

**NORTHERN TERRITORY OF AUSTRALIA**

**RETURN TO WORK ACT 1986**

As in force at 25 March 2024

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 25 March 2024

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## RETURN TO WORK ACT 1986

**An Act about workers' rehabilitation and compensation**

### **Part 1 Preliminary matters**

#### **1 Short title**

This Act may be cited as the *Return to Work Act 1986*.

#### **2 Objects of Act**

The objects of this Act are as follows:

- (a) to provide for the effective rehabilitation and compensation of injured workers;
- (b) to provide for the prompt and effective management of workplace injuries in a manner that promotes and assists the return to work of injured workers as soon as practicable;
- (c) to ensure that the scheme for the rehabilitation and compensation of injured workers in the Territory:
  - (i) is fair, affordable, efficient and effective; and
  - (ii) provides adequate and just compensation to injured workers; and
  - (iii) is balanced to ensure that the costs of workers compensation are contained to reasonable levels for employers.

#### **3 Interpretation**

- (1) In this Act:

**ABN** has the same meaning as in the *Income Tax Assessment Act 1997* of the Commonwealth.

**act** includes an omission.

**acting in an official capacity**, in relation to an inspector, means the inspector is exercising powers or performing functions under, or otherwise related to the administration of, this Act.

**adequate policy of insurance or indemnity**, for Part 7, Division 3, see section 126.

**appointed member**, of the Council, means a member appointed under section 10(1)(b).

**approved** means approved by the Authority or the Minister.

**approved form** means a form approved by the Authority for the purposes of the provision in which the expression occurs.

**approved insurer** means an insurer approved under section 119(2).

**attendant care services**, for Part 5, Division 4, see section 74A.

**Authority** means the Work Health Authority continued under the *Work Health Administration Act 2011*.

**average weekly earnings** means the Average Weekly Earnings for Full Time Adult Persons, Weekly Ordinary Time Earnings for the Northern Territory last published by the Australian Statistician before 1 January before the date in respect of which they are required under this Act to be assessed.

**benefit** includes an advantage of any kind.

**burial**, see section 7 of the *Burial and Cremation Act 2022*.

**catastrophic injury**, see section 78A(6).

**Chair**, of the Council, includes the Deputy Chair while acting as the Chair.

**claimant** means a person claiming or being paid compensation.

**compensation** means a benefit, or an amount paid or payable, under this Act as the result of an injury to a worker and, in sections 132 to 137 inclusive and section 167, includes:

- (a) an amount in settlement of a claim for compensation; and
- (b) costs payable to a worker by an employer in relation to a claim for compensation.

**conference**, for Part 6A, Division 1, see section 103A.

**Council** means the Workers Rehabilitation and Compensation Advisory Council.

**Court** means the Work Health Court continued under the *Work Health Administration Act 2011*.

**disease** includes a physical or mental ailment, disorder, defect or morbid condition, whether of sudden or gradual development and whether contracted before or after the commencement of Part 5.

**disposal**, see section 7 of the *Burial and Cremation Act 2022*.

**dispute**, for Part 6A, Division 1, see section 103A.

**employer** means a person by or for whom a worker is engaged or works or, in relation to a member of the Legislative Assembly, a Supreme Court Judge, a Local Court Judge or a member of the Police Force, means the Territory.

**expert financial advice** means expert financial advice as prescribed by regulation.

**first compensation date**, in relation to a worker and a particular injury, means the date on which the worker first became entitled to compensation for that injury.

**former Fund**, for Part 7, see section 117.

**Fund**, see section 117.

**impairment** means a temporary or permanent bodily or mental abnormality or loss caused by an injury.

**incapacity** means an inability or limited ability to undertake paid work because of an injury.

**incident** means an event occurring at, or a situation arising in, a workplace which results in an injury.

**industrial agreement** means an agreement which wholly or partly regulates terms or conditions of employment.

**industrial award** means:

- (a) an award or determination relating to the terms and conditions of employment of a worker made under an Act; or
- (b) an award or a certified agreement made under the *Workplace Relations Act 1996* of the Commonwealth.

**injury**, see section 3A.

**inspector** means an inspector under section 7A.

**insurer** means a body corporate that is authorised under the *Insurance Act 1973* (Cth) to carry on insurance business, or that was so authorised at the time a relevant policy of insurance or indemnity was taken out and, in Part 5, Division 5, includes the Nominal Insurer.

**jurisdiction** means a State or a Territory of the Commonwealth and, in a geographical sense, includes the adjacent area of the State or Territory as prescribed by regulation.

**labour hire arrangement**, see section 4A.

**management action**, in relation to a worker, means any action taken by the employer in the management of the worker's employment or behaviour at the workplace, including one or more of the following:

- (a) appraisal of the worker's performance;
- (b) counselling of the worker;
- (c) stand down of the worker, or suspension of the worker's employment;
- (d) disciplinary action taken in respect of the worker's employment;
- (e) transfer of the worker's employment;
- (f) demotion, redeployment or retrenchment of the worker;
- (g) dismissal of the worker;
- (h) promotion of the worker;
- (i) reclassification of the worker's employment position;
- (j) provision to the worker of a leave of absence;
- (k) provision to the worker of a benefit connected with the worker's employment;
- (l) training a worker in respect of the worker's employment;
- (m) investigation by the worker's employer of any alleged misconduct:
  - (i) of the worker; or

- (ii) of any other person relating to the employer's workforce in which the worker was involved or to which the worker was a witness;
- (n) communication in connection with an action mentioned in paragraphs (a) to (m).

**mediator** means a mediator appointed under section 103C(1).

**medical certificate of capacity** means a certificate issued by a medical practitioner, or another person of a class prescribed by regulation, that certifies a worker's capacity for work.

**Nominal Insurer** means the Nominal Insurer established by section 150(1).

**out of or in the course of his or her employment**, see section 4.

**party**, for Part 6A, Division 1, see section 103A.

**PAYG provisions** means the provisions of Division 12 of Schedule 1 to the *Taxation Administration Act 1953* of the Commonwealth.

**plant** includes machinery, pressure vessels, equipment, appliances, implements, scaffolding and tools, any component thereof and anything fitted, connected or appurtenant thereto.

**prohibition notice**, see section 7KA(3).

**registrar** means:

- (a) the registrar of the Court; or
- (b) a judicial registrar of the Court.

**rehabilitation**, in relation to an injured worker, means a process designed to:

- (a) ensure the worker's return to work as soon as practicable; or
- (b) maximise the worker's ability to live independently.

**relevant permanent impairment**, for Part 5, Division 3, means permanent impairment assessed in accordance with section 65(13A).

**repealed Act** means the Acts repealed by section 188, as in force immediately before the commencement of that section.

**Rules** means the court rules as defined in section 3 of the *Work Health Administration Act 2011*.

**sailor** means a person employed or engaged in any capacity on board a ship.

**self-insurer** means:

- (a) an employer approved under section 120 to self-insure; or
- (b) except in Part 7, subject to section 118(2) – the Territory.

**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-cushioned vehicle, or similar craft;

used wholly or primarily in navigation by water.

**substance** means a natural or artificial substance, whether in solid, liquid, gas or vapour form.

**Territory worker** means a person whose employment is determined, under section 53AA, to be connected with the Territory.

**tributer** means a person who works a mine under an agreement with the lessee or owner of the mine to pay or receive from the lessee or owner a percentage of the value of the product taken from the mine.

**weekly payment** means a weekly payment of compensation.

**worker**, see section 3B.

**workplace** means a place, whether or not in a building or structure, where workers work.

- (11) Where in this Act the expression **Default maximum penalty** appears in or at the foot of a section or subsection, being a section or subsection that provides that a person is guilty of an offence against this Act or a breach of which results in such an offence, a person who has been found guilty of that offence is guilty of a further offence against this Act if the offence continues after he or she has been so found guilty and is punishable, on being found guilty for the further offence, by a penalty not exceeding the amount of the default maximum penalty specified after that expression for each day during which the offence continues.



- (12) This section is not relevant for determining whether a person is or is not a worker or employee under another Act unless the other Act otherwise provides.

### **3A Injury**

- (1) An ***injury***, in relation to a worker, is a physical or mental injury arising out of or in the course of the worker's employment and includes:
- (a) a disease; and
  - (b) the aggravation, acceleration, exacerbation, recurrence or deterioration of a pre-existing injury or disease.
- (2) Despite any other provision of this Act, a mental injury is not considered to be an injury for this Act if it is caused wholly or primarily by one or more of the following:
- (a) management action taken on reasonable grounds and in a reasonable manner by or on behalf of the worker's employer;
  - (b) a decision of the worker's employer, on reasonable grounds, to take, or not to take, any management action;
  - (c) any expectation by the worker that any management action would, or would not, be taken or any decision made to take, or not to take, any management action.

### **3B Meaning of *worker***

- (1) A ***worker*** is an individual who:
- (a) performs work or a service of any kind for another person (the ***employer***) under a contract; and
  - (b) in relation to the contract:
    - (i) is an employee for the purpose of assessment for PAYG withholding under the *Taxation Administration Act 1953* (Cth), Schedule 1, Part 2-5 (the ***PAYG provisions***); or
    - (ii) despite that the employer does not treat a person as an employee, the person should be an employee under the PAYG provisions.
- (2) However, worker does not include an individual:
- (a) who is employed by the Commonwealth; or

- (b) in relation to the work or service under consideration – who is an employer of another person engaged in the performance of the work or service; or
  - (c) who is employed or engaged other than for the purposes of the employer's trade, business or enterprise and in respect of whom the employer does not make any withholding payments under the PAYG provisions.
- (3) Subject to subsection (4), a person who is a prescribed member of the immediate family of the employer, and who lives with the employer, is not a worker.

*Note for subsection (3)*

*A person who is a prescribed member of the immediate family of the employer, who does not live with the employer, is not precluded from being a worker only because the person is a prescribed member of the employer's family.*

- (4) A prescribed member of the immediate family of an employer, who lives with the employer, is a worker if the member's name, nature of employment and estimated wages are disclosed to the employer's insurer:
- (a) when the employment of that member is commenced or, if the relevant insurance or indemnity is effected after the employment is commenced, at that time; and
  - (b) each subsequent time the policy is renewed.
- (5) Subject to subsection (6), a person who is a director (however described) of a body corporate is not a worker.
- (6) A director of a body corporate is a worker if:
- (a) an amount is withheld, under the PAYG provisions, from any remuneration (however described) paid to the director by the body corporate; and
  - (b) the director's name and estimated remuneration, as well as the nature of the director's employment, are disclosed to the body corporate's insurer when:
    - (i) the director is appointed or, if the relevant insurance or indemnity is effected after the director is appointed, at that time; and
    - (ii) each subsequent time the policy is renewed.

- (7) Subject to subsections (8) and (9), an individual who is engaged in voluntary work and who receives in relation to that work, if anything, nothing more than reasonable travelling, accommodation or other out-of-pocket expenses, is not a worker.
- (8) An individual who, without remuneration or reward, voluntarily engages in any of the following is taken to be a worker employed by the Territory:
- (a) assisting in emergency services, training exercises or other activities with the consent of, or under the authority and supervision of, or in cooperation with, any of the following (as defined in section 8 of the *Emergency Management Act 2013*):
    - (i) the Territory, Regional or Local Controller;
    - (ii) the Territory, Regional or Local Recovery Coordinator;
    - (iii) the Director;
  - (b) fighting a fire, training exercises or other activities with the consent of, or under the authority and supervision of, or in cooperation with, a volunteer bushfire brigade established under the *Bushfires Management Act 2016*;
  - (c) fighting fires or dealing with other emergencies, or training exercises or other activities, as a volunteer member as defined in the *Fire and Emergency Act 1996*.
- (9) Also, an individual who, without remuneration or reward, voluntarily engages in work or training of a kind by reference or in relation to which a person or class of persons is prescribed as mentioned in subsection (17), is taken to be a worker employed under a contract of employment by the person or organisation prescribed.
- (10) Subject to subsection (11), an individual who is employed or engaged by a householder is not a worker.
- (11) An individual is a worker of a household if the individual earns more than, or is paid at a rate that would exceed, the prescribed amount.
- (12) A person performing work under a community court order is taken to be a worker employed by the Territory when the person is performing work under the order.
- (13) If the person was employed as a worker during normal working hours immediately before the time the person performed work under the order, the person's normal weekly earnings in that employment are taken to be the person's normal weekly earnings when performing work under the order.

- (14) Despite anything in this Act but subject to subsection (15), a person is taken not to be a worker while the person is, under a contract:
- (a) participating as a contestant in a sporting or athletic activity; or
  - (b) engaged in training or preparation with a view to participating in such an activity; or
  - (c) travelling in connection with:
    - (i) participating in such an activity; or
    - (ii) training or preparing for such participation.
- (15) Subsection (14) does not apply if, under the contract, the person is entitled to remuneration of not less than the prescribed amount per year or at a rate that, if the contract continued for a year, would result in the person receiving remuneration of not less than that amount.
- (16) An individual who, under a labour hire arrangement, is engaged by a provider of labour hire services to perform work or services for someone other than the provider and, in relation to whom, under the PAYG provisions, withholding payments are required to be made, is a worker of the provider.

*Note for subsection (16)*

*For the meanings of labour hire arrangement and provider of labour hire services, see sections 4A and 4B respectively.*

- (17) Despite anything in this section, a person, or a member of a class of persons, prescribed by regulation:
- (a) as a worker is a worker for this Act; and
  - (b) as not being a worker is not a worker for this Act.
- (18) To avoid doubt, the fact that an individual has an ABN is not determinative of whether or not the individual is a worker for this Act.
- (19) In this section:
- community court order** means any of the following:
- (a) a community work order made under the *Fines and Penalties (Recovery) Act 2001* or the *Youth Justice Act 2005*;
  - (b) a community correction order or intensive community correction order made under the *Sentencing Act 1995*;

- (c) a community work order, community based order or community custody order made under the *Sentencing Act 1995* as in force before the commencement of Part 2 of the *Sentencing and Other Legislation Amendment Act 2022*.

#### **4 Out of or in course of employment**

- (1) Without limiting the generality of the meaning of the expression, an injury to a worker shall be taken to arise ***out of or in the course of his or her employment*** if the injury occurs while the worker:
  - (a) on a working day on which the worker attends at the worker's workplace:
    - (i) is present at the workplace; or
    - (ii) having been present at the workplace, is temporarily absent on that day in the course of employment or during an ordinary recess and does not during that absence voluntarily subject himself or herself to an abnormal risk of injury; or
  - (d) is in attendance at a trade, technical or other training school that the worker is required to attend by the terms of employment or as an apprentice, or that the worker is otherwise expected to attend by the employer; or
  - (f) is in attendance at a place for any of the following purposes, in connection with an injury for which the worker is entitled to receive compensation:
    - (i) obtaining a medical certificate of capacity;
    - (ii) receiving medical, surgical or hospital advice, attention or treatment;
    - (iii) submitting to a medical examination required under this Act;
    - (iv) receiving a payment of compensation.
- (1A) In addition, an injury to a worker is taken to arise ***out of or in the course of his or her employment*** if the injury occurs while the worker:

- (a) is travelling by the shortest convenient route between the worker's place of residence and a workplace; or
  - (b) is travelling by the shortest convenient route between the worker's place of residence or a workplace and a place mentioned in subsection (1)(d) or (f); or
  - (c) being a worker who is employed by more than one employer and has attended on a working day at a workplace for one employer, is travelling by the shortest convenient route between that place and the worker's place of employment for another employer.
- (1B) If subsection (1A)(c) is applicable, the injury is taken to have occurred while the worker was employed by the employer to whose workplace the worker was travelling.
- (2) Subsection (1A) does not apply if an injury sustained while travelling is sustained during or after a substantial interruption of or substantial deviation from the worker's journey made for a reason unconnected with the worker's employment or attendance at a place mentioned in subsection (1)(d) or (f), which, having regard to all the circumstances, would ordinarily have materially added to the risk of injury.
- (2A) Despite subsection (1A), an injury to a worker is taken not to arise ***out of or in the course of his or her employment*** if the injury is sustained in a motor accident, as defined in the *Motor Accidents (Compensation) Act 1979*, while the worker:
- (a) having been at the worker's workplace, is temporarily absent during an ordinary recess; or
  - (b) is travelling between the worker's place of residence and a workplace, unless:
    - (i) the workplace is not the worker's normal or usual workplace and the travel is at the request of the worker's employer; or
    - (ii) the worker's employer has required the worker to work outside the worker's normal hours of work; or
  - (c) is travelling between the worker's place of residence or a workplace and a place mentioned in subsection (1)(d) or (f); or

- (d) having attended on a working day at a workplace for one employer, is travelling between that place and the worker's place of employment for another employer, unless:
  - (i) the workplace to which the worker is travelling is not the worker's normal or usual workplace and the travel is at the request of the worker's employer; or
  - (ii) the employer to whose workplace the worker is travelling has required the worker to work outside the worker's normal hours of work.
- (3) Despite any other provision of this Act, an injury to a worker is taken to arise **out of or in the course of his or her employment** if the injury is to a worker in a class of worker prescribed by regulation, subject to any limitation prescribed by regulation.
- (4) An injury shall be deemed to arise out of or in the course of employment even though at the time that the injury occurred the worker was acting:
  - (a) in contravention of a regulation (whether by or under an Act or otherwise) applicable to the work in which he or she is employed; or
  - (b) without instructions from his or her employer,if the act was done by the worker for the purposes of and in connection with his or her employer's trade or business.
- (5) An injury shall be deemed to arise out of or in the course of a worker's employment where it occurred by way of a gradual process over a period of time and the employment in which he or she was employed at any time during that period materially contributed to the injury.
- (6) Unless the contrary is established, a disease shall be taken to have been contracted by a worker in the course of his or her employment if:
  - (a) it is prescribed by the Regulations to be a particular disease, or a disease of a particular kind, specified by the Regulations as being related to employment of a particular kind; and
  - (b) the worker:
    - (i) was, at any time before he or she became aware of his or her contraction of that disease, engaged as a worker in employment of that kind; or

- (ii) died without having become so aware but was, at any time before he or she died, engaged as a worker in employment of that kind.
- (6A) Subject to this section, a disease shall be taken not to have been contracted by a worker or to have not been aggravated, accelerated or exacerbated in the course of the worker's employment unless the employment in which the worker is or was employed materially contributed to the worker's contraction of the disease or to its aggravation, acceleration or exacerbation.

- (7) In this section:

**working day**, in relation to a worker, means any day on which he or she attends at his or her workplace for the purpose of working.

**workplace**, where there is no fixed workplace, includes the whole area, scope or ambit of the worker's employment.

- (8) For the purposes of this section, the employment of a worker is not to be taken to have materially contributed to:
- (a) an injury or disease; or
  - (b) an aggravation, acceleration or exacerbation of a disease,
- unless the employment was the real, proximate or effective cause of the injury, disease, aggravation, acceleration or exacerbation.

#### **4A Labour hire arrangement**

A **labour hire arrangement** is a contract or an arrangement under which an individual is engaged by a provider of labour hire services (the **provider**) to provide work or service for someone other than the provider (a **client**), if:

- (a) there is no contract to perform the work or service between the individual and the client; and
- (b) the individual personally performs part or all of the work; and
- (c) for a provider that is a corporation – the individual is not a director of the corporation.

#### **4B Provider of labour hire services**

- (1) A person is a provider of labour hire services (the **provider**) if, in the course of conducting a business, the person supplies to another person (the **client**) an individual to perform work or services in and as part of a business or commercial undertaking of the client.



- (2) Without limiting subsection (1), a person is a provider of labour hire services:
- (a) if a contract is entered into between the individual (the **worker**) and the provider, or between the provider and the client; and
  - (b) whether the worker is supplied by the provider to a client directly or indirectly through one or more agents or intermediaries; and
  - (c) whether the work or services performed by the worker is under the control of the provider, the client or another person.

## **5 Act to bind Crown**

This Act binds the Crown not only in right of the Territory but also, so far as the legislative power of the Legislative Assembly permits, in all its other capacities.

## **5A Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against the following provisions of this Act:

- (a) section 7KD;
- (b) section 65C;
- (c) section 75A;
- (d) section 92;
- (e) section 103H;
- (f) section 126AA;
- (g) section 126AB.

*Note for section 5A*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

## **Part 2 Administration**

### **Division 1 Authority**

#### **6 Authority's functions and powers under this Act**

- (1) The Authority has the following functions:
- (aa) to administer this Act;
  - (ab) to monitor compliance with, and enforce, this Act;
  - (ac) to further the objects of this Act;
  - (a) to encourage the provision of appropriate and early rehabilitation treatment of workers incapacitated or impaired in compensable incidents;
  - (b) to identify the rehabilitation services needed in the Territory for workers injured in compensable incidents;
  - (c) to provide financial and other assistance to bodies established by this Act;
  - (d) to monitor, collect and analyse data on compensable incidents in the Territory;
  - (e) to provide information, advice and education to employer and worker groups and other interested persons;
  - (f) to approve insurers for providing workers' compensation insurance;
  - (g) to ensure, as far as practicable, compliance with the requirements of this Act;
  - (h) to prosecute offences against this Act;
  - (i) to perform any other function conferred under this Act.
- (4) The Authority may delegate any of its functions and powers under this Act.

#### **7 Powers of Authority to obtain information**

- (1) For performing its functions under this Act, the Authority may do one or more of the following:
- (a) obtain relevant information from any persons as the Authority considers appropriate;

- (b) consult with any persons as the Authority considers appropriate;
  - (c) make any inquiries as the Authority considers appropriate.
- (2) The Authority may perform its functions under subsection (1) in any way it considers appropriate.
- (3) Without limiting subsection (1)(a), the Authority may require a person to do one or more of the following:
  - (a) appear before the Authority at a specified time and place;
  - (b) answer questions asked by the Authority;
  - (c) produce documents to the Authority.
- (4) The Authority may require the person to give the answers on oath or verify the document by statutory declaration.
- (5) A requirement under subsection (3) or (4) must:
  - (a) be made in writing; and
  - (b) be accompanied by a statement informing the person that it is an offence not to comply with the requirement unless the person has a reasonable excuse.
- (6) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (3) or (4).

Maximum penalty: 100 penalty units.
- (7) Without limiting subsection (6), it is a reasonable excuse for an individual to fail to comply with a requirement if doing so might tend to incriminate the individual.

## **Division 2 Inspectors**

### **Subdivision 1 Appointment**

#### **7A Appointment of inspectors**

- (1) An inspector under the *Work Health and Safety (National Uniform Legislation) Act 2011* is an inspector for this Act.
- (2) The Authority may, in writing, appoint any of the following as an inspector:
  - (a) a public sector employee;

- (b) an employee of a local government council;
- (c) the holder of a statutory office;
- (d) a person in a class of persons prescribed by regulation.

