chapter 11, parts 3 and 4, see section 499.

relevant volunteer, for chapter 1, part 4, division 6, subdivision 3BA, see section 36EA.

representative, for chapter 11, part 4, see section 510A.

required minimum number, for chapter 8, part 4, division 2, see section 429.

residual liability see section 87(1)(a).

review decision see section 545.

section 84 security means a security given under section 84.

self-insurer means a single employer or group employer licensed under chapter 2, part 4.

self-insurer's workers means the workers employed by a self-insurer before the issue of the self-insurer's licence or during the period of the self-insurer's licence.

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

serious personal injury means an injury that is—

(a) a permanent spinal cord injury resulting in a permanent neurological deficit; or

(b) a traumatic brain injury resulting in a permanent impairment of cognitive, physical or psychosocial function; or

(c) a forequarter amputation or shoulder disarticulation amputation; or

(d) the amputation of a leg through or above the femur; or

(e) the amputation of more than 1 limb or parts of different limbs; or

(f) a permanent injury to the brachial plexus resulting in an impairment equivalent to a shoulder disarticulation amputation; or

(g) a full thickness burn to all or part of the body; or

(h) an inhalation burn resulting in a permanent respiratory impairment; or

(i) permanent blindness caused by trauma.

service request, for chapter 4A, see section 232P(1).

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.

single employer—

(a) includes persons in partnership that are employers; but

(b) does not include a limited partnership formed under the *Mercantile Act 1867* or the *Partnership Act 1891*.

single pension rate, for chapter 3, part 9, division 4, means the amount of the maximum single disability support pension payable from time to time under a Commonwealth law, but does not include an amount for allowances, for example, rent assistance or family payment.

specialist means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession as a specialist registrant in a recognised specialty, other than as a student.

specified disease see section 36B.

specified volunteer firefighter means a person to whom section 36D applies, if the person was a volunteer firefighter for any period of the person's employment as a firefighter mentioned in section 36D(1)(b).

spouse of a deceased worker, see section 29.

structured settlement, for chapter 5, part 9, division 4, see section 306Q.

student for chapter 3, part 11, see section 195.

substantive law, for chapter 6, see section 322.

suitable duties see section 42.

superannuation contribution means a superannuation contribution under the *Payroll Tax Act 1971*.

support plan, for chapter 4A, see section 232O(1)(b).

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.

terminal condition see section 39A.

this Act for chapter 5, includes a former Act.

total liability, for chapter 2, part 4, means the total of the following—

(a) residual liability;

(b) outstanding liability;

(c) any liability under section 68C.

treatment, care and support damages, in relation to a worker, see section 232I.

treatment, care and support needs, of a worker, see section 232J.

treatment, care and support payments, for a worker who has sustained an injury, see section 232I.

tribunal, other than in section 114(4), means a medical assessment tribunal.

usual employment see section 107C.

vehicle for section 36, means a motor vehicle, bicycle, aircraft, train, boat or anything else used to carry persons or goods from place to place, even if the vehicle is incapable of use because of mechanical defect or because a part has been removed.

volunteer firefighter means a person mentioned in section 36B, definition *firefighter*, paragraph (b), (c) or (e).

wages means the total amount paid, or provided by, an employer to, or on account of, a worker as wages, salary or other earnings by way of money or entitlements having monetary value, but does not include—

(a) allowances payable in relation to any travelling, car, removal, meal, education, living in the country or away from home, entertainment, clothing, tools and vehicle expenses; and

(b) superannuation contributions, for deciding the amount of compensation payable to a worker under chapter 3 or 4; and

(c) lump sum payments on termination of a worker's services for superannuation, accrued holidays, long service leave or any other purpose; and

(d) an amount payable under section 66.

WorkCover means WorkCover Queensland.

WorkCover employee means—

(a) WorkCover's chief executive officer; or

(b) a senior executive of WorkCover; or

(c) a person employed by WorkCover under a contract of service.

WorkCover Queensland means WorkCover Queensland established under section 380.

worker—

(a) generally—see section 11; or

(b) for chapter 3A—see section 207AA; or

(c) for chapter 5—see section 233; or

(d) for chapter 11—see section 491.

workers' compensation certificate protocol means a document stating the circumstances or conditions under which a nurse practitioner may issue a certificate under section 132(3)(a), that is—

(a) certified by the Regulator and the chief executive (health); and

(b) published by the department, including by being published on the department's website and elsewhere.

work performance arrangement means an arrangement under which an employee of a government entity or non-Queensland government entity performs work for another government entity or non-Queensland government entity.

workplace means a place where work is, is to be, or is likely to be, performed by a worker or employer and is a place—

(a) that is for the time being occupied by the employer or under the control or direction of the worker's employer; or

(b) where the worker is under the control or direction of the worker's employer.

workplace rehabilitation see section 43.

workplace rehabilitation policy and procedures see section 44.

written final offer, for chapter 5, see section 233.