#### **7B Identity cards**

- (1) The Authority must give each inspector an identity card that states the person's name and appointment as an inspector and includes any other matter prescribed by regulation.
- (2) For a person who is an inspector under section 7A(1), a single card may be given to the person for the purposes of both subsection (1) and section 157 of the *Work Health and Safety (National Uniform Legislation) Act 2011*.
- (3) An inspector must produce his or her identity card for inspection on request when exercising a power under this Act.
- (4) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the card to the Authority as soon as practicable.

#### **7C Suspension and ending of appointment of inspector**

- (1) The Authority may suspend or end the appointment of an inspector appointed under section 7A(2).
- (2) A person's appointment as an inspector under section 7A(2) ends if the person ceases to be eligible for appointment under that subsection.

*Note for section 7C*

*A person who is an inspector under section 7A(1) may have his or her appointment under the Work Health and Safety (National Uniform Legislation) Act 2011 suspended or ended under section 159 of that Act.*

### **Subdivision 2 Functions and powers**

#### **7D Functions of inspector**

An inspector has the following functions:

- (a) to give information and advice about compliance with this Act;
- (b) to assess whether or not the provisions of this Act are being complied with;
- (c) to gather evidence of a suspected offence under this Act;

- (d) to assist the Authority in performing its functions;
- (e) to perform any other functions conferred under this Act.

#### **7E Inspector subject to Authority's directions**

- (1) An inspector is subject to the Authority's directions in the performance of the inspector's functions.
- (2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

#### **7F Exercise of powers**

- (1) An inspector may only exercise a power under this Subdivision:
  - (a) for the purpose of performing the inspector's functions under section 7D(b) to (e); and
  - (b) if the inspector reasonably believes it is necessary to do so.
- (2) In exercising a power under this Subdivision, an inspector may:
  - (a) use any reasonable force; and
  - (b) be accompanied and assisted by other persons as the inspector reasonably considers necessary.

#### **7G Power to require information**

- (1) An inspector may, by written notice, require a person to do either or both of the following within the period specified in the notice:
  - (a) give to the inspector written answers to questions set out in the notice;
  - (b) produce to the inspector documents identified in the notice.
- (2) The inspector may, in the notice, require the person to verify the answers or document by statutory declaration.
- (3) A notice under subsection (1) must include a statement informing the person that it is an offence not to comply with the notice unless the person has a reasonable excuse.
- (4) A person must not, without reasonable excuse, fail to comply with a notice under subsection (1).

Maximum penalty: 100 penalty units

- (5) Without limiting subsection (4), it is a reasonable excuse for an individual to fail to comply with a notice under subsection (1) if doing so might tend to incriminate the individual.

## **7H Power of entry**

- (1) An inspector may enter a place:
- (a) with the consent of the occupier of the place; or
  - (b) in accordance with a warrant issued under section 7K; or
  - (c) if the place is a workplace and is not a place of residence:
    - (i) during normal working hours for that workplace; and
    - (ii) after having given the employer reasonable notice of the inspector's intention to enter the workplace and reasons for doing so.
- (2) An inspector seeking the consent of a person to enter a place must:
- (a) give the person the reasons why entry is sought; and
  - (b) inform the person that the person may refuse to give consent; and
  - (c) show the inspector's identity card to the person.
- (3) Having entered a place under subsection (1), an inspector may remain at the place for as long as is reasonably necessary to enable the inspector to perform the inspector's functions.

## **7J General powers of inspector**

- (1) An inspector who enters a place under section 7H may do one or more of the following:
- (a) inspect or examine the place or anything at the place;
  - (b) photograph, film or otherwise record the place or anything at the place;
  - (c) make copies of documents that are at the place or are produced to the inspector;
  - (d) take reasonable steps to secure or protect a document against damage or unauthorised removal or interference;

- (e) take into the place and use any equipment or other things that are reasonably necessary to enable the inspector to exercise the inspector's powers under this Subdivision;
  - (f) make reasonable use of equipment, things or services at the place as reasonably necessary to enable the inspector to:
    - (i) retrieve or record a document; or
    - (ii) exercise any of the inspector's other powers under this Subdivision;
  - (g) require a person at the place to do one or more of the following:
    - (i) answer questions asked by the inspector;
    - (ii) produce documents to the inspector;
    - (iii) give the inspector reasonable help to exercise the inspector's powers under this Subdivision;
  - (h) if the entry to the place was effected in accordance with a warrant – anything authorised to be done by the warrant.
- (2) A requirement under subsection (1)(g) must be accompanied by a statement informing the person that it is an offence not to comply with the requirement unless the person has a reasonable excuse.
- (3) A person must not, without reasonable excuse, fail to comply with a requirement under subsection (1)(g).

Maximum penalty: 20 penalty units

#### **7K Entry of place – search warrant**

- (1) An inspector may apply to a Local Court Judge, by information on oath, for a search warrant to enter a place for the purpose of exercising the inspector's powers under this Subdivision at the place.
- (2) The Local Court Judge may issue a search warrant only if satisfied there are reasonable grounds for the inspector to exercise the inspector's powers at the place and the warrant is reasonably necessary.
- (3) The warrant authorises the inspector named in the warrant, and any other person assisting the inspector, to enter the place and to exercise the inspector's powers under this Subdivision.

- (4) The warrant must state:
  - (a) the place for which it is issued; and
  - (b) the grounds (in general terms) on which it is granted; and
  - (c) the hours during which entry to the place is authorised or that the entry is authorised at any time of the day or night; and
  - (d) the date, within 14 days after the warrant's issue, on which the warrant ceases to have effect.
- (5) The inspector executing the warrant must produce the warrant for inspection if asked to do so by:
  - (a) the occupier of the place; or
  - (b) if the place is a workplace – the employer; or
  - (c) any person at the place.

## **Subdivision 2A Prohibition notices**

### **7KA Power to issue prohibition notice**

- (1) This section applies if an inspector reasonably believes that a policy of insurance or indemnity required by section 126AA(1) is not in force for an employer who is not a self-insurer.
- (2) The inspector may give the employer a direction prohibiting the carrying on of the employer's business until an inspector is satisfied that the employer holds the required policy.
- (3) The direction may be given orally, but must be confirmed by written notice (a **prohibition notice**) issued to the employer as soon as practicable after the oral direction.

### **7KB Contents of prohibition notice**

A prohibition notice must:

- (a) state that the inspector believes that the employer does not hold the required policy of insurance or indemnity and the reasons for that belief; and
- (b) include a statement of the effect of section 7KC.



**7KC When employer obtains policy**

- (1) An employer to whom a direction is given under section 7KA(2) or a prohibition notice is issued may, at any time, give evidence to an inspector that the employer is the holder of the required policy of insurance or indemnity.
- (2) As soon as practicable after the inspector receives the evidence, the inspector must review the evidence and do one of the following:
  - (a) if satisfied that the employer holds the required policy – give the employer written notice that the prohibition notice is no longer in force;
  - (b) otherwise – give the employer written notice as to the deficiencies in the evidence or the policy.
- (3) A notice under subsection (2)(b) is considered to be a prohibition notice.

**7KD Compliance with prohibition notice**

- (1) An employer commits an offence if the employer contravenes a direction given to the employer under section 7KA(2).

Maximum penalty: 100 penalty units
- (2) An offence against subsection (1) is an offence of strict liability.

**7KE Continuing offence**

- (1) This section applies if a court has found a person guilty of an offence against section 7KD.
- (2) The court may, in addition to any penalty imposed for the offence, impose a penalty not exceeding 10 penalty units for each day during which the offence continues after the day the offence is committed.

**Subdivision 3 Offences in relation to inspectors**

**7L Obstruction of inspector**

- (1) A person must not obstruct another person whom the person knows to be:
  - (a) an inspector acting in an official capacity; or

(b) a person assisting an inspector acting in an official capacity.

Maximum penalty: 100 penalty units or imprisonment for 6 months.

(2) In this section:

**obstruct** includes hinder or resist.

### **7M Misleading information**

(1) A person must not knowingly give to an inspector acting in an official capacity:

(a) misleading information; or

(b) a document containing misleading information.

Maximum penalty: 200 penalty units or imprisonment for 12 months.

(2) Subsection (1)(b) does not apply if the person, when giving the document:

(a) draws the misleading aspect of the document to the inspector's attention; and

(b) to the extent to which the person can reasonably do so – gives the inspector the information necessary to remedy the misleading aspect of the document.

(3) In this section:

**misleading information** means information that is misleading in a material particular or because of the omission of a material particular.

## **Part 3 Workers Rehabilitation and Compensation Advisory Council**

### **8 Workers Rehabilitation and Compensation Advisory Council**

The Workers Rehabilitation and Compensation Advisory Council is established.

### **9 Functions of the Council**

The Council has the following functions:

(a) to keep the operation of this Act under review;

- (b) to make recommendations to the Minister on possible improvements to the administration of this Act, or the statutory scheme for the rehabilitation and compensation of injured workers in the Territory;
- (c) to carry out investigations, at the request of the Minister, into questions about the rehabilitation and compensation of injured workers and to report to the Minister on the results of the investigations;
- (d) to perform any other advisory functions relating to workers rehabilitation and compensation as the Minister directs.

## **10 Membership of Council**

- (1) The Council consists of:
  - (a) the person constituting the Authority under section 4(3) of the *Work Health Administration Act 2011*; and
  - (b) not more than 10 other members appointed by the Minister.
- (2) The membership of the Council must:
  - (a) include members with a wide range of experience extending as far as possible across all major industry sectors in the Territory; and
  - (b) include representatives of organisations representing employers, and representatives of organisations representing employees, in equal or approximately equal numbers; and
  - (c) include persons with expertise in the rehabilitation of injured workers; and
  - (d) include persons with expertise in the insurance industry.
- (3) Before making an appointment to the Council, the Minister must:
  - (a) invite recommendations for appointment to the Council from interested organisations and persons; and
  - (b) consider all recommendations made in response to the notice.
- (4) The invitation must be published in the *Gazette* and in any other way the Minister considers appropriate.

**11 Terms and conditions of appointment**

- (1) The term of appointment for an appointed member of the Council is to be a term, not exceeding 2 years, specified in the instrument of appointment.
- (2) An appointed member is, at the end of a term of appointment, eligible for re-appointment.
- (3) A person ceases to be an appointed member of the Council if the person:
  - (a) resigns by notice of resignation given to the Minister; or
  - (b) comes to the end of a term of appointment and is not re-appointed; or
  - (c) is removed from office by the Minister under subsection (4).
- (4) The Minister may remove an appointed member of the Council from office if the member:
  - (a) is absent, without the Minister's permission, from 3 consecutive meetings of the Council; or
  - (b) becomes bankrupt or applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (c) becomes physically or mentally incapable of satisfactorily carrying out the duties of a member of the Council; or
  - (d) is guilty of misbehaviour.

**12 Chair and Deputy Chair**

- (1) The Chair of the Council is to be an appointed member of the Council appointed by the Minister to be the Chair.
- (2) The Minister may appoint another appointed member of the Council to be the Deputy Chair.
- (3) If the Chair is absent or unavailable to carry out official functions, the Deputy Chair is to act as the Chair.
- (4) A reference to the Chair extends, while the Deputy Chair is acting as the Chair, to the Deputy Chair.

**13 Meetings of Council**

- (1) Meetings of the Council are convened by the Chair.

- (2) A meeting of the Council must be convened:
  - (a) whenever the Chair considers a meeting necessary to deal with the Council's business (but at least once in each quarter); and
  - (b) whenever the Minister directs the Chair to convene a meeting.
- (3) The Chair must preside at all meetings of the Council.
- (4) At a meeting of the Council:
  - (a) the Chair and not less than half of the number of other members constitute a quorum; and
  - (b) questions arising for decision are determined by majority vote and, if the votes are equal, the Chair has a casting vote as well as a deliberative vote; and
  - (c) the Council determines, subject to this Act, its own procedures.
- (5) The Council must keep records of its proceedings.

#### **14 Council subcommittees**

- (1) The Council may establish subcommittees to assist or advise the Council in carrying out any aspect of the Council's functions.
- (2) A subcommittee may consist entirely of Council members, partly of Council members and partly of members drawn from outside the Council, or entirely of members drawn from outside the Council.
- (3) The terms and conditions of appointment of a member of a subcommittee are to be determined by the Minister.
- (4) The procedures of a subcommittee are, subject to any direction by the Council or the Minister, to be as determined by the subcommittee.

#### **15 Annual report of Council**

- (1) The Council must submit a report to the Minister for each financial year.
- (2) The report must cover:
  - (a) the work of the Council and its subcommittees for the relevant financial year; and
  - (b) the operation of this Act during the relevant financial year.

- (3) The report must be submitted on or before 30 September of the calendar year in which the financial year ends.
- (4) The Minister must table the report in the Legislative Assembly within 6 sitting days after receiving the report.

## **Part 5 Workers compensation and rehabilitation**

### **Division 1 Preliminary matters**

#### **49 Interpretation for Part 5**

- (1) In this Part:

**accredited vocational rehabilitation provider** means a person, Agency or body approved under section 50(1).

**dependant**, in relation to a worker, means:

- (a) a spouse or other member of the worker's family;
- (b) a person to whom the worker stood in loco parentis or who stood in loco parentis to the worker;
- (c) a grandchild of the worker,

who was wholly or in part dependent on his or her earnings at the date of his or her death or who would but for the worker's incapacity due to the injury resulting in his or her death, have been so dependent.

**enrolled nurse** means a person registered under the Health Practitioner Regulation National Law:

- (a) to practise in the nursing profession (other than as a student);  
and
- (b) in the enrolled nurses division of that profession.

**family**, in relation to an Aboriginal or Torres Strait Islander, includes all persons who are members of the person's family according to the customs and traditions of the particular community of Aboriginals or Torres Strait Islanders with which the person identifies.

**hospital treatment**, in relation to a worker, means treatment at a hospital within or outside the Territory, and includes his or her maintenance as a patient at the hospital, the provision or supply by the hospital of nursing attendants, medicine, medical or surgical

supplies or other curative apparatus and all other ancillary services.

**medical, surgical and rehabilitation treatment**, in relation to a worker, includes:

- (a) an attendance, examination or treatment on or of the worker by:
  - (i) a medical practitioner; or
  - (ii) a person registered under the Health Practitioner Regulation National Law (other than as a student) to practise in the Aboriginal and Torres Strait Islander health practice, chiropractic, dental, occupational therapy, osteopathy, physiotherapy or psychology profession; or
  - (iv) another person that, if provided or carried out at the place where the person normally provides services, would be recognised for compensation purposes under a law providing for compensation to injured workers in that place; and
- (b) the provision of a medical certificate of capacity by a person referred to in paragraph (a) required by the worker, a dependant of the worker or the worker's legal personal representative for a purpose relating to the operation of this Part; and
- (c) the provision for the worker of:
  - (i) prostheses;
  - (ii) crutches and other walking aids; or
  - (iii) spectacles,including the necessary repair, adjustment or replacement of those items; and
- (d) in relation to a claim under this Part, the repair or replacement of items of the kind referred to in paragraph (c) which were damaged or destroyed at the time of the injury giving rise to the claim; and
- (e) the provision of medical or surgical aids to rehabilitation or of curative appliances, apparatus or materials for the worker, otherwise than when a patient is in a hospital; and

- (f) the provision of medicines or curative apparatus, appliances or materials for workers by a person registered under the Health Practitioner Regulation National Law to practise in the pharmacy profession (other than as a student).

**mental stress** means anxiety, depression or other mental condition that affects a person's psychological, emotional or physical well-being.

**proceeding** means a claim before the Court for compensation or a matter or question incidental to such a claim.

**registered nurse** means a person registered under the Health Practitioner Regulation National Law:

- (a) to practise in the nursing profession (other than as a student);  
and
- (b) in the registered nurses division of that profession.

**spouse**, in relation to a person, includes a de facto partner of the person.

**worker**, in relation to an employer, includes a person formerly employed as a worker by the employer where the worker became eligible for compensation in respect of an injury arising out of or in the course of employment with that employer.

- (2) A reference in this Part to a fly-in fly-out worker or a drive-in drive-out worker is to be construed as it is for the purposes of the *Fringe Benefits Tax Assessment Act 1986* (Cth).

#### **49A Calculation of worker's normal weekly earnings**

- (1) This section applies when normal weekly earnings are to be calculated for a worker who is entitled to compensation under this Act.
- (2) Subject to this section, the worker's normal weekly earnings immediately before the first compensation date are the gross remuneration paid to the worker by:
- (a) the employer liable to compensate the worker; and
- (b) any other employer for whom the worker ordinarily works.



- (3) The following are included in the calculation of the worker's normal weekly earnings:
- (a) if the worker works overtime in accordance with a regular and established pattern – the amount of the wages attributable to that overtime;
  - (b) any over-award payment received by the worker;
  - (c) any climate allowance, district allowance, leading hand allowance, qualification allowance, shift allowance (if the worker works shiftwork in accordance with a regular and established pattern) or service grant received by the worker;
  - (d) unless the worker is a fly-in fly-out worker or drive-in drive-out worker – the value (not exceeding, in the aggregate, 35% of average weekly earnings) of any electricity, meals or accommodation provided to the worker by an employer in a form other than an amount of money paid or credited to the worker.
- (4) The following are not included in the calculation of the worker's normal weekly earnings:
- (a) a superannuation contribution made by the worker's employer;
  - (b) the amount of wages attributable to overtime other than as mentioned in subsection (3)(a);
  - (c) an allowance or grant not mentioned in subsection (3)(c);
  - (d) an amount for electricity, meals or accommodation other than as mentioned in subsection (3)(d);
  - (e) any other remuneration paid by an employer to the worker in a form other than an amount of money paid or credited to the worker.
- (5) The following applies for the calculation of the worker's normal weekly earnings:
- (a) if, immediately before the first compensation date, the remuneration paid to a worker by a particular employer did not vary from week to week – the portion of the normal weekly earnings provided by that employer must be calculated as being equal to the amount of the weekly remuneration;
  - (b) if, immediately before the first compensation date, the remuneration paid to the worker by a particular employer varied from week to week – the portion of the normal weekly

earnings provided by that employer must be calculated as equal to the relevant average remuneration from that employer;

- (c) the normal weekly earnings in respect of the worker's employment with the employer liable to compensate the worker must be calculated under this paragraph instead of under paragraph (a) or (b) and are equal to the all-employer average remuneration if:
  - (i) the worker had been in employment with that employer for less than 4 weeks immediately before the first compensation date; and
  - (ii) it is impracticable to calculate the normal weekly earnings of the worker, having regard both to the worker's period of employment with the employer and the period during which the worker likely would have continued to work for the employer had the injury not occurred;
- (d) if it is relevant whether a regular and established pattern of overtime or shiftwork was worked for a particular employer immediately before the first compensation date:
  - (i) if the worker was in employment with the employer for at least 6 months before the first compensation date – regard must be had to the overtime or shiftwork that the worker worked for that employer during the 6 months immediately before the first compensation date; or
  - (ii) otherwise – regard must be had to the following:
    - (A) the overtime or shiftwork that the worker worked for that employer; and
    - (B) whether, in the normal course of that employment, the worker would likely have worked overtime or shiftwork had the injury not occurred;
- (e) if there is doubt about the method to be used for the calculation of the worker's normal weekly earnings – the method of calculation that results in the greatest amount being calculated as the worker's normal weekly earnings must be used.

- (6) For subsection (2)(b), a worker ordinarily works for an employer immediately before the first compensation date if:
- (a) the worker was in employment with the employer on the first compensation date; and
  - (b) the worker had been in employment with the employer for at least 6 weeks immediately before the first compensation date.

- (7) In this section:

***all-employer average remuneration***, in relation to remuneration paid to a worker immediately before the first compensation date, means the average of the worker's total remuneration from all employers for all weeks of paid employment during the period of 12 months that ends immediately before the first compensation date.

***relevant average remuneration***, in relation to remuneration paid to a worker by an employer immediately before the first compensation date, means the average of the worker's total remuneration from the employer for all weeks of paid employment during the period of 12 months that ends immediately before the first compensation date.

## **50 Accredited vocational rehabilitation providers**

- (1) The Authority may, in writing, approve a person, Agency or body as an accredited vocational rehabilitation provider.
- (2) Approval under subsection (1) is not to be given unless the Authority considers that the person, Agency or body is capable of providing vocational rehabilitation under this Act and the person, Agency or body meets standards approved by the Authority.
- (3) An approval under subsection (1) is subject to the conditions, if any, determined by the Authority.
- (4) An injured worker who participates in a rehabilitation program or workplace based return to work program under this Act is not liable for any fees or other cost in relation to the program if it is provided by a person who, or an Agency or body that, is not an accredited vocational rehabilitation provider.
- (5) An accredited vocational rehabilitation provider must not contravene or fail to comply with a condition to which the approval under subsection (1) is subject.

- (6) A person, Agency or body must not hold out that the person, Agency or body is an accredited vocational rehabilitation provider unless the person, Agency or body is approved under subsection (1).
- (7) A person, Agency or body must not provide vocational rehabilitation services to an injured worker under this Act unless the services are provided by an accredited vocational rehabilitation provider.

Maximum penalty: 85 penalty units.

Maximum default penalty: 8 penalty units.

#### **50AA Accredited vocational rehabilitation providers in other jurisdictions**

Despite section 50, a person or body is considered to be an accredited vocational rehabilitation provider for this Act to the extent that they provide vocational rehabilitation services to an injured worker:

- (a) if the person or body is an accredited vocational rehabilitation provider (by whatever name called) under the law of another jurisdiction; and
- (b) if the services are provided to the injured worker in that jurisdiction.

### **Division 2 General**

#### **50A Eligibility of firefighter for compensation for prescribed disease**

- (1) Despite any other provision of this Act, but subject to section 203A, unless a contrary intention is established, a disease is taken to have been contracted by a worker in the course of a period of employment, and the employment is taken to have materially contributed to the worker's contraction of the disease, if the following conditions are met:
  - (a) the worker is or was a firefighter;
  - (b) the disease is a prescribed disease;
  - (c) the worker:
    - (i) is, on the onset day for the prescribed disease, working as an active firefighter and had been so working for a period at least as long as the prescribed qualifying period for the prescribed disease; or

- (ii) had been, within the 10 years immediately preceding that onset day, working as an active firefighter and had been so working for a period at least as long as the prescribed qualifying period for the prescribed disease;
  - (d) that onset day is on or after 4 July 2011.
- (2) All periods during which a worker is working, or worked, as an active firefighter are to be added together for the calculation of the relevant prescribed qualifying period.
- (3) For this section:

**firefighter** includes a person who is one of the following:

- (a) a volunteer firefighter;
- (b) a fire control officer (including a senior fire control officer or the chief fire control officer) appointed under the *Bushfires Management Act 2016*;
- (c) a worker employed by the Territory for the prevention or control of bushfires who is also a fire warden appointed under section 43 of the *Bushfires Management Act 2016*.

**onset day**, in relation to a worker and a prescribed disease, means the earliest of the following:

- (a) the day on which the worker is first diagnosed by a medical practitioner as having contracted the prescribed disease;
- (b) the day on which the worker becomes incapacitated for work, if the prescribed disease resulted in, or materially contributed to, the incapacity;
- (c) the day on which the worker dies, if the prescribed disease resulted in, or materially contributed to, the death.

**prescribed disease** means a disease prescribed by regulation.

**volunteer firefighter** means a natural person to whom section 3(8) or (8A) applies.

***working as an active firefighter***, in relation to a worker at a particular time or during a particular period, means:

- (a) if the worker is a volunteer firefighter at the particular time or during the particular period:
  - (i) the worker is working as a volunteer firefighter at the time or during the period and, while so working, is actively involved in fighting fires; and
  - (ii) the worker is exposed to the hazards of not fewer than the prescribed number of fires within any period:
    - (A) during which the worker is so working as a volunteer firefighter; and
    - (B) that is at least as long as the relevant prescribed firefighting period; or
- (b) if the worker is a firefighter (including a person appointed to be an auxiliary member under the *Fire and Emergency Act 1996*) other than a volunteer firefighter – the worker was required under his or her contract of employment to be exposed to the hazards of fighting fires.

## **51 Application to sailors**

- (2) This Act applies with the following modifications in respect of a disability occurring to a Territory worker employed on a ship:
  - (a) except where the sailor is the master, the notice of injury and the claim for compensation may be served on the master of the ship as if the master were the employer;
  - (b) if the injury is sustained and the incapacity commences on board the ship, it shall not be necessary to give any notice of injury;
  - (c) a claim for compensation in respect of the death of a sailor shall be made within 6 months after notice of the death has been received by the claimant;
  - (d) if a ship is lost with all hands, a claim for compensation in respect of the death of a sailor shall be made within 18 months after the date on which the ship shall be deemed under subsection (3) to have been lost with all hands;

- (e) if a sailor dies without leaving any dependants, compensation is not payable if the owner or charterer of the ship is liable under a law in force in the Territory to pay the expenses of the burial or disposal of human remains;
  - (f) weekly payments shall not be payable in respect of a period during which the owner or charterer of the ship is liable to pay the expenses of maintenance of an injured sailor; and
  - (g) notwithstanding any limitation of liability in any other law in force in the Territory, compensation shall be paid in full.
- (3) Without prejudice to any other means of proof available, for proceedings under this Act:
- (a) a ship is taken to have been lost with all hands on board if:
    - (i) the ship was expected to arrive at a port at a time; and
    - (ii) the ship did not arrive and has not been heard of for at least 12 months since that time; and
  - (b) an official list of the crew, or the certificate of a proper authority stating that certain sailors were on board the ship, in the absence of proof to the contrary, is sufficient evidence that the sailors were on board the ship at the time of its loss.

## **52 Abolition of certain rights to bring action**

- (1) Subject to section 189, no action for damages in favour of a worker or a dependant of a worker shall lie against:
- (a) the employer of the worker;
  - (b) any person who, at the relevant time, was a worker employed by the same employer as the deceased or injured worker; or
  - (c) the Nominal Insurer,
- in respect of:
- (d) an injury to the worker; or
  - (e) the death of the worker:
    - (i) as a result of; or
    - (ii) materially contributed to by,
- an injury.

- (1A) In subsection (1) ***injury*** does not include an injury inflicted or caused by, or as the result of an action or omission of, a worker employed by the same employer as the deceased or injured worker in circumstances in which the employer of the worker would not be liable under section 22A of the *Law Reform (Miscellaneous Provisions) Act 1956* to indemnify the first-mentioned worker in relation to any liability incurred by him or her or her in relation to the injury.
- (2) The purpose of subsection (1) is to ensure that, so far as the legislative power of the Legislative Assembly permits, no action for damages at common law shall lie in the Territory or otherwise in the circumstances described in that subsection and nothing in this Act shall be construed as derogating from that purpose.
- (3) Except as provided by this Act, no action for compensation or a benefit of any kind by a worker or a dependant of a worker shall lie in the Territory against the employer of the worker in respect of:
- (a) an injury to the worker; or
  - (b) the death of the worker:
    - (i) as a result of; or
    - (ii) materially contributed to by,  
an injury.

### **53 Compensation in respect of injuries**

- (1) Subject to this Part, if a Territory worker suffers an injury within or outside the Territory and that injury results in or materially contributes to his or her:
- (a) death;
  - (b) impairment; or
  - (c) incapacity,
- there is payable by his or her employer to the worker or the worker's dependants, in accordance with this Part, such compensation as is prescribed.
- (2) Compensation under this Act is payable only in respect of employment that is connected with the Territory.



- (3) The fact that a worker is outside the Territory when the worker suffers an injury does not prevent compensation being payable under this Act in respect of employment that is connected with the Territory.
- (4) Compensation under this Act does not apply in respect of the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* (Cth) applies to the worker's employment.

**53AA Worker's employment connected with a State**

- (1) A worker's employment is connected with a particular jurisdiction if:
  - (a) the worker usually works in that employment in that jurisdiction; or
  - (b) if no jurisdiction or no one jurisdiction is identified by paragraph (a) – the worker is usually based in the jurisdiction for the purposes of that employment; or
  - (c) if no jurisdiction or no one jurisdiction is identified by paragraph (a) or (b) – the principal place of business in Australia of the worker's employer is located in the jurisdiction.
- (2) If a worker is working on a ship and no jurisdiction or no one jurisdiction is identified by subsection (1), the worker's employment is connected with the jurisdiction in which the ship is registered or (if the ship is registered in more than one jurisdiction) the jurisdiction in which the ship most recently became registered.
- (3) If no jurisdiction is identified by subsection (1) (or, if applicable, subsection (2)), the worker's employment is connected with the Territory if:
  - (a) the worker is in the Territory when the worker suffers an injury; and
  - (b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.
- (4) In deciding whether a worker usually works in a particular jurisdiction, regard must be had to:
  - (a) the worker's work history with the employer over the preceding period of 12 months; and
  - (b) the intentions of the worker and employer;

but regard must not be had to any temporary arrangement under which the worker works in a particular jurisdiction for a period of not longer than 6 months.

- (5) In deciding whether a worker is usually based in a particular jurisdiction, regard may be had to the following matters:
  - (a) the work location specified in a worker's contract of employment;
  - (b) the location the worker routinely attends during the term of employment to receive directions or collect materials or equipment in relation to the work;
  - (c) the location the worker reports to in relation to the work;
  - (d) the location from which the worker's wages are paid.
- (6) In deciding the principal place of business in Australia of the worker's employer, regard may be had to the following matters:
  - (a) the address registered on the Australian Business Register in connection with the employer's Australian Business Number (**ABN**);
  - (b) if the employer is not registered for an ABN, the State or Territory indicated on the ASIC National Names Index as the principal place of business for the employer;
  - (c) if the employer is not registered for an ABN and is not listed on the National Names Index, the State or Territory indicated by the employer's business mailing address.
- (7) Subject to subsection (4) or (5), in deciding whether a worker usually works in a particular jurisdiction or is usually based in a particular jurisdiction for the purposes of employment, regard must be had to any period during which the worker works in a particular jurisdiction or is in a particular jurisdiction for the purposes of employment whether or not under the statutory workers' compensation scheme of that jurisdiction the person is regarded as a worker or as working or employed in that jurisdiction.
- (8) For subsection (2):
  - (a) a ship is taken to be registered in the Territory if the ship is required to be surveyed under the Marine Safety National Law as defined in section 7(1) of the *Marine Act 1981*; and

- (b) the registration of the ship is taken to be from:
  - (i) for a vessel surveyed under the *Marine Act 1981* – the date of initial survey under that Act; or
  - (ii) for a vessel exempted under section 75(2)(e) of the *Marine Act* – 1 January 1989; or
  - (iii) for a vessel otherwise exempted under the *Marine Act 1981* – the date of commencement of this section, or the date of the vessel's arrival (or launch) in the Territory, whichever is later.

**53AB Determination of jurisdiction with which worker's employment is connected**

- (1) If the question of whether a worker's employment is connected with the Territory arises in proceedings in a court in relation to a claim for compensation under this Act, the court must:
  - (a) determine, in accordance with section 53AA, the particular jurisdiction with which the worker's employment is connected; and
  - (b) cause that determination to be entered in the records of the court.
- (2) Subsection (1) does not apply if there is a determination that must be recognised under section 53AC.

**53AC Recognition of previous determination**

- (1) This section applies if a determination has been made as to the particular jurisdiction with which a worker's employment is connected by a court of the Territory, another Territory or a State.
- (2) The jurisdiction determined must be recognised for this Act as the jurisdiction with which the worker's employment is connected.
- (3) This section does not prevent an appeal in relation to a determination.
- (4) If a determination is changed on appeal, subsection (2) applies in relation to the changed determination.

**53A Compensation in respect of contact with bodily fluids**

- (1) Subject to this Part, where a worker:
- (a) has come or may have come into contact with bodily fluid from another person in the course of his or her employment; and
  - (b) as a result, has a reasonable apprehension that he or she may have contracted a disease,
- the worker is entitled to be paid by the worker's employer:
- (c) the costs reasonably incurred by the worker for the purpose of obtaining medical tests in respect of that contact; and
  - (d) the worker's salary or wages in full during any absence from his or her workplace for the purpose of obtaining those medical tests.
- (2) A payment made by an employer in pursuance of subsection (1)(c) or (d) is not to be taken to be an admission of liability by the employer in respect of a disease that is or may be attributable to the contact with bodily fluid.

**54 Entitlement to compensation under other laws**

- (1) This section applies where, as a result of an injury caused to a worker, the worker or his or her dependants:
- (a) are entitled to:
    - (i) compensation or damages under an applicable law; or
    - (ii) a benefit from a superannuation scheme established under an applicable law, other than a benefit financed by an employer's contributions made under an industrial award or agreement or by the worker's contributions; and
  - (b) would, but for this section, be entitled to compensation under this Part.
- (2) A person is not entitled to compensation under this Part if, in respect of the injury:
- (a) compensation or damages have been paid or recovered under the applicable law; or
  - (b) an award of compensation or judgment for damages has been made, given or entered under the applicable law.

- (3) Where, in respect of the injury:
- (a) a person receives compensation under this Part; and
  - (b) the person:
    - (i) is paid or recovers compensation or damages under the applicable law;
    - (ii) obtains an award of compensation or judgment for damages under the applicable law;
    - (iii) accepts a payment into court, or settles or compromises a claim, under the applicable law; or
    - (iv) is paid or is entitled to receive a benefit from a superannuation scheme established under the applicable law (other than a benefit financed by an employer's contributions made under an industrial award or agreement or by the worker's contributions) because of incapacity resulting from the injury,

the worker's employer is entitled to recover from that person the amount determined in pursuance of subsection (4).

- (4) The amount entitled to be recovered under subsection (3) is the amount determined by a Fellow of the Institute of Actuaries of Australia to be:
- (a) the discounted present value of compensation paid or payable to the person under this Part; or
  - (b) equal to the amount of the compensation, damages, payment, settlement, compromise or benefit paid or payable to the person under the applicable law,

whichever is the lesser.

- (5) Where:
- (a) compensation or damages are received or are to be received by a person under an applicable law in respect of an injury to a worker; and
  - (b) a claim for compensation under this Part is made by a person in respect of an injury to the same worker,

unless the contrary is proved, it is to be presumed that the claim for compensation under this Part is in respect of the same injury as the compensation or damages received or to be received under the applicable law.

- (6) In this section, ***applicable law*** means:
- (a) a law of the Territory other than this Act;
  - (b) a law of the Commonwealth; or
  - (c) a law in force in a place outside the Territory.

## **55 Liability in relation to disease**

- (1) Subject to subsection (3), where a worker was employed by 2 or more employers in employment the nature of which caused a disease, compensation shall be recoverable from the employer who last employed the worker in that employment.
- (2) A claimant for compensation recoverable as provided in subsection (1) shall, if so requested by the employer from whom compensation, if payable, is recoverable, furnish that employer with such information as the claimant possesses as to the names and addresses of other employers who employed the worker in employment the nature of which caused the disease.
- (3) If the employer alleges that the disease was contracted while the worker was in the employ of some other employer, he or she may join that other employer as a party to proceedings and, if the allegation is proved, compensation, if payable, is, subject to subsection (4), recoverable from that other employer.
- (4) Where compensation is, pursuant to subsection (3), recoverable from an employer other than the employer who last employed the worker, and that first-mentioned employer proves to the satisfaction of the Court that the disease is being or was accelerated or aggravated by the worker's later employment with a particular employer or employers, the first-mentioned employer is entitled to recover from that particular employer or those particular employers, as the case may be, in respect of that acceleration or aggravation, such amount or amounts:
- (a) as agreed between the insurer of the first-mentioned employer and the insurer or insurers of that particular employer or those particular employers, as the case may be; or
  - (b) in the absence of such agreement, as the Court determines.

- (5) For the purposes of subsection (4), **insurer** shall, in relation to an employer who is under section 120(2) approved to undertake the liability to pay compensation to his or her own workers, be construed as meaning that employer.

**56 Payment of salary or wages for day of injury**

- (1) A worker is entitled to be paid his or her salary or wages in full for the day on which he or she sustained an injury in respect of which compensation is payable under this Act.
- (2) An employer is not entitled to claim under his or her policy of insurance or indemnity in respect of a payment referred to in subsection (1).

**57 Compensation not payable in certain circumstances**

Compensation is not payable under this Part in respect of an injury to a worker:

- (a) that was deliberately self inflicted; or
- (b) (not being an injury resulting in his or her death or permanent or long-term incapacity) attributable to his or her serious and wilful misconduct.

**58 Compensation payable in respect of heart attack or stroke**

- (1) Compensation is payable under this Part in respect of a heart attack injury or a stroke injury to a worker only:
- (a) for a heart attack or stroke injury that arose in the course of, or was caused by, a disease – if the worker's employment materially contributed to the injury or disease; or
- (b) for a heart attack or stroke injury that did not arise in the course of a disease and was not caused by a disease – if the worker's employment materially contributed to the injury.
- (2) In determining, for subsection (1), whether the worker's employment materially contributed to the injury or disease:
- (a) the following must be taken into account:
- (i) the duration of the worker's employment with the employer or employers who were the worker's employers at the time of the injury or the onset of the disease;
- (ii) the nature of the work performed;

- (iii) the particular tasks of the employment;
  - (iv) the probability of the injury or disease occurring if that employment had not taken place;
  - (v) the existence of any hereditary risks;
  - (vi) the lifestyle of the worker;
  - (vii) the activities of the worker outside the workplace; and
- (b) the material contribution of the worker's employment to the injury or disease is to be determined in accordance with section 4(8).
- (3) In this section:

***heart attack injury*** means an injury to the heart, or a blood vessel supplying blood to, or associated with, the heart, that consists of, is caused by, results in or is associated with any of the following:

- (a) a heart attack;
- (b) a myocardial infarction;
- (c) a myocardial ischaemia;
- (d) angina, whether unstable or otherwise;
- (e) fibrillation, whether atrial, ventricular or otherwise;
- (f) an arrhythmia of the heart;
- (g) tachycardia, whether ventricular, supra ventricular or otherwise;
- (h) harm or damage to the blood vessel or associated plaque;
- (i) an impairment, disturbance or alteration of blood, or blood circulation, within the blood vessel;
- (j) an occlusion of the blood vessel, whether the occlusion is total or partial;
- (k) a rupture of the blood vessel, including a rupture of an aneurism of the blood vessel;
- (l) a haemorrhage from the blood vessel;
- (m) an aortic dissection;



- (n) any consequential physical harm or damage, including harm or damage to the brain;
- (o) any consequential mental harm or damage.

**stroke injury** means an injury to the brain, or a blood vessel supplying blood to, or associated with, the brain, that consists of, is caused by, results in or is associated with any of the following:

- (a) a stroke;
- (b) a cerebral infarction;
- (c) a cerebral ischaemia;
- (d) a rupture of the blood vessel, including a rupture of an aneurism of the blood vessel;
- (e) a subarachnoid haemorrhage;
- (f) a haemorrhage from the blood vessel;
- (g) harm or damage to the blood vessel or associated plaque;
- (h) an impairment, disturbance or alteration of blood, or blood circulation, within the blood vessel;
- (i) an occlusion of the blood vessel, whether the occlusion is total or partial;
- (j) any consequential physical harm or damage, including neurological harm or damage;
- (k) any consequential mental harm or damage.

## **60 Exclusion of entitlement in respect of certain travel accidents**

- (1) A worker is not entitled to compensation in respect of an injury sustained whilst driving a motor vehicle, as defined in the *Motor Accidents (Compensation) Act 1979*, after having consumed alcoholic liquor where the consumption of that liquor materially contributed to the accident giving rise to the injury, or while under the influence of a drug.
- (2) It is to be presumed that the consumption of the alcoholic liquor materially contributed to the accident giving rise to the injury, unless the contrary is proved, if the worker had at the time of the accident a concentration of alcohol:
  - (a) in the breath of 0.08 grams or more per 210 litres of exhaled breath; or

(b) in the blood of 0.08 grams or more per 100 millilitres of blood.

(3) Nothing in this section affects an entitlement to compensation under Subdivision A or D of Division 3 or Division 4.

## 61 Settling of journey claims

(1) For the purposes of determining whether an injury to a worker sustained in a motor accident arose out of or in the course of the worker's employment, regard is to be had to the document called "Guidelines for the Settling of Journey Claims" published by or on behalf of the Authority.

(2) Where:

(a) despite having regard to the document referred to in subsection (1), it remains in dispute as to whether compensation is payable under this Act or the MAC Act; and

(b) but for this Act, compensation would be payable under the MAC Act,

compensation is payable under the MAC Act until it is determined that compensation is payable under this Act.

(3) Where:

(a) compensation has been paid under the MAC Act in pursuance of subsection (2); and

(b) it is determined that compensation should have been paid under this Act,

the MAC Commission:

(c) is entitled to recover the amount paid under the MAC Act from the worker's employer; and

(d) may claim compensation under this Act on behalf of the person to whom compensation should have been paid under this Act.

(4) For the purposes of subsection (3)(d), anything required or permitted to be done under this Act by a worker in respect of a claim for compensation is to be taken to be required or permitted to be done by the MAC Commission.

(5) In this section:

**MAC Act** means the *Motor Accidents (Compensation) Act 1979*.

**MAC Commission** means the Commission as defined in section 3 of the *Motor Accidents (Compensation) Commission Act 2014*.

**motor accident**, see section 4(1) of the *Motor Accidents (Compensation) Act 1979*.

## Division 3 Amount of compensation

### Subdivision AA Limit on benefits

#### 61A Maximum benefits

- (1) This section applies to a worker to whom compensation is payable in accordance with section 65(1BA) or (1D), in respect of an injury.
- (2) The worker is entitled to be paid compensation under this Division as follows:
  - (a) if the worker has been paid compensation under section 65 in respect of the injury for a period of 260 weeks in the aggregate:
    - (i) no other compensation under section 65 is payable to the worker in respect of the injury; and
    - (ii) no other compensation under this Part, other than under section 71, is payable to the worker in respect of the injury for a cost that was incurred after 12 months after the end of the last of the 260 weeks;
  - (b) if, because of the operation of section 65(1D), compensation is to be paid to a worker under section 65, other than a worker who suffers relevant permanent impairment at a percentage of the whole person equal to not less than 15%, in respect of an injury for a period of weeks shorter than the period of 260 weeks mentioned in paragraph (a) (the **shorter period**):
    - (i) no compensation under section 65 is payable to the worker in respect of the injury and in respect of a period after the end of the shorter period; and
    - (ii) no other compensation under this Part, other than under section 71, is payable to the worker in respect of the injury for a cost that is incurred after a period that ends more than 12 months after the end of the last of the relevant number of weeks.

(2A) In this section, a reference to a week, in relation to payment, or eligibility for payment, of compensation is to be construed as including a week during which compensation is paid or payable, even if the compensation is paid or payable only in respect of part of the week.

(3) In this section:

**relevant number of weeks**, in relation a shorter period, means the number of weeks obtained when the number of weeks in the shorter period is subtracted from 260 weeks.

### **61B Notice of change of entitlement to compensation**

(1) This section applies when a statutory event is about to occur in relation to compensation payable to a worker.

(2) The employer of the worker must give the worker notice of the following:

- (a) the date on which the statutory event is scheduled to occur;
- (b) an explanation of the effect of the statutory event on the compensation payable to the worker;
- (c) unless the statutory event is one mentioned in paragraph (a) of the definition **statutory event** in subsection (5) – a statement of the effect of section 61A.

(3) The notice must be in writing and given to the worker by:

- (a) delivering it personally to the worker; or
- (b) placing it in a properly addressed envelope and leaving it with a person who has apparently attained the age of 16 years at the worker's address as shown in the claim form given to or served on the employer under section 82; or
- (c) sending it in a properly addressed envelope by pre-paid post to the worker at the worker's address as mentioned in paragraph (b), in which case the notice is considered to have been given when the envelope is posted.

(4) Despite any other provision of this Act, the change to the compensation payable to the worker that results from the occurrence of the statutory event takes effect on the later of the following days:

- (a) the day that is 14 days after the employer gives the notice to the worker;

(b) the day on which the statutory event occurs.

(5) In this section:

**statutory event**, in relation to compensation payable to a worker for an injury, means one of the following:

- (a) the end of the last of the weeks during which compensation is to be paid to the worker under section 64;
- (b) the end of the last week in the period of 260 weeks in the aggregate mentioned in section 65(1BA);
- (c) the attainment of the worker's normal retiring age or future pension age, as relevant, as mentioned in section 65(1D);
- (d) the end of the 104 weeks mentioned in section 65(1D)(c).

## **Subdivision A Death benefits**

### **62 Lump-sum compensation in respect of death**

(1) Subject to subsection (2), where the death of a worker results from or is materially contributed to by an injury, there is payable:

(a) to the person liable to meet the expense of the worker's funeral, a funeral benefit equal to:

- (i) the cost of the funeral; or
- (ii) the prescribed amount,

whichever is the lesser amount; and

(b) for the benefit of the worker's dependants:

- (i) where the dependants are a spouse, a child or children, or a spouse and a child or children, the prescribed proportions; or
- (ii) such proportions as the Court determines on an application under subsection (2) having regard to the relative needs and degrees of dependency of the dependants,

of an amount equal to 364 times average weekly earnings at the time the payment is made; and

- (c) for the benefit of the worker's dependants – the reasonable costs (not exceeding, in the aggregate, any amount prescribed by regulation) of one or both of the following:
- (i) counselling services provided to them by a counselling professional;
  - (ii) expert financial advice.
- (2) For the purposes of subsection (1)(b), a person claiming to be a dependant of the deceased worker may, in the prescribed form, apply to the Court for a determination under that subsection.
- (3) For the purposes of subsection (1)(b)(i), the prescribed proportions are those specified in column 2 of the Table in respect of the dependants specified opposite in Column 1 of that Table.

**TABLE**

Column 1	Column 2
Dependants	Proportion
Spouse	100%
one child	100%
2 or more children	Equally between children
Spouse and one child	10% to child, balance to spouse
Spouse and not more than 5 children	5% to each child, balance to spouse
Spouse and more than 5 children	25% divided equally between children, balance to spouse

- (4) Except where the Court orders otherwise, an amount payable under this section for the benefit of a dependant who is a child of a worker shall be paid, where the child has not attained the age of 18 years, to the Public Trustee appointed under the *Public Trustee Act 1979* who shall hold the amount on trust for the benefit of that child until the child attains the age of 18 years.

- (5) In this section:

***counselling professional*** means:

- (a) a medical practitioner, registered psychologist or social worker; or
- (b) a counsellor who has qualifications recognised by the Authority.

***counselling service*** means a service provided to a worker's dependants to assist them to cope with the psychological impact of the death of the worker.

### **63 Prescribed children's benefits**

- (1) In addition to any amount payable under section 62(1)(b) to or for the benefit of a prescribed child who is a dependant, subject to subsection (2), there shall be paid to or for the benefit of each prescribed child of a deceased worker an amount per week equal to 10% of average weekly earnings at the time the payment is made.
- (2) The aggregate of all amounts paid or payable per week under subsection (1) shall not exceed 100% of average weekly earnings and where there are more than 10 prescribed children entitled to compensation under that subsection they shall be entitled in equal shares to an amount equal to 100% of average weekly earnings at the time the payment is made.
- (3) In this section:

***prescribed child*** means a child of the deceased worker, or a child in relation to whom the deceased worker stood in loco parentis, and who:

- (a) has not attained the age of 16 years; or
- (b) having attained that age but not having attained the age of 21 years, is a full-time student or is physically or mentally handicapped,

other than such a child who is the spouse of another person.

## **Subdivision B Total incapacity and loss of earning capacity**

### **64 Compensation during first 26 weeks of incapacity**

- (1) This section applies to a worker who is totally or partially incapacitated for work as the result of an injury.
- (2) Subject to this section, the worker is entitled to be paid compensation as follows:
  - (a) from the date on which a medical practitioner first certifies that the worker is totally or partially incapacitated for work and that the injury is the reason for, or materially contributed to, the incapacity;

- (b) in respect of any period during which the worker is certified by a medical practitioner to be totally or partially incapacitated for work, if the injury was the reason for, or materially contributed to, the incapacity.
- (3) The weekly amount of the compensation is calculated as the difference between the following amounts:
  - (a) the amount that the worker actually earned in employment during the week;
  - (b) the worker's normal weekly earnings immediately before the first compensation date.
- (4) The weekly amount is in addition to any other compensation to which the worker is entitled under this Part.
- (5) The maximum number of weeks during which compensation is payable under this section need not be a continuous period, but may be made up of more than one period of weeks, so long as the following conditions are met:
  - (a) the total number of weeks does not exceed 26;
  - (b) a medical practitioner certifies that the worker is totally or partially incapacitated during each of those weeks;
  - (c) the injury was the reason for, or materially contributed to, the incapacity during each of those weeks;
  - (d) the worker suffered actual economic loss during each of those weeks as a result of the incapacity.
- (5A) A reference in subsection (5) to a week, in relation to payment, or eligibility for payment, of compensation is to be construed as including a week during which compensation is paid or payable, even if the compensation is paid or payable only in respect of part of the week.
- (6) If a worker retires before the end of a period during which the worker would otherwise be entitled to compensation under this section:
  - (a) the retirement does not affect the worker's entitlement to compensation; and
  - (b) the weekly amount of compensation continues to be calculated after the retirement as if the worker's normal weekly earnings continued despite the retirement.



(7) This section is subject to sections 65A and 65B.

## **65 Long-term incapacity**

(1) This section applies to a worker who is totally or partially incapacitated for work as the result of an injury out of which his or her incapacity arose or that materially contributed to his or her incapacity.

(1B) A worker to whom this section applies must be paid compensation, in accordance with subsections (1BA) to (1D), equal to whichever of the following is the lesser at the time the payment is made:

- (a) 75% of the worker's loss of earning capacity;
- (b) 150% of average weekly earnings.

(1BA) Compensation under this Subdivision for a worker, other than a worker who suffers relevant permanent impairment at a percentage of the whole person equal to not less than 15%:

- (a) is payable under this section for a period that does not exceed a period of 260 weeks in the aggregate (which includes the first 26 weeks for which compensation is payable under section 64) in respect of the injury; and
- (b) is otherwise subject to this Part.

(1C) Compensation under subsection (1B):

- (a) is payable to a worker only after the first 26 weeks of incapacity (for which compensation is payable under section 64 to the worker); and
- (b) is in addition to any other compensation to which, under this Part, the worker is entitled; and
- (c) is otherwise subject to this Part.

*Note for subsection (1C)*

*Compensation under this section and section 64 is not payable for the same period. That is, a worker is not entitled to double dip for the first 26 weeks of incapacity.*

(1D) The following applies for the calculation of the period during which compensation is to be paid to a worker under this section:

- (a) if the worker's injury date is 2 years or more before the date on which the worker attains the worker's future pension age and the worker suffers relevant permanent impairment at a percentage of the whole person equal to not less than 15% –

the compensation is to be paid:

- (i) if the worker's normal retiring age is later than the worker's future pension age – until the worker attains the worker's normal retiring age; or
  - (ii) otherwise – until the worker attains the worker's future pension age;
- (b) if the worker's injury date is 2 years or more before the date on which the worker attains the worker's future pension age and the worker suffers relevant permanent impairment at a percentage of the whole person equal to less than 15% – the compensation is to be paid:
- (i) if the worker's normal retiring age is later than the worker's future pension age – until the earlier of the following:
    - (A) the end of the last week in the period of 260 weeks in the aggregate mentioned in subsection (1BA);
    - (B) the date on which the worker attains the worker's normal retiring age; or
  - (ii) otherwise – until the earlier of the following:
    - (A) the end of the last week in the period of 260 weeks in the aggregate mentioned in subsection (1BA);
    - (B) the date on which the worker attains the worker's future pension age; or
- (c) the compensation is to be paid for 104 weeks from the injury date if:
- (i) the worker's normal retiring age is later than the worker's future pension age and the injury date is less than 2 years before the date on which the worker attains the worker's normal retiring age; or
  - (ii) the worker's normal retiring age is later than the worker's future pension age and the injury date is on or after the date on which the worker attains the worker's normal retiring age; or
  - (iii) the worker's normal retiring age is not later than the worker's future pension age and the injury date is less than 2 years before the date on which the worker attains the worker's future pension age; or

- (iv) the worker's normal retiring age is not later than the worker's future pension age and the injury date is on or after the date on which the worker attains the worker's future pension age.
- (2) For the purposes of this section, loss of earning capacity in relation to a worker is the difference between:
- (a) his or her normal weekly earnings indexed in accordance with subsection (3); and
- (b) the amount, if any, he or she is from time to time reasonably capable of earning in a week in work he or she is capable of undertaking if:
- (i) in respect of the period to the end of the first 104 weeks of total or partial incapacity – he or she were to engage in the most profitable employment (including self-employment), if any, reasonably available to him or her; and
- (ii) in respect of the period after the first 104 weeks of total or partial incapacity – he or she were to engage in the most profitable employment that could be undertaken by that worker, whether or not such employment is available to him or her,

and having regard to the matters referred to in section 68.

- (3) The normal weekly earnings of a worker for the calculation of the worker's loss of earning capacity, or for subsection (8) or (9), at a particular date, are the amount calculated by using the formula in subsection (3A).
- (3A) The formula for subsection (3)(a) is the following:

$$\frac{N \times A}{C}$$

where:

**N** is amount of the normal weekly earnings of the worker immediately before the first compensation date;

**A** is the amount of average weekly earnings at the particular date mentioned in subsection (3);

**C** is the amount of average weekly earnings applying at the first compensation date.

- (4) Where a worker is totally incapacitated for work, his or her normal weekly earnings in respect of the period of his or her total incapacity after the expiration of 2 years after the first day of the period in respect of which he or she first became entitled under section 64 or this section to compensation shall be taken to be:
- (a) in the case of a worker who was an apprentice (including an adult apprentice) immediately before the date on which he or she first became entitled to compensation:
    - (i) as from the date on which he or she would otherwise have completed his or her apprenticeship – the full award wage for a tradesman in the trade in which the worker was an apprentice; and
    - (ii) until that date – the normal weekly earnings that would have been his or hers had he or she continued in the apprenticeship; and
  - (b) in the case of a worker who was a junior employee immediately before the date on which he or she first became entitled to compensation:
    - (i) as from the date on which he or she would otherwise have ceased to earn wages at a junior rate of pay – the full award wage for a person performing the work that the junior worker performed; and
    - (ii) until that date – the normal weekly earnings that would have been his or hers had he or she continued performing that work.
- (5) For the purposes of subsections (2) and (6), the most profitable employment available includes:
- (a) self employment; and
  - (b) employment in a geographical location (including a place outside the Territory) away from the place where the worker normally resides where it would be reasonable to expect the worker to take up that employment and the person liable to pay compensation to the worker has undertaken to meet the reasonable expenses in moving him or her and his or her dependants to that location and other reasonable relocation expenses.
- (6) For the purposes of this section, a worker shall be taken to be totally incapacitated if he or she is not capable of earning any amount if he or she were to engage in the most profitable employment, if any, reasonably available to him or her, and having

regard to the matters referred to in section 68.

- (7) Where a worker is totally incapacitated for work and the compensation the worker is entitled to under subsection (1B) is less than the amount calculated in accordance with subsection (12), the worker shall, notwithstanding subsection (1B), but subject to subsection (10), be entitled to compensation equal to 90% of his or her loss of earning capacity or the amount so calculated, whichever is the lesser.
- (8) Where a worker is partially incapacitated for work and 75% of his or her normal weekly earnings indexed in accordance with subsection (3) is less than the amount calculated in accordance with subsection (12), the worker shall, notwithstanding subsection (1B), but subject to subsection (10), be entitled to compensation equal to 90% of his or her loss of earning capacity or the percentage of his or her loss of earning capacity as determined in accordance with subsection (9), whichever is the lesser.
- (9) For the purposes of subsection (8), the percentage is the amount calculated in accordance with subsection (12) expressed as a percentage of the worker's normal weekly earnings.
- (10) Subsections (7) and (8) do not apply where the normal weekly earnings of the spouse of the worker is equal to or more than 150% of average weekly earnings.
- (11) For the purposes of subsection (10), normal weekly earnings of the spouse of a worker shall be determined, as for a worker, in accordance with section 49A and, for that purpose, a reference to a worker shall be construed as a reference to the spouse of a worker.
- (12) For the purposes of subsections (7) and (8), the amount is 50% of average weekly earnings and, in addition:
  - (a) 12.5% of average weekly earnings, where the worker has a spouse who is, at the date of the relevant injury and at the time when compensation is paid under this section, wholly or mainly dependent on the worker; and
  - (b) 6.25% of average weekly earnings for each prescribed child of the worker.
- (13) In subsection (12), **prescribed child** means a child of the worker, or a child in relation to whom the worker stood in loco parentis, and who:
  - (a) has not attained the age of 16 years; or

- (b) having attained that age but not having attained the age of 21 years, is a full-time student or is physically or mentally handicapped,

other than such a child who is the spouse of another person.

- (13A) For this section, a worker's relevant permanent impairment is to be assessed as follows:

- (a) subject to paragraph (b), the relevant permanent impairment is to be assessed as if it were being assessed under section 72 as permanent impairment for Subdivision C;
- (b) permanent impairment is not to be included in the assessment if it is:
  - (i) a psychological or psychiatric impairment; and
  - (ii) consequential on a physical injury other than a heart attack injury or stroke injury for which compensation is payable under section 58.

- (13B) In this section, a reference to a week, in relation to payment, or eligibility for payment, of compensation is to be construed as including a week during which compensation is paid or payable, even if the compensation is paid or payable only in respect of part of the week.

- (14) In this section:

**future pension age**, for a worker, means the age at which (once attained) the worker would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the *Social Security Act 1991* (Cth).

**injury date**, for a worker, means the date of the injury the result of which is the worker's total or partial incapacity for work or that materially contributed to the worker's total or partial incapacity for work.

**injury pension age**, for a worker who is totally or partially incapacitated, means the age that, at the injury date, the worker would, subject to satisfying any other qualifying requirements, be eligible to receive an age pension under the *Social Security Act 1991* (Cth).

*Note*

*The injury pension age for a worker may be 65, 65.5, 66, 66.5 or 67 years.*

**normal retiring age**, for a worker, means the age that workers in the industry or occupation in which the worker is employed usually retire.

*Note*

*The normal retiring age may be expressed other than as a whole number of years, for example, 68.5 years or 68 years and 8 months.*

**65A Compensation not payable to prisoner**

- (1) A worker is not entitled to be paid compensation under section 64 or 65 during any period during which the worker is:
  - (a) a prisoner; or
  - (b) a person who is:
    - (i) detained in a prison or other correctional facility (however described) in a place outside the Territory; or
    - (ii) otherwise a person who is in a place outside the Territory in circumstances in which, if the worker were in the Territory, the worker would be a prisoner.
- (2) Subsection (1) does not apply to a worker mentioned in subsection (1)(a) if the Territory is not liable to maintain the worker as mentioned in section 115 of the *Correctional Services Act 2014*.
- (3) Subsection (1) does not apply to a worker mentioned in subsection (1)(b)(ii) if, under the law of the place in which the worker is, there is no liability to maintain the worker for reasons similar to those mentioned in section 115 of the *Correctional Services Act 2014*.
- (4) In this section:

**prisoner**, see section 6 of the *Correctional Services Act 2014*.

**65B Entitlement to compensation of worker residing outside Australia**

- (1) The entitlement of a worker to receive weekly payments of compensation mentioned in section 64 or 65 is suspended when the worker begins to reside outside Australia unless the entitlement continues under this section.

- (2) The entitlement (the **continued entitlement**) to the weekly payments of compensation mentioned in section 64 or 65 continues even if the worker is residing outside Australia if:
- (a) the worker complies with the requirements prescribed by regulation when so residing outside Australia; and
  - (b) the employer is satisfied about the worker's continued incapacity.
- (3) However, the continued entitlement ceases when, in aggregate, the worker is paid compensation because of the application or applications of subsection (2) for 104 weeks (the period of 104 weeks includes the first 26 weeks referred to in section 64).
- (4) Despite subsection (3), the Court may order the continued entitlement does not cease after 104 weeks if the Court is satisfied:
- (a) the worker continues to be totally and permanently incapacitated; and
  - (b) the circumstances of the worker residing outside Australia are otherwise exceptional because of the nature of the worker's incapacity or other circumstances applying to the worker; and
  - (c) the worker would suffer undue hardship if the Court did not make an order under this subsection.
- Note for subsection (4)*  
*See section 104 for applications to the Court.*
- (5) The Court's order must:
- (a) be made in accordance with the Regulations; and
  - (b) specify the period (the **extended period**) for which the continued entitlement is extended.
- (6) The extended period:
- (a) must be a single period that does not exceed 104 weeks; and
  - (b) starts, or is taken to have started, on a date specified in the order of the Court (which may be a date before the date of the order).
- (7) At the end of the extended period in relation to a worker's entitlement, the entitlement ceases while the worker is residing outside Australia.



### **65C Employer not to dismiss worker**

- (1) An employer of a worker commits an offence if:
- (a) the worker is totally or partially incapacitated for work as a result of an injury; and
  - (b) the employer intentionally engages in conduct during the relevant period; and
  - (c) the conduct results in the dismissal of the worker; and
  - (d) the employer is reckless as to whether the worker is totally or partially incapacitated for work as a result of the injury.

Maximum penalty: 200 penalty units

- (2) Strict liability applies to subsection (1)(a) and (c).
- (3) It is a defence to a prosecution for an offence against subsection (1) if the reason for the dismissal is serious misconduct by the worker.
- (4) In this section:

***dismissal***, of a worker, includes a situation in which:

- (a) an unreasonable employment condition is imposed on the worker that is designed to make the worker leave employment; and
- (b) the worker leaves the employment.

***relevant period***, for an employer of a worker who is totally or partially incapacitated for work as a result of an injury, means the period:

- (a) that starts on the day on which the injury occurs; and
- (b) that ends 6 months after that day.

***serious misconduct*** means:

- (a) wilful or deliberate behaviour by a worker that is inconsistent with the continuation of the worker's contract of employment; or
- (b) conduct that causes serious and imminent risk to:
  - (i) the health or safety of a person; or

- (ii) the reputation, viability or profitability of the employer's business; or
- (c) engaging in theft, fraud or assault in the course of employment; or
- (d) being intoxicated in the workplace, including being too impaired to work because of alcohol or a drug, other than a drug administered by, or taken in accordance with the directions of, a person lawfully authorised to administer the drug; or
- (e) refusal to carry out a reasonable instruction from the employer that is consistent with the worker's contract of employment.

**66 Special rule for calculation of compensation for volunteers**

- (1) In calculating compensation for a volunteer under section 64 or 65, the normal weekly earnings of the volunteer immediately before the date on which the volunteer first became entitled to compensation will, if less than 50% of average weekly earnings, be taken to be 50% of average weekly earnings.
- (2) In this section:

**volunteer** means a person who is, under section 3(7), (8) or (8A), taken to be a worker in the employ of the Territory.

**68 Assessment of most profitable employment**

In assessing what is the most profitable employment available to a worker for the purposes of section 65 or reasonably possible for a worker for the purposes of section 75B(3), regard shall be had to:

- (a) his or her age;
- (b) his or her experience, training and other existing skills;
- (c) his or her potential for rehabilitation training;
- (d) his or her language skills;
- (e) in respect of the period referred to in section 65(2)(b)(i) – the potential availability of such employment;
- (f) the impairments suffered by the worker; and
- (g) any other relevant factor.

**69 Cancellation or reduction of compensation**

- (1) Subject to this Subdivision, an amount of compensation under this Subdivision shall not be cancelled or reduced unless the worker to whom it is payable has been given:
- (a) 14 days notice of the intention to cancel or reduce the compensation and, where the compensation is to be reduced, the amount to which it is to be reduced; and
  - (b) a statement in the approved form:
    - (i) setting out the reasons for the proposed cancellation or reduction;
    - (ii) to the effect that, if the worker wishes to dispute the decision to cancel or reduce compensation, the worker may, within 90 days after receiving the statement, apply to the Authority to have the dispute referred to mediation;
    - (iii) to the effect that, if mediation is unsuccessful in resolving the dispute, the worker may appeal to the Court against the decision to cancel or reduce compensation;
    - (iv) to the effect that, if the worker wishes to appeal, the worker must lodge the appeal with the Court within 28 days after receiving a certificate issued by the mediator under section 103J(2);
    - (v) to the effect that the worker may only appeal against the decision if an attempt has been made to resolve the dispute by mediation and that attempt has been unsuccessful; and
    - (vi) to the effect that, despite subparagraphs (iv) and (v), the claimant may commence a proceeding for an interim determination under section 107 at any time after the claimant has applied to the Authority to have the dispute referred to mediation.
- (2) Subsection (1) does not apply where:
- (a) the person receiving the compensation returns to work or dies;  
or

- (aa) the person receiving the compensation fails to provide to his or her employer a medical certificate of capacity under section 91A within 14 days after being requested to do so in writing by his or her employer; or
  - (b) the following occurs:
    - (i) the medical certificate of capacity mentioned in section 82 specifies that the person receiving the compensation is fit for work on a particular date, being not later than 4 weeks after the date of the injury in respect of which the claim was made;
    - (ii) the person fails to return to work on the particular date or to provide his or her employer on or before that date with another certificate as to his or her incapacity for work; or
  - (c) the payments of compensation were obtained by fraud of the person receiving them or by other unlawful means; or
  - (d) the Court orders the cancellation or reduction of the compensation.
- (3) Where compensation is to be cancelled for the reason that the worker to whom it is paid has ceased to be incapacitated for work, the statement under subsection (1) shall be accompanied by the medical certificate of capacity of the medical practitioner certifying that the person has ceased to be incapacitated for work.
- (4) For the purposes of subsection (1)(b), the reasons set out in the statement referred to in that subsection shall provide sufficient detail to enable the worker to whom the statement is given to understand fully why the amount of compensation is being cancelled or reduced.

## **Subdivision C Compensation for permanent impairment**

### **70 Definition**

In this Subdivision ***permanent impairment*** means an impairment or impairments assessed, in accordance with the guides approved and published by the Authority, as being an impairment, or combination of impairments, of not less than 5% of the whole person.

### **71 Compensation for permanent impairment**

- (1) In addition to any other compensation payable under this Part, a worker who suffers permanent impairment assessed at a

percentage of the whole person equal to not less than 15% shall, subject to subsection (2), be paid compensation equal to that assessed percentage of 208 times average weekly earnings at the time the payment is made.

- (2) In addition to any other compensation payable under this Part, a worker who suffers permanent impairment assessed at not less than 85% of the whole person shall be paid compensation of 208 times average weekly earnings at the time the payment is made.
- (3) In addition to any other compensation payable under this Part, where a worker suffers permanent impairment assessed at a percentage of the whole person equal to less than 15%, the worker shall be paid compensation equal to the percentage specified in column 2 of the Table to this section of the relevant assessed percentage of permanent impairment specified opposite in column 1 of 208 times average weekly earnings at the time the payment is made.

**TABLE**

Column 1	Column 2
Degree of permanent impairment	Percentage of compensation payable
not less than 5% but less than 10%	2
10%	3
11%	4
12%	6
13%	8
14%	12

- (4) Compensation payable under this section is to be paid to the worker:
- (a) if no application is made under section 72(3) for a reassessment of the level of the worker's permanent impairment – not later than 14 days after the end of the 28 day period allowed for that application; or
- (b) if an application is made under section 72(3) for a reassessment of the worker's level of permanent impairment – not later than 28 days after the applicant is notified of the reassessment.

## **72 Assessment of permanent impairment**

- (2) The level of permanent impairment for the purposes of section 71 shall be assessed in the first instance by a medical practitioner.
- (3) Where a person is aggrieved by the assessment of the level of permanent impairment by a medical practitioner, the person may, within 28 days after being notified of the assessment, apply to the Authority for a reassessment of that level.
- (3A) Subject to subsection (3B), the Authority must, as soon as practicable after receiving an application, refer the application to a panel of 3 medical practitioners to reassess the level of permanent impairment.
- (3B) The Authority is not required to refer an application to a panel unless satisfied that the assessment was properly conducted and is in accordance with the guides mentioned in the definition of ***permanent impairment*** in section 70.
- (3C) The panel to whom an application is referred:
  - (a) must include at least one medical practitioner appearing to the Authority to have specialist knowledge of the type of impairment in question; and
  - (b) must not include the medical practitioner who originally assessed the level of impairment.
- (4) An assessment made by a panel under subsection (3A) as to the degree of permanent impairment of a worker:
  - (a) is taken to be the level of permanent impairment suffered by the worker for the purposes of section 71; and
  - (b) is not subject to review.
- (5) The costs incurred in carrying out an assessment or reassessment under this section shall be paid by the employer.

## **72A Enforcement of entitlement to compensation**

- (1) This section applies if compensation payable to a worker under section 71 has not been paid.
- (2) On application by or on behalf of the worker or his or her employer, the registrar must issue a certificate certifying that the compensation is payable and the amount that is outstanding.
- (3) The certificate may be filed in the Local Court.

- (4) On the filing of the certificate in the Local Court, a registrar of the Local Court must enter judgment for the worker as if the Local Court had given judgment in favour of the worker for:
- (a) the amount certified as being outstanding; and
  - (b) the amount of any fees paid:
    - (i) under this Act to obtain the certificate; or
    - (ii) under the *Local Court Act 2015* for the filing of the certificate and entering of judgment.

### **Subdivision D Compensation for medical, surgical and rehabilitation treatment, etc.**

#### **73 Compensation for medical, surgical and rehabilitation treatment, family counselling and other costs**

- (1) Subject to this Part and the Regulations, the employer of a worker who sustains an injury is liable to pay any costs reasonably incurred by the worker as a result of that injury for any one or more of the following:
- (a) medical, surgical and rehabilitation treatment (those costs being not more than the relevant amount set out in any guidelines published by the Authority);
  - (b) hospitalisation and hospital treatment;
  - (c) travelling, or being transported, to or from any place for the purpose of medical, surgical and rehabilitation treatment, hospitalisation or hospital treatment;
  - (d) accommodation of the worker if it is necessary for the worker to be accommodated away from the worker's normal place of residence for the purpose of medical, surgical or rehabilitation treatment;
  - (e) attendance by a registered nurse or enrolled nurse, or by some other person if, because of the injury, it is necessary for the worker to have nursing or personal attendance;
  - (f) any other costs as are prescribed by regulation.
- (2) Subject to this Part and the Regulations, the employer of a worker who sustains an injury is liable to pay any costs reasonably incurred by the worker for family counselling provided to the worker or to one or more members of the worker's immediate family.

- (3) The costs mentioned in subsection (2) are payable:
- (a) in the case of a family counselling provided to the worker – in addition to any costs payable under subsection (1); and
  - (b) only to the extent that the total of the costs incurred under subsection (2) for the worker and all members of the worker's immediate family does not exceed 150% of average weekly earnings at the time the costs are incurred.
- (4) An employer who decides to dispute that particular costs incurred, or proposed to be incurred, by a worker mentioned in subsection (1) or (2) are, or would be, reasonably incurred as a result of an injury must, within 14 days of the decision to dispute the reasonableness of the costs, serve on the worker:
- (a) a written notice stating:
    - (i) that the employer believes that the treatment or family counselling does not relate to the injury or is not required; and
    - (ii) the reasons for the employer's belief; and
  - (b) a statement of the rights of appeal under this Act; and
  - (c) if the belief is that the treatment is not required – an opinion of a medical practitioner supporting the employer's belief.
- (5) If the dispute relates to costs incurred under subsection (1), the employer must also serve the following on the worker's medical practitioner:
- (a) a copy of the written notice mentioned in subsection (4)(a);
  - (b) if applicable – a copy of the opinion mentioned in subsection (4)(c).
- (6) In this section:
- family counselling** means counselling that:
- (a) is provided to a worker, or a member of the worker's immediate family, to assist the worker or family member to cope with the psychological impact of the injury sustained by the worker's injury; and



- (b) is provided:
  - (i) individually to the worker or a member of the worker's immediate family; or
  - (ii) to a group all the members of which are the worker and one or more members of the worker's immediate family; and
- (c) is provided by:
  - (i) a medical practitioner, registered psychologist or social worker; or
  - (ii) a counsellor who has qualifications recognised by the Authority.

## **Subdivision E Recovery of overpayments**

### **74 Recovery from worker**

- (1) This section applies if there has been an overpayment of benefits under this Act.
- (2) Unless otherwise ordered by the Court, an overpayment cannot be recovered from the worker to whom the overpayment was made if:
  - (a) the benefit payable was incorrectly calculated by the employer or insurer who made the payment; or
  - (b) the payment was made in respect of a period more than 6 months before the date on which recovery of the overpaid amount was sought.
- (3) In deciding whether to order that recovery of an overpaid amount is to be permitted, the Court must take into account whether the worker should reasonably have been aware that the benefit had been overpaid.
- (4) This section applies in relation to a worker who is, or was, a public sector employee, despite anything to the contrary in the *Financial Management Act 1995*.

## **Division 4 Rehabilitation and other compensation**

### **74A Definition**

In this Division:

**attendant care services**, in relation to an injured worker, means services (other than medical and surgical services or nursing care) that are required to provide for the worker's essential and regular personal care.

### **75 Purpose of Division**

The purpose of this Division is to ensure the rehabilitation of an injured worker following an injury.

### **75A Employer to assist injured worker to find suitable employment**

(1) An employer who is liable under this Part to compensate an injured worker must do the following:

- (a) take reasonable steps to ensure that suitable employment is provided to the worker in accordance with the worker's medical certificate of capacity;
- (b) take reasonable steps to ensure that efforts to retrain the worker are undertaken if required to enable the worker to engage in the suitable employment;
- (c) give a proposal in writing for a return to work plan to the worker within 7 days after the employer becomes aware that the worker's total or partial incapacity is likely to exceed 28 days.

(2) An employer commits an offence if:

- (a) the employer intentionally engages in conduct; and
- (b) the conduct results in the contravention of subsection (1)(a) or (b).

Maximum penalty: 200 penalty units

(3) Strict liability applies to subsection (2)(b).

(4) An employer who contravenes subsection (1)(c) commits an offence.

Maximum penalty: 100 penalty units

- (5) An offence against subsection (4) is an offence of strict liability.
- (6) For subsection (1)(a):
- (a) employment is suitable for a worker if it requires the worker to perform work for which the worker is fit as specified in the worker's medical certificate of capacity, taking the following matters into account:
    - (i) the worker's age;
    - (ii) the worker's experience, training and other skills;
    - (iii) the worker's potential for rehabilitation training;
    - (iv) the worker's language skills;
    - (v) the impairments suffered by the worker; and
  - (b) the provision of suitable employment includes the referral of the worker to the alternative employer incentive scheme developed by the Authority if the employer does not have other suitable employment available.
- (6A) To avoid doubt, the giving of a proposal for a return to work plan under subsection (1)(c) is not providing a program of a type mentioned in section 75B(1A).

*Note for subsection (6A)*

*An employer may elect to use an accredited vocational rehabilitation provider to prepare a proposal for a return to work plan, but it is not necessary if the employer does not wish to do so.*

- (7) If the worker is working with another employer under the alternative employer incentive scheme, the worker's employer is liable to compensate the worker for any aggravation, acceleration or exacerbation of the injury that occurs within 1 year after the worker commences employment with the other employer.

**75B Worker to undertake reasonable treatment and training, or assessment**

- (1) Where compensation is payable under Subdivision B of Division 3 to a worker, the worker shall undertake, at the expense of the worker's employer, reasonable medical, surgical and rehabilitation treatment or participate in rehabilitation training or, as appropriate, in workplace based return to work programs, or as required by his or her employer, present himself or herself at reasonable intervals to a person for assessment of his or her employment prospects.

- (1A) The employer of a worker who participates in a rehabilitation program or workplace based return to work program under subsection (1) must ensure that program is provided by an accredited vocational rehabilitation provider.
- (2) Where a worker unreasonably fails to undertake medical, surgical and rehabilitation treatment or to participate in rehabilitation training or a workplace based return to work program which could enable him or her to undertake more profitable employment, he or she shall be deemed to be able to undertake such employment and his or her compensation under Subdivision B of Division 3 may, subject to section 69, be reduced or cancelled accordingly.
- (3) Where a worker so required under subsection (1) unreasonably refuses to present himself or herself for assessment of his or her employment prospects, he or she shall be deemed to be able to undertake the most profitable employment that would be reasonably possible for a willing worker with his or her experience and skill and who has sustained a similar injury and is in similar circumstances, having regard to the matters referred to in section 68, and his or her compensation under Subdivision B of Division 3 may, subject to section 69, be reduced or cancelled accordingly.

## **76 Rehabilitation training and workplace modification**

- (1) In addition to any other compensation under this Part, an employer shall pay the costs incurred for such rehabilitation training and workplace modification as is reasonable and necessary for the purpose of this Division for a worker who suffers or is likely to suffer a permanent or long-term incapacity.
- (2) Without limiting the matters which may be taken into account in determining what is necessary and reasonable rehabilitation training and workplace modification in a particular case, there shall be taken into account:
  - (a) the cost of compensation payments and medical and other expenses which will or are likely to be incurred if no rehabilitation training is provided or workplace modification carried out;
  - (b) the likely cost of the rehabilitation training and workplace modification and of alternative training or modifications, if any, available and possible;

- (c) the likely opportunities for the gainful employment of the worker after the proposed training or workplace modification compared with those if no such training was provided or modification carried out;
  - (d) the likely psychological effect on the injured worker of receiving or not receiving the proposed training;
  - (e) the worker's suitability for and attitude to the training, and his or her suitability for and attitude to any other training available and possible; and
  - (f) in the case of workplace modifications:
    - (i) the likely duration of the employment by the employer of the worker;
    - (ii) the benefit or detriment to the employer, or to other workers employed at a workplace, of the workplace modifications; and
    - (iii) the ability of the employer to provide the worker with suitable employment.
- (3) For the purposes of this section, rehabilitation training includes a workplace based return to work program.

## **77 Additional travel costs**

- (1) In addition to any other compensation under this Part, an employer shall pay to a worker who has suffered a significant reduction in his or her mobility in the community as the result of his or her suffering a permanent or long-term incapacity and who has not received a benefit under section 78 by the modification of a vehicle, and would not safely be able to drive a motor vehicle no matter how reasonably modified the vehicle, any costs incurred by the worker (in excess of those which he or she would have incurred had he or she not suffered the incapacity) as are reasonable and necessary for the purpose of this Division to enable the worker to achieve reasonable mobility in the community.
- (2) Without limiting the matters which may be taken into account in determining what is a reasonable and necessary payment referred to in subsection (1) in a particular case, there shall be taken into account:
- (a) the effect of the payments on the likelihood of the worker obtaining and retaining gainful employment;

- (b) the difficulty faced by him or her in achieving reasonable mobility in the community; and
- (c) the alternative means of transport available to him or her.

## **78 Other rehabilitation**

- (1) Subject to this section, in addition to any other compensation under this Part, an employer shall pay the costs incurred for such home modifications, vehicle modifications and household and attendant care services as are reasonable and necessary for the purpose of this Division for a worker who suffers or is likely to suffer a permanent or long-term incapacity.
- (2) Without limiting the matters which may be taken into account in determining what are reasonable and necessary home modifications, vehicle modifications and household and attendant care services in a particular case, there shall be taken into account:
  - (a) in relation to home modifications:
    - (i) the cost, and the relevant benefit to the worker, of the proposed modifications;
    - (ii) the difficulties faced by him or her in:
      - (A) gaining access to;
      - (B) enjoying reasonable freedom of movement in; or
      - (C) living independently in,his or her home without the proposed modifications;
    - (iii) the likely duration of his or her residence in the home;
    - (iv) where the home is not owned by the worker, the permission of the owner;
    - (v) the likely cost of reasonable alternative living arrangements; and
    - (vi) the likely psychological effect on the worker of not having the proposed modifications made;
  - (b) in relation to vehicle modifications:
    - (i) the cost and relevant benefit to the worker of the proposed modifications;

- (ii) the difficulty faced by him or her in:
    - (A) driving or operating;
    - (B) gaining access to; or
    - (C) enjoying freedom and safety of movement in, the vehicle without the proposed modifications;
  - (iii) alternative means of transport available to him or her; and
  - (iv) the effect of the modifications on his or her likelihood of obtaining and retaining gainful employment;
- (c) in relation to household services:
- (i) the extent to which household services were provided by the worker before the relevant injury and the extent to which he or she is able to provide those services after that date;
  - (ii) the number of household family members, their ages and their need for household services;
  - (iii) the extent to which household services were provided by other household family members before the relevant injury;
  - (iv) the extent to which other household family members or other family members might reasonably be expected to provide household services for themselves and for him or her after the relevant injury; and
  - (v) the need to avoid substantial disruption to the employment or other activities of the household family members; and
- (d) in relation to attendant care services:
- (i) the nature and extent of the worker's injury and the degree to which that injury impairs his or her ability to provide for his or her personal care;
  - (ii) the extent to which such medical services and nursing care as may be received by him or her provide for his or her essential and regular personal care;

- (iii) where he or she so desires, the extent to which it is reasonable to meet his or her desire to live outside an institutional environment;
  - (iv) the extent to which attendant care services are necessary to enable him or her to undertake or continue employment;
  - (v) any assessment made, at the request of the insurer, by persons having expertise in the worker's rehabilitation;
  - (vi) any standard developed or applied by a government department or public authority in respect of the need of disabled persons for attendant care services; and
  - (vii) the extent to which a relative of the worker might reasonably be expected to provide attendant care services to him or her.
- (3) An employer shall not be liable to pay the costs incurred for home modifications except where the worker for whose benefit the modifications are or are to be carried out is severely impaired in his or her mobility or ability to live independently within the home.
- (4) Without limiting subsection (2)(c), in relation to reasonable and necessary household services, the reasonable costs of childcare, including overnight childcare, are included for a period when the worker is unable to access child care or child minding support from family members and the worker is:
- (a) hospitalised due to the compensable injury; or
  - (b) undergoing surgery directly related to the compensable injury.

## **Division 4A Settlement by agreement of entitlement to compensation**

### **78A Settlement by agreement**

- (1) As an alternative to being paid an amount, or all amounts, payable under this Act in respect of an injury, a claimant may enter into an agreement of one of the following types:
- (a) an agreement with the employer for payment of a lump sum;
  - (b) an agreement with the employer for a structured settlement.



- (1A) However, an agreement purportedly entered into in accordance with subsection (1) is void if the agreement provides for an amount as settlement of all amounts payable for any of the following in relation to a person who has suffered a catastrophic injury:
- (a) medical treatment;
  - (b) pharmaceutical treatment;
  - (c) dental treatment;
  - (d) ambulance transportation;
  - (e) respite care;
  - (f) attendant care services;
  - (g) domestic assistance;
  - (h) aids and appliances intended to assist a person to live a normal lifestyle, or to help prevent further injury or worsening of a health condition;
  - (i) prosthetics, including limbs, eyes and teeth;
  - (j) educational and vocational training;
  - (k) home, transport and workplace modification;
  - (l) a service or treatment prescribed by regulation.
- (2) If an agreement mentioned in subsection (1) becomes enforceable under this section, the claimant is not entitled to any future payments under this Act in respect of the injury to which the claimant's compensation relates.
- (3) An agreement relating to the payment of compensation, other than an agreement under this Division, or an agreement that is substantially in accordance with this Division and that is reached before a court, is void.
- (4) Before an agreement under subsection (1) is entered into, the following conditions must be met:
- (a) the employer must invite the claimant to obtain independent legal advice from a legal practitioner of the claimant's choice;
  - (b) the employer must invite the claimant to obtain expert financial advice from a person of the claimant's choice who is qualified to give expert financial advice;

- (c) the claimant must confirm in writing to the employer that:
  - (i) the claimant has received the advice mentioned in paragraph (a); and
  - (ii) the claimant either has received the advice mentioned in paragraph (b) or does not elect to receive that advice.
- (4A) Whether or not an agreement is entered into, the employer must pay the reasonable costs of:
  - (a) the legal practitioner who gave the legal advice; and
  - (b) if the claimant elects to obtain expert financial advice – the person who gave that advice.
- (4B) Any agreement entered into is not enforceable until subsection (4A) is satisfied.
- (5) If an agreement mentioned in subsection (1), including an agreement in relation to a claim where liability is disputed by the employer, is entered into in respect of payments for a period that starts before 104 weeks after the claimant first becomes entitled to compensation:
  - (a) the claimant may withdraw from the agreement at any time during the cooling-off period; and
  - (b) the claimant may request further advice of the kind mentioned in subsection (4)(a) or (b), or both, at any time during the cooling-off period; and
  - (c) the employer must pay the reasonable costs of that advice; and
  - (d) if, after that advice is received, the claimant requests an amendment to the agreement – the agreement is subject to the amendment being made in a way that is acceptable to the claimant and the employer.
- (5A) If liability is disputed as mentioned in subsection (5), any payment under an agreement mentioned in subsection (1) made by the employer:
  - (a) is made on a "without prejudice" basis; and
  - (b) is not taken to be an admission by the employer that the claimant has any entitlement to compensation in relation to an injury suffered by the claimant and to which the agreement relates; and

- (c) is not evidence that the employer is liable to make any, or any further, payments under this Act as compensation to the claimant.
- (5B) If, during the cooling-off period, the claimant withdraws from an agreement entered into with the employer:
- (a) any payment (the **repayment amount**) made by the employer in accordance with the agreement is repayable by the claimant to the employer; and
  - (b) the repayment amount is a debt due and payable by the claimant on demand by the employer within the time (not less than 14 days) specified in the demand.
- (5C) If the claimant fails to repay to the employer all or any of the repayment amount within the time specified, the employer may:
- (a) set-off the unpaid amount against any further entitlement to compensation that the claimant may establish against the employer after the claimant withdraws from the agreement; or
  - (b) initiate legal proceedings to recover the amount remaining unpaid.
- (6) In this section:

**catastrophic injury** means an injury of a type prescribed by regulation that meets the eligibility criteria prescribed for an injury of that type.

**cooling-off period**, in relation to an agreement under subsection (5), means a period that:

- (a) starts on the day on which the agreement is entered into; and
- (b) ends 6 months after that day.

**structured settlement** means an agreement between a claimant and an employer providing for the payment of amounts otherwise payable under this Act in respect of an injury by one or both of the following means:

- (a) periodic payments funded by an annuity or other agreed means;
- (b) periodic payments in respect of future reasonable expenses for medical, hospital, pharmaceutical or attendant care services, payable as those expenses are incurred.

## **78B Lump sum agreement for particular period**

- (1) A claimant may enter into an agreement with the employer for payment of a lump sum instead of being paid an amount, or all amounts, otherwise payable under this Act during a period in respect of an injury.
- (2) Such an agreement may contain conditions on the payment of the lump sum, including conditions relating to one or more the following uses for part of the sum:
  - (a) education or other acquisition or development of new skills by the claimant, including skills related to the claimant becoming self-employed;
  - (b) retraining or job-seeking activities carried out by the claimant;
  - (c) modifications to the workplace to enable the claimant to return to work;
  - (d) payment of carers, including during periods of travel for the claimant.
- (3) If such an agreement is entered into, no person is entitled to any payments under this Act in respect of the period and the injury to which the claimant's compensation relates.
- (4) Despite subsection (3), the worker may claim a payment under this Act for the period and the injury to which the compensation relates if the worker can demonstrate that:
  - (a) the lump sum was inadequate to compensate the worker with respect to rehabilitation and other needs under this Act or to which the employer agreed; or
  - (b) the worker incurred expenses beyond those that were contemplated by the worker and the employer when the agreement was entered into.

## **Division 5 Claim procedures and determination**

### **80 Notice of injury and claim for compensation**

- (1) Subject to this Act, a person shall not be entitled to compensation unless notice of the relevant injury has, as soon as practicable, been given to or served on the worker's employer.
- (2) An employer who receives a claim for compensation shall be deemed to have been given notice of the injury to which it relates.

**81 Form of notice of injury**

- (1) Notice of an injury:
  - (a) may be given orally or in writing;
  - (b) shall, subject to section 84(2), be given to:
    - (i) the employer or, if there is more than one employer, to one of the employers;
    - (ii) a person under whose supervision the worker is employed; or
    - (iii) a person designated for the purpose by the employer;
  - (c) shall include the name and address of the person injured; and
  - (d) shall include the date on which the injury occurred and the cause of the injury.
- (2) Where an employer has received notice of an injury, he or she shall record that fact in records kept for that purpose.

**82 Form of claim**

- (1) A claim for compensation shall:
  - (a) be in the approved form; and
  - (b) unless it is a claim for compensation under section 62, 63 or 73 – be accompanied by a medical certificate of capacity in a form approved by the Authority; and
  - (c) subject to section 84(3), be given to or served on the employer.
- (2) If the claim and medical certificate of capacity are not given or served at the same time, the remaining document shall be given or served on the employer within 28 days after the first document is given or served and the claim for compensation shall be deemed not to have been made until the day on which the remaining document is given to or served on the employer.
- (3) A defect, omission or irregularity in a claim or medical certificate of capacity shall not affect the validity of the claim and the claim shall be dealt with in accordance with this Part unless the defect, omission or irregularity relates to information which is not within the knowledge of or otherwise ascertainable by, the employer or his or her insurer.

- (4) if the claim form specifies that the worker is required to authorise the release of information concerning the worker's injury:
  - (a) the form may specify that the information may be released to one or more of the following persons:
    - (i) the worker's employer;
    - (ii) the worker's employer's insurer;
    - (iii) a legal practitioner, medical practitioner, investigator, accredited vocational rehabilitation provider, or any other person reasonably consulted by the employer or insurer for making a decision as to the payment of the claim for compensation; and
  - (b) the worker must authorise the release of the information in accordance with the form; and
  - (c) the claim for compensation by the worker is not considered to have been made until the authorisation is given.
- (5) An authorisation under subsection (4) is irrevocable.
- (6) A medical certificate of capacity referred to in subsection (1)(b) has effect only for the prescribed period.

### **83 Service of claim**

- (1) A claim for compensation may be given or served on an employer by:
  - (a) giving it to or serving it personally on the employer; or
  - (b) placing it in a properly addressed envelope and leaving it with a person who has apparently attained the age of 16 years at, or sending it by pre-paid post to the employer at, the employer's usual or last known place of residence or business.
- (2) Subsection (1) is in addition to and not in derogation of provisions of the Corporations Act 2001 relating to the service of documents.

**84 Employer to forward incident report and claim**

- (1) An employer shall, immediately on receiving a claim for compensation, complete the employer's report section of the claim form and, within 3 working days after receiving the claim:
  - (a) where the employer is a self-insurer – forward a copy of the claim to the Authority; and
  - (ab) if the employer is uninsured – forward the claim to the Nominal Insurer and a copy of the claim to the Authority; and
  - (b) in all other cases – forward the claim, and a copy, to his or her insurer; and
  - (c) in all cases – retain a copy of the claim for his or her own records.
- (2) An insurer who is given notice of a claim under section 81 or receives a claim forwarded under subsection (1) shall, within 10 working days after the notice is given or the claim received, forward a copy to the Authority.
- (3) Despite sections 81 and 82, a person making a claim for compensation for an injury may lodge the claim with the relevant insurer or the Authority if the person becomes aware that the employer:
  - (a) has not complied or is not likely to comply with subsection (1)(a) or (b); or
  - (b) is refusing to receive the claim; or
  - (c) cannot be identified; or
  - (d) cannot be found; or
  - (e) is dead; or
  - (f) is a corporation which has been wound up; or
  - (g) is uninsured.
- (4) Where under subsection (3) a person lodges a claim for compensation with the relevant insurer or the Authority:
  - (a) the insurer shall give to the Authority a copy of the claim and accompanying documents; or
  - (b) the Authority shall give to the relevant insurer the claim and accompanying documents,

within 10 working days after the insurer or Authority receives them.

- (5) An employer who:
- (a) refuses to receive a claim for compensation; or
  - (b) dismisses a worker from employment for the reason only that the worker has given or attempted to give to the employer or the Authority a claim for compensation,
- is guilty of an offence.

Maximum penalty for an offence against this section:

In the case of a body corporate – 85 penalty units.

In the case of a natural person – 25 penalty units.

Default maximum penalty: In the case of a body corporate – 6 penalty units.

In the case of a natural person – 1.2 penalty units.

## **85 Decision as to eligibility for compensation**

- (1) Subject to subsection (10), an employer shall, on receiving a claim for compensation:
- (a) accept liability for the compensation;
  - (b) defer accepting liability for the compensation; or
  - (c) dispute liability for the compensation,
- and shall notify the person making the claim of the employer's decision within 10 working days after receiving the claim.
- (2) Where an employer accepts liability for the compensation claimed, the employer shall, in the case of a claim for weekly payments (whether or not other compensation is claimed), commence those payments within 3 working days after accepting liability.
- (3) Where a claim for compensation is for a lump-sum payment of compensation or for a benefit other than a weekly payment, the employer shall, where liability for the compensation claimed is accepted, make the payment or provide the benefit as soon as practicable after the claim is accepted.



- (4) Where an employer defers accepting liability for the compensation claimed:
- (a) the deferral shall remain in force for 56 days from the date the notification under subsection (1) is given or such longer period as the Court may allow unless, within that period, the employer notifies the person making the claim that the employer accepts or disputes liability for the compensation;
  - (b) where the claim is for weekly payments (whether or not other compensation is claimed), the employer shall, within 3 working days of making the decision to defer accepting liability for the compensation claimed, commence those payments; and
  - (c) if the claim is for weekly payments:
    - (i) subject to subparagraph (ii), sections 75A(1) and 75B apply during the period of deferral to the employer and the worker as if the employer had accepted liability for the compensation claimed; and
    - (ii) if the claim does not relate to an injury involving mental stress – the employer is not required to bear the expense, under section 75B, of either or both of the following:
      - (A) hospitalisation (including surgery while the worker is hospitalised);
      - (B) the worker travelling, or being transported, to and from any place outside the Territory for the purpose of hospitalisation.
- (5) Where an employer accepts or disputes liability for compensation under subsection (4)(a), the employer shall notify the person making the claim of the employer's decision.
- (6) Notification required to be given to a person under this section shall be in writing and given to the person by:
- (a) delivering it personally to the person;
  - (b) placing it in a properly addressed envelope and leaving it with a person who has apparently attained the age of 16 years at the person's address as shown in the claim form given to or served on the employer under section 82; or

- (c) sending it in a properly addressed envelope by pre-paid post to the person at the person's address as shown in the claim form given or served on the employer under section 82, and notification shall be deemed given when the envelope is posted.
- (7) Where payments are made to a person under subsection (4)(b) or by virtue of subsection (4)(c), or where the employer pays the costs of a worker's reasonable rehabilitation treatment or training or workplace return to work programs before accepting liability for or being found liable to pay compensation, those payments:
- (a) are made on a without prejudice basis and are not, in any subsequent proceedings under this Act, to be construed as an admission of liability;
  - (b) if they are made under subsection (4)(b) or by virtue of subsection (4)(c) – are to continue to be made until the employer under subsection (5) notifies the person making the claim of the employer's decision to accept or dispute liability for the compensation claimed;
  - (c) are to be taken into account in determining the amount of the employer's liability under the claim, where liability is accepted or deemed accepted or an order for compensation is made; and
  - (d) are not able to be recovered by the employer notwithstanding that the employer may not be liable under this Act to pay the compensation claimed, unless the Court otherwise orders because the Court has found that:
    - (i) the worker or the person making the claim has acted dishonestly; or
    - (ii) the claim was fraudulently made; or
    - (iii) the worker or the person making the claim has obstructed or delayed the process for the employer's making the decision.
- (8) At the same time as an employer notifies a claimant under this section that the employer disputes liability for compensation claimed, the employer must give the claimant a statement in the approved form:
- (a) setting out the reasons for the employer's decision to dispute liability;

- (b) to the effect that, if the claimant is aggrieved by the employer's decision to dispute liability, the claimant may, within 90 days after receiving the statement, apply to the Authority to have the dispute referred to mediation;
  - (c) to the effect that, if mediation is unsuccessful in resolving the dispute, the claimant may commence a proceeding before the Court for the recovery of compensation to which the claimant believes he or she is entitled;
  - (d) to the effect that, if the claimant wishes to commence a proceeding, the claimant must lodge an application with the Court within 28 days after receiving a certificate issued by the mediator under section 103J(2);
  - (e) to the effect that the claimant may only commence the proceeding if an attempt has been made to resolve the dispute by mediation and that attempt has been unsuccessful; and
  - (f) to the effect that, despite paragraphs (d) and (e), the claimant may commence a proceeding for an interim determination under section 107 at any time after the claimant has applied to the Authority to have the dispute referred to mediation.
- (9) For the purposes of subsection (8), the reasons set out in the statement referred to in that subsection shall provide sufficient detail to enable the claimant to whom the statement is given to understand fully why the employer disputes liability for the compensation claimed.
- (10) If an employer is uninsured, a reference to the employer in this section is to be read as a reference to the Nominal Insurer.

#### **85A Worker may request information about weekly earnings**

- (1) A worker may, for the purposes of determining his or her entitlement to compensation from an employer, request the employer to provide him or her with information about the worker's weekly earnings.
- (2) An employer must, in the absence of reasonable excuse, comply with a request under subsection (1) within 21 days after receiving the request.

Maximum penalty: In the case of a body corporate – 85 penalty units.

In the case of a natural person – 17 penalty units.

**86 Application to alter level of weekly payments**

- (1) A worker who is receiving weekly payments may apply to the employer for an increase or decrease in the level of weekly payments.
- (2) An employer shall, within 14 days after receiving an application under subsection (1), accept or reject the application and:
  - (a) if the application is accepted – advise the worker of the decision; and
  - (b) if the application is rejected – advise the worker of the decision and the reasons for the rejection.

Maximum penalty: In the case of a body corporate – 25 penalty units.

In the case of a natural person – 8 penalty units or imprisonment for 3 months.

Default maximum penalty: In the case of a body corporate – 4 penalty units.

In the case of a natural person – \$50.

- (3) If an application under subsection (1) is accepted, weekly payments at the new level shall commence within the period specified in subsection (2).

**87 Failure to decide within specified time**

- (1) If an employer fails to notify a person of his or her decision within the time specified in section 85(1), the employer is deemed to have accepted liability for compensation payable under Subdivisions B and D of Division 3 until:
  - (a) the expiry of 14 days after the day on which the employer notifies the person of his or her decision in pursuance of that section; or
  - (b) the Court orders otherwise.

- (2) If an employer defers a decision on liability but fails to make a decision to accept or dispute liability within the period for which the deferral remains in force under section 85(4)(a), the employer is deemed to have accepted liability for compensation payable under Division 3, Subdivisions B and D until:
  - (a) the expiry of 14 days after the day on which the employer notifies the claimant of a decision to accept or dispute liability;  
or
  - (b) the Court orders otherwise.
- (3) An employer notifies a claimant of a decision for the purposes of subsection (1)(a) or (2)(a) if (and only if):
  - (a) notification of the decision is given in accordance with section 85(6); and
  - (b) in the case of a decision to dispute liability, the employer complies with the further requirements of section 85(8) and (9).
- (4) An employer who fails to notify a claimant of a decision mentioned in subsection (1)(a) or (2)(a) is considered to have accepted liability for compensation:
  - (a) effective on the day that is 10 working days after the employer commences making payments or providing a benefit by operation of this section and section 85; and
  - (b) whether or not the employer further notifies the claimant as mentioned in section 85(1).

## 88 Weekly payments

- (1) Unless otherwise agreed in writing by the worker, a weekly payment shall be made to the worker before the expiration of 7 days after the end of the week in respect of which it is payable or, where the worker is normally paid at intervals greater than one week, before the expiration of 7 days after the end of the period in respect of which he or she is normally paid.

Maximum penalty: In the case of a body corporate –  
125 penalty units.

In the case of a natural person – 25 penalty units.

Default maximum penalty: In the case of a body corporate –  
6 penalty units.

In the case of a natural person –  
1.2 penalty units.

- (2) A weekly payment may be made by post by properly addressing, prepaying and posting to the worker a letter containing a cheque or other monetary instrument for the amount of the weekly payment.
- (3) Where a weekly payment is made by cheque or other monetary instrument (whether in accordance with subsection (2) or otherwise), the person liable to make the payment is not to be taken to have complied with subsection (1) unless the cheque or other instrument is received by the worker in sufficient time for the worker to be able to deposit and draw on the cheque or other instrument within the relevant period specified in subsection (1).

## 89 Late payment of weekly payments

- (1) If a person (the *liable person*) liable under this Part to make a weekly payment of compensation to a worker fails to make the weekly payment on or before the day on which the liable person is required to do so, the worker must, in respect of that weekly payment, be paid, in addition to any other payment required to be made under this Part, an amount represented by the formula:

A x the prescribed rate of interest x  $\frac{B}{52}$

where:

A is the amount of that weekly payment payable to the worker; and

B is the number of weeks (with a part of a week being counted as a whole week) occurring within the period commencing immediately after the day on which payment of that weekly payment was due and concluding at the end of the day on which payment of that weekly payment is made.

- (2) If the liable person disputes liability for compensation and the dispute is later resolved wholly or partly in favour of the worker, for the purpose of calculating interest under subsection (1), weekly payments are taken to have fallen due when they would have fallen due had there been no dispute.

## **90 Return to work**

Where a worker who has been receiving weekly payments for incapacity returns to work with an employer other than the employer in whose employment the injury occurred or his or her employment or other circumstances change in such a way as is likely to affect his or her entitlement to, or the amount of, compensation, the worker shall immediately notify the employer in whose employment the injury occurred of the return to work or those changed circumstances.

Maximum penalty: 25 penalty units or imprisonment for 6 months.

## **90A Employer may request information about earnings**

- (1) Where a worker who has been receiving weekly payments for incapacity returns to work with an employer other than the employer in whose employment the injury occurred, the employer in whose employment the injury occurred may request the worker to provide him or her with information about the worker's earnings from the employer with whom the worker returned to work.
- (2) A worker must, in the absence of reasonable excuse, comply with a request under subsection (1) within 21 days after receiving the request.

Maximum penalty: 17 penalty units.

## **90B Initial medical opinion**

- (1) This section applies in relation to an employer after a claim for compensation is made under section 82, whether the employer decides under section 85 to accept, defer accepting, or dispute liability for the claim.

- (2) If the employer requires a medical opinion about the injury to which the claim relates, the employer must initially request the opinion of a medical practitioner who is treating or has treated the worker for the injury.
- (3) The request must be in writing and must include the following information:
  - (a) the medical opinion is required by the employer within 14 days after the treating medical practitioner receives the request;
  - (b) if the opinion is not provided to the employer within that time, the employer may seek the opinion of another medical practitioner.
- (4) If the treating medical practitioner does not provide the medical opinion to the employer within the period specified in the request, the employer may seek the medical opinion of another medical practitioner.
- (5) This section does not prevent the employer from obtaining a medical opinion from any medical practitioner after the treating medical practitioner has provided the opinion as requested.

## **91 Medical examinations**

- (1) An employer may require a worker who has made a claim for compensation to submit at reasonable intervals to an examination by a medical practitioner provided and paid for by the employer.
  - (1A) Before each appointment for an examination under subsection (1), the employer must notify the medical practitioner who is treating the worker for the injury to which the claim relates of the name and contact details of the medical practitioner who will be examining the worker.
  - (1B) The employer must give the worker's treating medical practitioner a copy of the report of the medical practitioner who examined the worker.
- (2) Subject to section 69, where a worker unreasonably refuses to have, or unreasonably obstructs, an examination under subsection (1), an employer may cancel or reduce the compensation payable to the worker under Subdivision B of Division 3 until the examination takes place.

## **91A Worker to provide statement of fitness for work**

- (1) A worker receiving weekly payments of compensation because he or she is incapacitated for work shall ensure that his or her



employer is provided with a statement of fitness for work from a medical practitioner certifying that the worker is incapacitated for work for the periods he or she remains incapacitated for work.

- (2) Nothing in subsection (1) shall be construed as requiring a worker to provide his or her employer with more than one statement of fitness for work for a period during which he or she remains incapacitated for work.

## **Part 6                    Misleading information and statements**

### **92                    Misleading information**

- (1) A person commits an offence if:
- (a) the person intentionally makes a statement to the employer of an injured worker, or to the insurer of that employer; and
  - (b) the person knows the statement contains misleading information; and
  - (c) the result of the making of the statement is that an insurer, a self-insurer or the Nominal Insurer makes a payment or provides a benefit that they would not have made or provided if the statement had not been made.

Maximum penalty:     200 penalty units.

- (2) A person commits an offence if:
- (a) the person intentionally gives a document to the employer of an injured worker, or to the insurer of that employer; and
  - (b) the person knows the document contains misleading information; and
  - (c) the result of the giving of the document is that an insurer, a self-insurer or the Nominal Insurer makes a payment or provides a benefit that they would not have made or provided if the statement had not been so given.

Maximum penalty:     200 penalty units.

- (3) A person commits an offence if:
- (a) the person intentionally makes or alters a document; and
  - (b) the person knows the document contains misleading information; and

- (c) the person is reckless as to whether the document could be used in relation to a claim for compensation; and
- (d) the document is provided directly or indirectly to an employer or the employer's insurer; and
- (e) the result of the provision of the document is that an insurer, a self-insurer or the Nominal Insurer makes a payment or provides a benefit that they would not have made or provided if the document had not been so provided.

Maximum penalty: 200 penalty units.

- (4) Strict liability applies to subsections (1)(c), (2)(c) and (3)(d) and (e).
- (5) In this section:

***misleading information*** means information that is misleading in a material particular or because of the omission of a material particular.

## **Part 6A            Dispute resolution**

### **Division 1        Mediation**

#### **103A     Definitions**

In this Division:

***conference*** means a conference convened by a mediator under section 103C(3)(b).

***dispute*** has the meaning given in section 103B.

***party*** means a party to a mediation under section 103F(1).

#### **103B     Disputes**

For the purposes of this Division, a dispute arises where a claimant is aggrieved by the decision of an employer:

- (a) to dispute liability for compensation claimed by the claimant;
- (b) to cancel or reduce compensation being paid to the claimant;  
or
- (c) relating to a matter or question incidental to or arising out of the claimant's claim for compensation.

### **103BA Internal dispute resolution process**

- (1) A person who is an approved insurer, a self-insurer or the Nominal Insurer must ensure that they:
  - (a) prepare and publish an internal dispute resolution process that is available to be used by claimants; and
  - (b) implement the process.
- (2) The internal dispute resolution process must comply with any relevant guidelines published by the Authority.

### **103C Mediators**

- (1) The Minister may appoint a person to be a mediator.
- (2) The function of a mediator is to promote the resolution of disputes between claimants, employers and employers' insurers.
- (3) For the purpose of promoting the resolution of a dispute, a mediator has power:
  - (a) to conduct discussions with each party; and
  - (b) where it appears to the mediator likely to assist in the resolution of a dispute – to convene a conference and require the parties or any of them to attend; and
  - (c) to require a party to the dispute to provide to the mediator or another party to the dispute specified materials in the party's possession or control; and
  - (d) to require that information to be provided within a specified time; and
  - (e) to do any other things that are necessary or convenient to be done for the purpose of resolving the dispute.
- (4) In the performance of his or her function and in the exercise of his or her powers, a mediator must:
  - (a) act promptly;
  - (b) be impartial; and
  - (c) except to the extent necessary for the proper performance of that function or exercise of those powers, maintain confidentiality.

### **103D Application for and conduct of mediation**

- (1) A claimant may apply to the Authority to have a dispute referred to mediation.
- (1A) If the dispute relates to a decision specified in section 103B(a) or (b), the claimant must apply under subsection (1) within 90 days of receiving the statement referred to in section 85(8) or 69(1)(b) respectively.
- (2) Within 7 days after receiving the application, the Authority must refer the dispute to a mediator.
- (2A) After receiving an application under this section, the Authority must, by written notice, require each party to the mediation to provide the Authority with:
  - (a) all written medical reports in the party's possession or control relevant to the dispute (including reports on which the party does not rely); and
  - (b) all other written materials in the party's possession or control on which the party relies.
- (2AB) A party must comply with a notice under subsection (2A) within 7 days after receiving the notice.
- (2B) The Authority will give the medical reports and other materials to the mediator who will make copies of them available to the parties in the course of the mediation.
- (3) Within 21 days after receiving a referral, a mediator must:
  - (a) attempt to resolve the dispute;
  - (b) advise the claimant and the employer's insurer of the outcome of the mediation; and
  - (c) if the mediator has been unable to resolve the dispute – advise the parties of further proceedings that may be commenced and the time within which to commence them.
- (4) A claimant who fails to apply for mediation within the period referred to in subsection (1A) may apply to the Court under section 104(1) for an extension of the period.
- (5) The Court may extend the period if it is satisfied the failure to apply within the period was occasioned by mistake, ignorance of a disease, absence from the Territory or other reasonable cause.

### **103E Recommendations by mediator**

The mediator may make recommendations to the parties in relation to the resolution of the dispute.

### **103F Parties, representation and attendance**

- (1) The parties to a mediation are:
  - (a) the claimant;
  - (b) the employer; and
  - (c) the employer's insurer.
- (2) Subject to subsection (3), a party is not entitled to legal representation in the mediation.
- (3) The mediator may agree to a party being legally represented if satisfied that:
  - (a) it is physically impracticable for the party to participate in the mediation in person; or
  - (b) it would otherwise facilitate the conduct of the mediation.
- (4) Where the mediator agrees to a party having legal representation, the mediator must notify the other parties of that agreement before taking a step or, if the mediation has commenced, a further step in the mediation.
- (5) A party who is not legally represented:
  - (a) is entitled to be accompanied at a conference by another person who is not a lawyer (the **support person**) and to consult with the support person during the conference; and
  - (b) is not entitled to be represented at the conference by the support person.
- (5A) However, the mediator may agree to a claimant being represented by the support person at the conference if satisfied that to do so would facilitate the conduct of the mediation.
- (5B) If the mediator agrees to the claimant being represented by the support person, the mediator must notify the other parties of that agreement before taking a step or, if the mediation has commenced, a further step, in the mediation.

- (6) With the agreement of the mediator, a party or his or her legal representative may attend a conference by teleconferencing if physical attendance is impracticable.

**103FA Legal representation or legal advice**

- (1) If the dispute relates to a decision of a type mentioned in section 103B(a) or (b), and the mediator agrees to a claimant having legal representation as mentioned in section 103F(3):
- (a) the claimant may choose the legal practitioner who is to represent them; and
  - (b) the mediator may, if of the opinion that to do so would facilitate the conduct of the mediation, by written notice to the Authority, make a recommendation in accordance with subsection (3).
- (2) If the dispute relates to a decision of a type mentioned in section 103B(a) or (b), the mediator may recommend, by written notice, that the Authority direct the employer to pay the reasonable costs of legal advice received by the claimant, even if the mediator does not agree to the claimant having legal representation.
- (3) The mediator may recommend, in the written notice under subsection (1)(b) or (2), that the Authority direct the employer to pay:
- (a) if the recommendation is under subsection (1)(b) – one or both of the following:
    - (i) the reasonable costs of the legal representation;
    - (ii) the reasonable costs of legal advice received by the claimant before the mediator agreed to the legal representation; or
  - (b) if the recommendation is under subsection (2) – the reasonable costs of the legal advice.
- (4) The Authority must do one of the following:
- (a) by written notice given to an employer, direct the employer to pay the reasonable costs mentioned in subsection (3)(a)(i) or (ii) or (b);
  - (b) by written notice given to the claimant and the mediator, inform them that the Authority has decided not to follow the recommendation.

- (5) A notice under subsection (4)(a):
- (a) must specify the maximum amount of the reasonable costs payable by the employer (the total of which is not to exceed the amount of average weekly earnings at the time of the notice); and
  - (b) may specify the date before which those reasonable costs are payable.
- (6) An employer may pay an amount greater than the maximum amount mentioned in subsection (5)(a).

### **103G Parties to pay own costs**

Unless the Court orders otherwise, the parties must bear their own costs of the mediation.

### **103H Offences**

- (1) A party commits an offence if:
- (a) the mediator requires a party to do one or more of the following:
    - (i) attend a conference;
    - (ii) provide specified written information to the mediator or another party;
    - (iii) provide specified written information to the mediator or another party within a specified time; and
  - (b) the party does not comply with the requirement.

Maximum penalty: 100 penalty units.

- (2) A party commits an offence if:
- (a) the party receives a notice under section 103D(2A); and
  - (b) the party does not comply with the notice.

Maximum penalty: 100 penalty units.

- (3) An offence against subsection (1) or (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (1) or (2) if the defendant has a reasonable excuse.

### **103J      Pre-condition to court proceedings**

- (1) Subject to subsection (3), a claimant is not entitled to commence proceedings under Division 2 in respect of a dispute unless there has been an attempt to resolve the dispute by mediation under this Division and that attempt has been unsuccessful.
- (2) At the conclusion of a mediation, the mediator must issue to each of the parties a certificate in the approved form:
  - (a) stating that mediation has taken place;
  - (b) listing the written information provided to the mediator by the parties during the mediation;
  - (c) setting out the recommendations (if any) of the mediator; and
  - (d) stating what the outcome of the mediation was.
- (3) A claimant is entitled to commence proceedings for an interim determination of his or her entitlement to compensation under section 107 at any time after the claimant has applied to the Authority under section 103D to have the dispute referred to mediation.

### **103K      Mediation proceedings privileged**

- (1) Except as expressly provided by or under this Act, anything said, written or done in the course of mediation under this Division is not admissible in any other proceedings under this Act.
- (2) A certificate issued under section 103J(2) is admissible in proceedings under this Act.

## **Division 2      Claims for compensation**

### **104      Applications**

- (1) A person may, subject to this Act, commence proceedings before the Court for the recovery of compensation under Part 5 or for an order or ruling in respect of a matter or question incidental to or arising out of a claim for compensation under that Part.
- (2) Proceedings under this Division may be commenced before the Court by application in the prescribed manner and form or, where there is no manner or form prescribed, in such manner or form as the Court approves.



- (3) Proceedings to which section 103J(1) applies are to be commenced within 28 days after the claimant receives a certificate issued under section 103J(2).
- (4) The failure to make a claim within the period specified in subsection (3) shall not be a bar to the commencement of the proceedings if it is found that the failure was occasioned by mistake, ignorance of a disease, absence from the Territory or other reasonable cause.

**105      Court list**

The managing Judge of the Court must keep and maintain a list for the purposes of this Division.

**106      Directions conference**

Before proceeding to hear a matter in the Court list, the Court must hold a directions conference.

**107      Interim determination**

- (1) Subject to this section, the Court may make, vary or revoke an interim determination of a party's entitlement to compensation.
- (2) The making or refusal to make an interim determination is not to be taken to be a finding in respect of a party's entitlement to or liability for compensation.
- (3) A party is entitled to compensation for the period specified in the interim determination, being a period:
  - (a) commencing within 10 weeks before the determination is made; and
  - (b) ending within 12 weeks after the order is made.
- (4) The Court may only revoke an interim determination:
  - (a) on the making by the Court of a formal finding in respect of liability; or
  - (b) with the consent of the parties.
- (5) The Court may make more than one interim determination of a party's entitlement to compensation.

- (6) The Court may only make a further determination under subsection (5) if satisfied that:
- (a) the party would suffer undue hardship if the further determination were not made; or
  - (b) the circumstances are otherwise exceptional.
- (7) Nothing in this section is to be taken to affect the power of the Court under this Part to order, at the time it finally determines a party's entitlement to compensation, the repayment of all or part of the amount paid under an interim determination.

### **109      Unreasonable delay in settlement of compensation**

- (1) If, in a proceeding before it, the Court is satisfied that the employer has caused unreasonable delay in accepting a claim for or paying compensation, it must:
- (a) where it awards an amount of compensation against the employer – order that interest on that amount at a rate specified by it be paid by the employer to the person to whom compensation is awarded; and
  - (b) if, in its opinion, the employer would otherwise be entitled to have costs awarded to him or her – order that costs be not awarded to him or her.
- (2) Where a weekly or other payment due under this Act to a person by an employer has not been made in a regular manner or in accordance with the normal manner of payment, the Court must, on an application in the prescribed form made to it by the person, order that interest at a rate specified by it be paid by the employer to the person in respect of the amount and period for which the weekly or other payment was or is delayed.
- (3) Where the Court orders that interest be paid under subsection (1) or (2), it may, in addition, order that punitive damages of an amount not exceeding 100% of such interest be paid by the employer to the person to whom compensation is awarded or to whom the weekly or other payment due under this Act is payable.

### **110      Costs**

In awarding costs in a proceeding before the Court, the Court shall take into account the efforts of the parties made before or after the making of the application under section 104 in attempting to come to an agreement about the matter in dispute and it may, as it thinks fit, include as costs in the action such reasonable costs of a party incurred in or in relation to those efforts, including in particular the

efforts made at the directions hearing and any conciliation conference.

#### **110A      Procedure**

- (2) The proceedings of the Court under this Division shall be conducted with as little formality and technicality, and with as much expedition, as the requirements of this Act and the *Work Health Administration Act 2011* and a proper consideration of the matter permits.
- (3) Subject to this Act and the *Work Health Administration Act 2011*, the Court in proceedings under this Division is not bound by any rules of evidence but may inform itself on any matter in such manner as it thinks fit.

#### **110B      Client legal privilege and section 12(2) of *Evidence Act 1939* not to apply**

- (1) In this section:

***hospital report*** means a statement in writing concerning a worker made by or on behalf of a hospital, rehabilitation centre or other medical institution.

***medical expert*** means a person lawfully practising in a branch of medicine, dentistry, pharmacology, occupational therapy, physiotherapy, rehabilitation, ergonomics or related field.

***medical report*** means a statement in writing by a medical expert concerning a worker and includes a document which the medical expert intends should be read with the statement, whether the document was in existence at the time the statement was made or was a document which he or she obtained or caused to be brought into existence subsequently.

- (2) Client legal privilege does not apply to a medical report, hospital report or other medical document that relates to a claim for compensation under this Act.
- (3) Section 12(2) of the *Evidence Act 1939* does not apply to or in relation to civil proceedings under this Act.

### **Division 3      Appeals to and review by Court**

#### **111      Application to Court**

- (1) A person who has a right to apply to the Court for a ruling or a right of appeal, or a right of review, under this Act (other than Part 5) or any other Act may, within the prescribed time and in the prescribed manner and form (or, where there is no manner or form prescribed,

in such manner or form as the Court approves), apply to the Court for the ruling or a determination of the appeal or matter.

- (2) An application referred to in subsection (1) shall be dealt with by the Court as expeditiously as the circumstances will allow.

## **112 Appeals and disputes**

Subject to this Act and any other relevant Act, the Court shall consider and determine all applications and appeals referred to in section 111(1) in such manner as it thinks fit.

## **113 Review of determination of Authority**

The Court may hear an application relating to a review referred to in section 111(1) and may determine the application by:

- (a) confirming the determination of the Authority;
- (b) disallowing that determination; or
- (c) substituting its determination for that of the Authority.

## **114 Enforcement of decision**

- (1) The Court, in relation to an appeal or application referred to in section 111, may make such orders (including orders as to costs) and give such direction, not inconsistent with this Act, as it thinks are reasonably necessary to enforce its decisions and determinations.
- (2) The Authority, all persons employed by or in the service of the Authority and all persons affected by a decision or determination of the Court taken or made under this Division or an order or direction referred to in subsection (1) shall do all things reasonably necessary to give effect to the relevant decision or determination.

## **Division 4 Appeals from registrars**

### **114A Appeal to Court constituted by Local Court Judge**

- (1) Subject to subsection (2), a person affected by an order made or a thing done by a registrar under this Act may appeal against the order or thing to the Court constituted by a Local Court Judge.
- (2) No appeal lies under subsection (1) from the making, variation or revocation by a registrar of an interim determination under section 107.

- (3) An appeal under subsection (1) is to be by way of a hearing de novo.

## **Division 5      Reservations of points of law and appeals to Supreme Court**

### **115      Points of law may be reserved for consideration of Supreme Court**

- (1) The Court may, in its discretion, reserve a question of law arising out of a proceeding under this Act for the consideration of the Supreme Court and state a special case for the opinion of the Supreme Court.
- (2) The Supreme Court shall deal with a special case referred to it under subsection (1) according to the practice of the Supreme Court on such special cases and may make such order thereon (including an order as to the costs of the proceedings in the Supreme Court and in the Work Health Court) as it thinks fit.
- (3) The Supreme Court may send a special case referred to it under subsection (1) back to the Court for amendment, or may itself amend it.
- (4) The Court shall make a determination in respect of a matter referred under subsection (1) to the Supreme Court in conformity with a certificate of the Supreme Court.

### **116      Appeals**

- (1) Subject to subsection (3), a party to a proceeding before the Court constituted by a Local Court Judge who is aggrieved by a decision or determination of the Court may appeal against the decision or determination on a question of law to the Supreme Court within the time and in the manner prescribed by the Rules of the Supreme Court.
- (2) In deciding the appeal, the Supreme Court may:
- (a) confirm or vary the decision or determination; or
  - (b) set aside the decision or determination and substitute its own decision or determination; or
  - (c) set aside the decision or determination and remit the matter to the Work Health Court.
- (2A) For subsection (2), the Supreme Court may make the orders and give the directions it considers appropriate.

- (3) A party may not appeal under subsection (1) until the proceeding in which the decision or determination was made has been finally determined by the Court.

## **Part 7 Insurance**

### **Division 1 Preliminary matters**

#### **117 Definitions**

In this Part:

**former Fund** means the Fund established under the repealed Act.

**Fund** means the Nominal Insurer's Fund established under section 162.

#### **118 Application of Part**

- (1) Subject to subsection (2), this Part does not apply in relation to the Territory.
- (2) If a determination is published under section 164B(4) and for the purposes of the determination the Territory is taken to be an employer approved under section 120 to self-insure, the provisions of section 164B that apply to self-insurers apply to the Territory for the period the determination is in force.

### **Division 2 Approved insurers and self-insurers**

#### **119 Application for approval as approved insurer**

- (1) An insurer may apply in writing to the Authority for approval by the Authority for the purposes of this Act.
- (2) The Authority may, in its absolute discretion, by notice in writing to the insurer, approve an insurer who has under subsection (1) applied for approval, on any conditions the Authority considers appropriate, or refuse to approve the insurer.
- (3) Without limiting its discretion under subsection (2), the Authority shall, before approving or refusing to approve an insurer, take into consideration:
  - (a) the insurer's ability to provide the necessary insurance service, including its ability to meet time limits imposed by this Act;

- (b) the likely market share of the insurer and its likely effect on its cost efficiency in supplying the service;
- (c) the financial viability of the insurer;
- (d) the insurer's ability to provide the statistical and other information required or likely to be required under this Act; and
- (e) such other matters as are prescribed.

**120 Application for approval to self-insure**

- (1) An employer may apply in writing to the Authority for approval to self-insure for the purposes of this Act.
- (2) The Authority may, in its absolute discretion, by notice in writing to the employer, approve an employer who has under subsection (1) applied for approval, on any conditions the Authority considers appropriate, or refuse to approve the employer.
- (3) Without limiting its discretion under subsection (2), the Authority shall, before approving or refusing to approve an employer to self-insure, take into consideration:
  - (a) the employer's ability to provide the necessary service;
  - (b) the financial viability of the employer;
  - (c) the employer's ability to provide the statistical and other information required or likely to be required under this Act; and
  - (d) such other matters as are prescribed.

**120A Variation of conditions**

- (1) The Authority may, on its own initiative, vary the conditions of an approval under section 119 or 120.
- (2) Before varying the conditions, the Authority must give the insurer or employer written notice:
  - (a) explaining the proposed variation; and
  - (b) stating the reasons for the proposed variation; and
  - (c) inviting the insurer or employer to submit a response to the proposed variation within 28 days after the date of the notice.
- (3) The Authority may, having considered any response mentioned in subsection (2)(c), vary the conditions of the approval as proposed in the notice or in another way the Authority considers appropriate.

- (4) As soon as practicable after deciding to vary the conditions under subsection (3), the Authority must give a written notice to the insurer or employer:
  - (a) explaining the variation; and
  - (b) stating the date on which the variation takes effect (which must not be sooner than 7 days after the notice is given).
- (5) The variation takes effect on the date mentioned in the notice under subsection (4).
- (6) Subsections (2) to (5) do not apply if the variation is for a formal or clerical reason that does not alter the substance of the conditions.

### **121 Period and renewal of approval**

- (1) Subject to this Part, where an insurer or employer is approved under section 119 or 120, the approval shall have effect for such period as is specified in the notice of approval.
- (2) An approved insurer or self-insurer may, not later than 42 days before the expiration of his or her approval, apply in writing to the Authority for a renewal of that approval.
- (3) The Authority:
  - (a) shall consider an application under subsection (2) as if it were an application under section 119 or 120, as the case may be; and
  - (b) may, in its absolute discretion, renew or refuse to renew the approval.
- (4) If the Authority renews an approval, the Authority may renew the approval on any conditions that it considers appropriate, whether or not there were conditions imposed on the original approval.

### **121A Contribution towards administration costs**

- (1) In addition to any other condition, an approval granted under section 119 or 120 or renewed under section 121 is subject to the condition that the approved insurer or self-insurer pay to the Territory, within the time determined by the Authority, any amount determined by the Authority as the insurer's or self-insurer's contribution towards:
  - (a) that part of the administration costs of the Court associated with proceedings under this Act; and



- (b) that part of the administration costs of the Supreme Court associated with proceedings under this Act; and
  - (c) the costs incurred by the Authority in providing a mediation service; and
  - (d) the costs incurred by the Territory in relation to the Authority's performance of functions under this Act, the *Work Health Administration Act 2011* or another Act, and generally in relation to promoting work health and safety.
- (2) The Authority may establish and maintain procedures for one or both of the following:
- (a) payments to be made under this section;
  - (b) payment of mediators participating in the mediation service provided by the Authority.

**122 Additional information to be supplied**

- (1) The Authority may direct an insurer or employer who has made an application under section 119 or 120, or an approved insurer or self-insurer, to provide it with such information, and at such times, as it thinks fit relating to the matters referred to in section 119(3) or 120(3) or for the purposes of 121(3).
- (2) An insurer, employer, approved insurer or self-insurer referred to in subsection (1) shall not refuse or fail to comply with a direction under that subsection to the extent that he or she is capable of complying with it.

Maximum penalty: 125 penalty units.

**123 Notice of refusal**

Where the Authority refuses under section 119 or 120 to approve an insurer or an employer, or under section 121 to renew the approval of an approved insurer or a self-insurer, it shall give to the insurer, employer, approved insurer or self-insurer, in writing, its reasons for so refusing.

**124 Revocation or suspension of approval**

- (1) The Authority may at any time, in its absolute discretion, by notice in writing to an approved insurer or self-insurer, revoke or suspend for the period specified in the notice the insurer's or self-insurer's approval under this Division.

- (2) A notice under subsection (1) shall be accompanied by a statement of the Authority's reasons for revoking or suspending the approval.
- (3) As soon as practicable after it revokes or suspends the approval of an approved insurer or self-insurer the Authority shall cause to be published in a newspaper circulating throughout the Territory a notice of that fact.
- (4) The revocation under this section of an approval shall not:
  - (a) annul a policy of insurance issued before the revocation; or
  - (b) diminish or otherwise affect the liability of the insurer under a policy referred to in paragraph (a) or of an employer in relation to his or her status under this Act as a self-insurer before the revocation.
- (5) For the purposes of this Act, an insurer or self-insurer whose approval is suspended under this section is not to be taken to be an approved insurer or self-insurer during the period of the suspension.

#### **124A Civil penalties**

- (1) Where an approved insurer or self-insurer:
  - (a) contravenes the approval; or
  - (b) contravenes this Act,in addition to or instead of revoking or suspending the approval, the Authority may, by notice in writing to the insurer or self-insurer, require the insurer or self-insurer to pay to the Territory the amount prescribed by the Regulations for the contravention or that class of contravention.
- (2) A notice under subsection (1) is to specify:
  - (a) the nature of the contravention; and
  - (b) the circumstances in which the contravention occurred; and
  - (c) the amount required to be paid; and
  - (d) the time for payment.
- (3) An amount payable under subsection (1) is a debt due to the Territory by the insurer or self-insurer.

- (4) This section applies despite any other penalty that may be or has been imposed under this Act on the insurer or self-insurer in respect of the contravention.

**125 Offence by insurers**

- (1) A person who is not an approved insurer shall not:
- (a) advertise or hold himself or herself out to be:
    - (i) an approved insurer; or
    - (ii) a person who undertakes workers compensation insurance business in the Territory; or
  - (b) undertake or offer to undertake workers compensation insurance business in the Territory.

Maximum penalty: 430 penalty units.

Default maximum penalty: 17 penalty units.

- (2) All moneys received in respect of the conduct of workers compensation insurance business in the Territory by a person found guilty of an offence against subsection (1) are forfeited to the Territory.
- (3) Nothing in this section affects the liability of a person by or under a contract of insurance or indemnity entered into by him or her.

**Division 3 Workers compensation insurance**

**126 Definition**

In this Division:

***adequate policy of insurance or indemnity***, in relation to an employer, means a policy of insurance or indemnity that is:

- (a) issued by an approved insurer; and
- (b) for the full amount of the employer's liability under this Act to all workers employed by the employer; and
- (c) for an amount of not less than the amount prescribed by regulation in respect of the employer's liability, independent of this Act, for an injury to a worker in the employer's employ.

### **126AA Employer must have adequate insurance**

- (1) An employer, other than a self-insurer, must do the following:
  - (a) obtain an adequate policy of insurance or indemnity;
  - (b) ensure that the adequate policy of insurance or indemnity is in force when the employer carries on business and employs one or more workers.
- (2) An employer who contravenes subsection (1) commits an offence.  
Maximum penalty: 100 penalty units.
- (3) An offence against subsection (2) is an offence of strict liability.
- (4) It is a defence to a prosecution for an offence against subsection (2) if the Court is satisfied that at the time of the alleged offence:
  - (a) the employer believed on reasonable grounds that the employer could not be liable under this Act in respect of the worker because the worker was not a Territory worker; and
  - (b) there was in force for the employer, in respect of the worker's employment, insurance or registration required in respect of liability for statutory workers compensation under the law of the jurisdiction with which the employer believed on reasonable grounds that the worker's employment was connected.
- (5) An additional penalty may be imposed on an employer who is guilty of an offence against subsection (2).
- (6) The additional penalty must be an amount that does not exceed the amount of the premium that would have been payable by the employer to obtain and maintain in force an adequate policy of insurance or indemnity for the relevant period.
- (7) For subsection (6), the relevant period is:
  - (a) if the period during which the employer did not have the adequate policy of insurance or indemnity in force is 2 years or more – the last 2 years of the period; or
  - (b) otherwise – the period during which the employer did not have the adequate policy of insurance or indemnity in force.

**126AB Approved insurer must issue or renew policy**

- (1) An approved insurer must not, except with the consent in writing of the Authority, refuse to issue to an employer, or renew, an adequate policy of insurance or indemnity if the employer has:
- (a) applied for the policy or the renewal of the policy; and
  - (b) tendered the premium for the policy; and
  - (c) complied with the approved conditions.

- (2) An approved insurer who contravenes subsection (1) commits an offence.

Maximum penalty: 100 penalty units.

- (3) An approved insurer commits an offence if:
- (a) the approved insurer issues to an employer an adequate policy of indemnity or insurance; and
  - (b) the policy contains a provision other than a provision that:
    - (i) is prescribed by regulation; or
    - (ii) is in relation to the employer's liability at common law or under any other law of the Territory and is appropriate for the particular employer and the particular policy; or
    - (iii) complies with a condition imposed by the Authority under section 119, 120 or 121, or imposed by the Authority by way of variation of conditions under section 120A.

Maximum penalty: 100 penalty units

- (4) An offence under subsection (2) or (3) is an offence of strict liability
- (5) It is a defence to a prosecution for an offence against subsection (2) or (3) if the defendant has a reasonable excuse.
- (6) A contravention of subsection (2) or (3) does not annul the policy of insurance or diminish or affect the liability of the insurer to the person insured under the policy.
- (7) An insurer under an adequate policy of insurance or indemnity is liable under the policy as if the policy were in accordance with subsection (3) even if the insurer is not an approved insurer.

## 126A Liability as between approved insurers

- (1) Subject to subsection (2), where an employer is liable under this Act to pay compensation to a worker, the approved insurer of the employer at the time the claim is made shall indemnify the employer for the full amount of the employer's liability to the worker notwithstanding that the approved insurer may allege that, at the time the injury was sustained or the disease was caused, the liability to indemnify the employer (whether in whole or in part) was that of another approved insurer.
- (2) Where an approved insurer who has indemnified an employer for the employer's liability to pay compensation to a worker under this Act is aware that another approved insurer may be liable to indemnify the employer for all or a part of the compensation paid, the first-mentioned insurer:
  - (a) shall notify the other insurer as soon as practicable after becoming aware of the insurer's potential liability; and
  - (b) may, within 6 months after becoming aware of the other insurer's potential liability or such longer period as the Court may allow:
    - (i) commence proceedings in the Court to recover from the other insurer all or a part of the compensation paid; or
    - (ii) where other proceedings in respect of the claim for compensation have been commenced, join the other insurer as a party to those proceedings.
- (3) Where an approved insurer has indemnified an employer for the employer's liability to pay compensation to a worker under this Act and it is subsequently established that another approved insurer was liable to indemnify that employer in whole or in part, that other insurer shall reimburse the first-mentioned insurer such amount or amounts:
  - (a) as agreed between the 2 insurers; or
  - (b) in the absence of such agreement, as the Court determines.
- (4) In this section, **approved insurer** includes:
  - (a) a self-insurer; and
  - (b) the Territory.

## 127 Subcontracting

- (1) Where a person (in this section called a **principal contractor**) contracts with another person (in this section called a **subcontractor**) for the execution by or under the subcontractor of work undertaken by the principal contractor in the course of the principal contractor's business or trade, the principal contractor is liable to pay compensation under this Act to a worker employed by the subcontractor in the execution of that work as if the worker has been employed by the principal contractor.
- (2) Where a claim for compensation from a principal contractor is made under this Act by a worker employed by a subcontractor:
  - (a) a reference in this Act to the worker's employer is to be read as including a reference to the principal contractor; and
  - (b) a reference in this Act to the worker's earnings is to be read as a reference to the worker's earnings from the subcontractor.
- (3) A principal contractor who is liable to pay compensation under this section is entitled to be indemnified by any person who is liable to pay compensation to the worker other than by virtue of this section.
- (4) Nothing in subsection (3) is to be construed as requiring the Nominal Insurer to indemnify a principal contractor.
- (5) Nothing in this section is to be construed as preventing a worker from recovering compensation from the subcontractor instead of the principal contractor.

## 128 Joint policies

- (1) Where 2 or more persons may become liable under this Act in respect of an injury to the same person and they have obtained from an approved insurer a joint policy of insurance or indemnity in respect of their liability, section 126(1) is deemed to have been complied with by each of them.
- (2) In respect of a joint policy referred to in subsection (1), an approved insurer shall not charge a premium in excess of prevailing rates for insurance of an employer's liability in respect of workers engaged in the same trade, occupation, calling or industry.

## 129 Principal controlled sites

- (1) Where a person (in this section referred to as **the principal**) intends to contract or has contracted, other than under a contract of service or apprenticeship, with another person (in this section referred to as **the contractor**) for work to be done by or on behalf

of the contractor, the principal may obtain from an approved insurer a policy of insurance or indemnity (in accordance with the Regulations, with the necessary changes) which, in relation to the work specified in the policy of insurance or indemnity as work to be done by or on behalf of that contractor, covers:

- (a) the principal's liability under this Act;
  - (b) the contractor's liability under this Act; and
  - (c) the liability under this Act of those persons with whom the contractor intends to contract or has contracted in order to fulfil his or her contractual obligations with the principal.
- (2) It is a defence to a prosecution for an offence against section 126 where the defendant satisfies the court that his or her liability under this Act is the subject of a policy of insurance or indemnity under subsection (1).

### **130 Statement of payments to workers to be supplied to insurer**

- (1) Subject to subsection (4), an employer applying to an insurer for the issue or renewal of a policy of insurance or indemnity (for which purpose ***policy of insurance or indemnity*** includes a cover note) against liability under this Act shall:
- (a) not later than 28 days after:
    - (i) the issue of the policy;
    - (ii) the date for renewal of the policy; or
    - (iii) the policy expires,as the case may be, give to the insurer a statement containing the information referred to in subsection (3); and
  - (b) not later than 28 days after the expiration of each such period of insurance or indemnity, supply the insurer with a full and correct statement of the amounts actually paid by him or her during the period.
- (2) An employer who contravenes subsection (1) is guilty of a regulatory offence.

Maximum penalty: 25 penalty units.



- (3) An employer shall include in a statement referred to in subsection (1)(a):
- (a) a proper estimate of the payments that will be payable by him or her during the insurance or indemnity period to the workers in his or her employ in respect of whom the employer would be entitled to claim under the policy;
  - (b) a statement showing the trade, occupation and calling of such workers; and
  - (c) such other information as is prescribed.

(4) Where:

- (a) the Authority approves a form in or to the effect of which a statement referred to in subsection (1) is to be supplied; or
- (b) the Regulations prescribe the manner in which the statement is to be verified,

a statement is not sufficient for the purposes of subsection (1) unless it is supplied in that form or verified in that manner.

(5) An employer shall keep full and correct records of:

- (a) all wages paid to;
- (b) the trade, occupation or calling of; and
- (c) such other matters as are prescribed relating to wages paid to, workers employed by him or her.

Maximum penalty: 85 penalty units.

(6) An employer shall, for not less than 7 years, retain in the Territory the records referred to in subsection (5).

(7) An employer who fails to comply with subsection (6) is guilty of a regulatory offence.

Maximum penalty: 17 penalty units.

### **131 Payment of premiums**

(1) Where, in respect of a policy of insurance or indemnity against liability under this Act:

- (a) the insurance or indemnity period is 12 months; and

- (b) the premium payable is more than \$500 or, where some other amount is prescribed, more than that other amount,

the employer may, in such manner as is agreed on between himself or herself and the insurer or, in default of agreement, as is prescribed, elect to pay the premium by 4 instalments, the several instalments being payable on dates that are 1, 3, 5 and 7 months after service on the employer of a demand or request by the insurer for payment of the premium.

- (2) An instalment referred to in subsection (1) in respect of a premium referred to in that subsection shall be:

- (a) due on the dates that are 1, 3, 5 and 7 months after service on the employer of a demand or request for payment of the premium; and

- (b) equal to 25% of the premium.

- (3) Where an employer:

- (a) has not elected under subsection (1) to pay a premium referred to in that subsection by instalments and fails to pay the full amount of the premium within one month after service on him or her of a notice that payment of the premium is due;

- (b) has elected under subsection (1) to pay a premium referred to in that subsection by instalments and fails to pay an instalment by the due date for the instalment; or

- (c) fails to pay an adjustment of a premium referred to in subsection (1) within one month after service on him or her of a notice that payment of the amount of the adjustment is due,

then:

- (d) in the case referred to in paragraph (a) – the full amount of the premium referred to in that paragraph;

- (e) in the case referred to in paragraph (b) – the balance of the premium referred to in that paragraph unpaid or, where no instalment has been paid, the full amount of that premium; and

- (f) in the case referred to in paragraph (c) – the amount of the adjustment referred to in that paragraph,

bears interest until payment is made (except to the extent that payment of interest is waived by the insurer) at the prescribed rate and is recoverable with interest as a debt due and payable.

**132 Recovery of compensation from insurer**

- (1) Where:
- (a) a claim has been made against an employer that the employer is liable to pay compensation;
  - (b) in relation to the claim, the employer has agreed to pay compensation or the liability of the employer to pay compensation has been established in accordance with this Act;
  - (c) the employer is entitled to be indemnified against his or her liability to pay the compensation under a policy of insurance or indemnity obtained in accordance with this Act; and
  - (d) the employer defaults in payment of an amount of the compensation for a period exceeding one month,

the person entitled to the compensation may make a claim against the approved insurer of the employer for payment of the amounts of compensation payable and to become payable.

- (2) A claim under subsection (1) shall be made within one month after the right to make the claim arose or within such further time as the Court, on an application made before or after the expiration of that period of one month, allows.
- (3) The Court may allow such further time for the making of a claim under subsection (1) as it thinks fit and the claim may be made accordingly.
- (4) An approved insurer shall, in writing to an employer who has defaulted in payment of the compensation, give notice of the making of a claim under subsection (1).

**133 Payments by approved insurer**

- (1) Where a person makes a claim against an approved insurer in accordance with section 132, the approved insurer shall pay to the person the compensation payable at the date of the claim or becoming payable after that date.
- (2) An amount payable to a person by an approved insurer is a debt due and payable by the insurer.

**134 Effects of payment by approved insurer**

Where an approved insurer pays an amount under section 133 in respect of a liability of an employer, the payment operates to the extent of the payment to discharge:

- (a) the liability of the employer to the person entitled to the compensation; and
- (b) the liability, if any, of the approved insurer to the employer.

**135 Act of employer not defence of approved insurer**

- (1) It shall not be a defence by an approved insurer to a claim under section 132 that he or she is not liable under the policy of insurance or indemnity by reason of an act of the employer who has defaulted in payment of the compensation.
- (2) Without limiting the generality of subsection (1), it shall not be a defence by an approved insurer to a claim under section 132 that he or she is not liable under the policy of insurance or indemnity merely because:
  - (a) the policy was obtained by a false statement or misrepresentation or non-disclosure, whether fraudulent, material or otherwise; or
  - (b) the employer who is insured under the policy has committed a breach of, or has failed to comply with, a term, condition or warranty of that policy; or
  - (c) the employer who is insured under the policy has committed a breach of, or has failed to comply with, a provision of this Act or a law in force in the Territory relating to the employment of workers.

**136 Recovery by approved insurer from employer**

- (1) Subject to subsection (2), an approved insurer may, in addition to any other right or remedy he or she may have, recover from an employer referred to in section 132(1) so much of:
  - (a) an amount which the approved insurer has paid pursuant to section 133; and
  - (b) the cost of expenses reasonably incurred by the approved insurer,

as the approved insurer has paid under or in consequence of a policy of insurance or indemnity where there has been:

- (c) a false statement or misrepresentation or non-disclosure in obtaining the policy; or
  - (d) a contravention by that employer of a term, condition or warranty of the policy, a provision of this Act or a law in force in the Territory relating to the employment of workers.
- (2) An approved insurer shall not be entitled to recover moneys under subsection (1) unless the court in which the proceedings for recovery of the moneys are taken is satisfied:
- (a) where there has been a false statement or misrepresentation or non-disclosure in obtaining the policy – that the false statement or misrepresentation or non-disclosure, whether fraudulent or otherwise, was in relation to some fact or thing of such a nature as would have justified the approved insurer charging a higher premium in respect of the policy than the premium paid or payable by the employer; or
  - (b) where there has been a contravention of a term, condition, warranty or provision referred to in subsection (1)(d) – that the contravention was such that it contributed materially to the circumstances in which the approved insurer agreed to pay or otherwise became liable to pay the moneys sought to be recovered.

### **137 Default of approved insurer**

- (1) Where:
- (a) a claim has been made against an employer that he or she is liable to pay compensation under this Act, or damages otherwise than under this Act, in respect of an injury, incapacity or death;
  - (b) in relation to the claim, the employer has agreed to pay compensation or damages, as the case may be, or the liability of the employer to pay compensation or damages has or has not been established or has been declined;
  - (c) the employer is entitled to be indemnified against his or her liability to pay the compensation, or all or part of the damages under a policy of insurance or indemnity obtained in accordance with this Act; and

- (d) in the case:
- (i) of an amount of compensation or damages agreed to be paid or in respect of which the employer's liability to pay has been established – an amount payable under the policy of insurance or indemnity referred to in paragraph (c) is not paid and has remained unpaid for a period of one month;
  - (ii) where the liability of an employer to pay compensation or damages claimed has not been established within one month after notice of a worker's claim has been lodged with the relative approved insurer; or
  - (iii) where the liability of an employer to pay compensation or all or any damages claimed has been declined,

the Nominal Insurer shall, subject to subsection (3), have the same rights, powers, duties and liabilities in respect of the claim as the approved insurer would have had if the approved insurer had provided the indemnity referred to in paragraph (c).

- (2) Where an approved insurer is unable to make a payment required to be made under a policy of insurance or indemnity issued in accordance with this Act in respect of a claim to which subsection (1) applies, the approved insurer or a person holding in relation to the approved insurer the office of liquidator, receiver, receiver and manager or official manager shall:
- (a) forthwith notify the Nominal Insurer of the claim; and
  - (b) make available to the Nominal Insurer any books or papers relevant to the claim, including all agreements, contracts, treaties or other documents relating to reinsurance arrangements in effect at the time of the injury, incapacity or death giving rise to the claim.
- (3) Where an approved insurer is unable to make any or complete payment required to be made under a policy of insurance or indemnity issued in accordance with this Act in respect of a claim to which subsection (1) applies and the Nominal Insurer has made a payment in respect of that claim:
- (a) the Nominal Insurer has the right to subrogation in respect of all rights that the employer may have against any person in relation to the occurrence that gave rise to the claim for compensation or damages, as the case may be;
  - (b) the right to subrogation shall vest in the Nominal Insurer to the exclusion of all other rights to subrogation that would

otherwise exist in favour of the approved insurer or the person, if any, holding in relation to the approved insurer the office of liquidator, receiver, receiver and manager or official manager, whether arising under a law in force in the Territory or the policy of insurance or indemnity under this Act; and

- (c) all rights which the approved insurer has to receive payments under an agreement, contract, treaty or other document relating to reinsurance in respect of a claim referred to in subsection (1) shall be deemed to be assigned to the Nominal Insurer from the date that the Nominal Insurer first makes a payment in respect of that claim, to the exclusion of any person holding in relation to the approved insurer the office of liquidator, receiver, receiver and manager or official manager, notwithstanding any rule of law or statutory provision to the contrary.

### **138 Policies deemed to be cancelled in certain cases**

- (1) Where an employer had a policy of insurance or indemnity under this Act with an approved insurer immediately before:
  - (a) the insurer's approval as an approved insurer was revoked under section 124; or
  - (b) a liquidator, receiver, receiver and manager or official manager was appointed for the insurer under a law relating to the registration of bodies corporate in the Territory or in a State or another Territory of the Commonwealth in which the insurer was incorporated,

and the employer subsequently took out a policy of insurance or indemnity under this Act with another approved insurer, the first-mentioned policy of insurance or indemnity shall be deemed to have been duly cancelled at the time that the new policy became effective.

- (2) In a case referred to in subsection (1), the employer is entitled to recover from his or her former insurer, as a debt due and payable, the amount of all unearned premiums paid by him or her to the former insurer.

### **138A Expiration of policy**

- (1) An approved insurer shall, not later than 28 days before the day on which a policy of insurance or indemnity against liability under this Act is due to expire, notify, in writing, the employer who obtained the policy or a person acting as the agent of the employer of the date on which the policy is due to expire and that the policy will expire on that date unless a premium, as agreed by the insurer and

the employer, for the renewal of the policy is paid or agreed to be paid on or before that date.

(2) Where:

- (a) an approved insurer fails to comply with subsection (1); and
- (b) before the policy referred to in that subsection expired, the employer who obtained the policy had not obtained another policy of insurance or indemnity against liability under this Act,

then, by force of this section, there exists between the approved insurer and the employer a policy of insurance or indemnity against liability under this Act which shall provide the same cover as provided by the expired policy commencing on the date of the expiration of that policy and expiring 28 days after a notice as required by subsection (1) is given to the employer.

(3) A notice under subsection (1) given after the time specified in that subsection shall contain a statement that the policy of insurance or indemnity against liability under this Act as existing between the employer and the approved insurer shall, in accordance with subsection (2), expire 28 days after the notice is given.

### **139 Inspection of policies**

- (1) The Authority may, by notice in writing, require an employer to:
  - (a) produce for inspection a policy of insurance or indemnity indemnifying him or her against his or her liability under this Act; and
  - (b) furnish such particulars in relation thereto as the Authority thinks fit.
- (2) A notice under subsection (1) may be served on an employer in the same manner as a claim for compensation may be given or served under section 83.

## **Division 4 Scheme Monitoring Committee and premium rates**

### **140 Definitions**

In this Division:

**Chairperson** means the Chairperson of the Committee.

**Committee** means the Scheme Monitoring Committee.

**member** means a member of the Committee.



#### **141 Scheme Monitoring Committee**

- (1) There shall be a committee by the name of the Scheme Monitoring Committee.
- (2) The Committee shall consist of the Chief Executive Officer or a person in the employ of the Authority nominated by him or her, who shall be its Chairperson, and not more than 7 other members (one of whom shall be an actuary) appointed by the Minister.
- (3) Before appointing the members of the Committee the Minister shall, by notice in the *Gazette*, advertise his or her intention to make the appointments and invite any organization claiming to represent the interests of employers, workers or insurers to submit to him or her the name or names of a person or persons it recommends should be appointed as a member or members.
- (4) Without limiting his or her discretion under this section, the Minister shall, before appointing a person to be a member, consider all recommendations made to him or her as the result of an advertisement under subsection (3).

#### **142 Period of appointment**

Subject to this Division, a member (other than the Chairperson) holds office for such period, not exceeding 2 years, as is specified in the instrument of his or her appointment, but is eligible for re-appointment.

#### **143 Resignation of members**

A member may resign his or her office by writing signed by him or her and delivered to the Minister.

#### **144 Dismissal of members**

- (1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (2) Where a member:
  - (a) is absent, except on leave granted by the Committee, from 3 consecutive meetings of the Committee; or
  - (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,

the Minister shall terminate the appointment of the member.

#### **145 Functions and powers of Committee**

- (1) The functions of the Committee are to:
  - (a) monitor the viability and performance of the workers compensation scheme;
  - (aa) monitor premium rates offered for workers compensation in the Territory;
  - (b) receive submissions from persons relating to premium rates charged for workers compensation insurance policies in the Territory or elsewhere;
  - (c) monitor and publish data on overall underwriting results; and
  - (d) advise the Minister on the basis of its consideration of information obtained by it.
- (1A) It is also a function of the Committee to consider and report on the effectiveness of the premiums offered by insurers:
  - (a) in encouraging employers to develop and maintain safe working practices; and
  - (b) in penalizing employers which do not ensure the maintenance of safe working practices.
- (2) The Committee has such powers as are necessary to enable it to carry out its functions or as are conferred on it by or under this or any other Act.

#### **146 Authority to provide information to Committee**

The Authority shall provide the Committee with such information in its possession as is reasonably necessary to enable the Committee to perform its functions.

#### **147 Obtaining of information by Committee**

- (1) The Committee may, by notice in writing by its Chairperson, require a person to furnish to it such information as it reasonably requires to enable it to carry out its functions.

- (2) A person required under subsection (1) to furnish information who, without lawful excuse, refuses or fails to furnish the information within the time specified in the notice under that subsection or such further time as the Committee allows, is guilty of an offence.

Maximum penalty:        In the case of a body corporate – 8 penalty units.

   In the case of a natural person – 4 penalty units.

Default maximum penalty:    In the case of a body corporate – 0.8 penalty unit.

   In the case of a natural person – \$50.

#### **148        Meetings of Committee**

- (1) The Chairperson shall call such meetings of the Committee as are necessary for the exercise of its powers and the performance of its functions.
- (2) The Minister may, at any time, direct the Chairperson to convene a meeting of the Committee and the Chairperson shall convene a meeting in accordance with that direction.
- (3) The Chairperson shall preside at all meetings of the Committee at which he or she is present and, in the absence of the Chairperson from a meeting, the members present shall elect one of their number to preside at the meeting.
- (4) At a meeting of the Committee:
- (a) 50% of the members for the time being holding office constitute a quorum;
  - (b) questions arising shall be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the Chairperson or other member presiding has a casting vote as well as a deliberative vote; and
  - (c) subject to this Act, the Committee shall determine the procedure to be followed at or in connection with the meeting.
- (5) The Committee shall keep records of its meetings.

## **Division 5 Nominal Insurer**

### **149 Definitions**

In this Division:

***alternate member*** means a person appointed under section 152 as an alternate member for a member.

***member*** means a member of the Nominal Insurer and includes an alternate member while he or she is acting as a member.

***nominated member*** means a member appointed on the nomination of approved insurers and self-insurers.

### **150 Establishment and purpose of Nominal Insurer**

- (1) There is established by this Act a corporation by the name of the Nominal Insurer.
- (1A) The purposes of the Nominal Insurer are:
  - (a) to protect injured workers whose employers do not have workers compensation insurance; and
  - (b) to protect employers and injured workers where insurers default in the payment of compensation under workers compensation insurance.
- (2) The Nominal Insurer:
  - (a) is a body corporate with perpetual succession;
  - (b) shall have a common seal; and
  - (c) is capable, in its corporate name, of acquiring, holding and disposing of real (including leasehold) and personal property and of suing and being sued.
- (3) All courts, judges and persons acting judicially shall take judicial notice of the common seal of the Nominal Insurer affixed to a document and shall presume that it was duly affixed.

### **151 Composition of Nominal Insurer**

The Nominal Insurer shall consist of 4 members appointed by the Minister of whom:

- (a) 3 shall be appointed on the nomination, if any, of the approved insurers and self-insurers or a majority of them; and

- (b) one shall be an employee within the meaning of the *Public Sector Employment and Management Act 1993*.

**152 Alternate member**

- (1) The Minister may appoint an employee within the meaning of the *Public Sector Employment and Management Act 1993* to be an alternate member for the member appointed under section 151(b).
- (2) During the absence from the Territory of the member appointed under section 151(b) or where for any other reason he or she is unable to perform his or her duties as a member, the alternate member appointed under subsection (1) shall have all the functions and powers of that member and shall be counted towards a quorum at a meeting of the Nominal Insurer.

**153 Period of appointment**

Subject to this Division, a member holds office for such period, not exceeding 3 years, as is specified in the instrument of his or her appointment but is eligible for reappointment.

**154 Chairperson**

- (1) Subject to subsection (2), the Minister shall appoint a person who is, or is to be, a nominated member to be the Chairperson of the Nominal Insurer.
- (2) The appointment of the Chairperson shall be made on the nomination of the approved insurers and self-insurers or a majority of them or, in default of such a nomination, directly by the Minister.

**155 Resignation**

A member may resign his or her office by writing signed by him or her and delivered to the Minister.

**156 Dismissal of members**

- (1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (2) Where a member:
- (a) is absent, except on leave granted by the Nominal Insurer, from 3 consecutive meetings of the Nominal Insurer; or

- (b) becomes bankrupt, applies to take the benefit of a law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit,

the Minister shall terminate the appointment of the member.

**157 Powers and functions**

The Nominal Insurer shall perform such functions and may exercise such powers as are imposed or conferred on it by or under this Act.

**158 Disclosure of interest**

- (1) A member or alternate member who has a direct or indirect pecuniary interest in a matter being considered or about to be considered by the Nominal Insurer otherwise than as a member of, and in common with the other members of, an incorporated company consisting of not less than 25 persons and of which he or she is not a director, shall, as soon as possible after the relevant facts have come to his or her knowledge, disclose the nature of his or her interest at a meeting of the Nominal Insurer.
- (2) A disclosure under subsection (1) shall be recorded in the minutes of the Nominal Insurer and the member or alternate member:
- (a) shall not, while he or she has that interest, take part after the disclosure in any deliberation or decision of the Nominal Insurer in relation to that matter; and
- (b) shall be disregarded for the purpose of constituting a quorum of the Nominal Insurer in relation to that matter.

**159 Delegation**

- (1) The Nominal Insurer may, by instrument in writing, delegate to a person all or any of its powers and functions under this Act other than this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Nominal Insurer.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Nominal Insurer.

## **160 Meetings of Nominal Insurer**

- (1) The Chairperson shall call such meetings of the Nominal Insurer as are necessary for the exercise of its powers and the performance of its functions.
- (2) The Chairperson shall preside at all meetings of the Nominal Insurer at which he or she is present and, in the absence of the Chairperson from a meeting of the Nominal Insurer, the members present shall elect one of their number to preside at the meeting.
- (3) At a meeting of the Nominal Insurer:
  - (a) 3 members constitute a quorum;
  - (b) questions arising shall be determined by a majority of the votes of the members present and voting and, in the event of an equality of votes, the member presiding has a casting vote as well as a deliberate vote; and
  - (c) subject to this Act, the Nominal Insurer shall determine the procedure to be followed at or in connection with the meeting.
- (4) The Nominal Insurer shall keep a record of its meetings.

## **161 Validity of acts or decisions of Nominal Insurer**

The exercise of a power of or the performance of a function by the Nominal Insurer is not affected by reason only of there being:

- (a) a defect or irregularity in or in connection with the appointment of a member; or
- (b) a vacancy in the membership of the Nominal Insurer, including a vacancy arising because of the failure to appoint a member.

## **Division 6 Nominal Insurer's Fund**

### **162 Nominal Insurer's Fund**

- (1) The Minister shall establish a fund to be known as the Nominal Insurer's Fund.
- (2) The Fund shall be administered by the Nominal Insurer.
- (3) The Fund shall consist of:
  - (a) the balance of the former Fund;

- (b) contributions paid under this Division by approved insurers, self-insurers and employers;
  - (c) moneys recovered by or on behalf of the Nominal Insurer in the performance of its functions and the exercise of its powers;
  - (d) the interest from time to time accruing from the investment of moneys standing to its credit;
  - (e) all moneys paid into it in accordance with section 177; and
  - (f) such other moneys as are lawfully paid into it.
- (4) The Nominal Insurer may borrow money, from sources and on terms and conditions approved by the Minister, to be paid into the Nominal Insurer's Fund.

**163 Payments out of Fund**

There shall, from time to time, be paid out of the Fund:

- (a) the amount of all claims, including costs allowed or established against the Nominal Insurer, in accordance with this Act or the repealed Act;
- (b) the costs and expenses of its administration, including the costs and expenses of exercising the powers and performing the functions of the Nominal Insurer, the legal expenses incurred by the Nominal Insurer in applications to the Court or otherwise incurred in relation to the Fund or the former Fund; and
- (c) such other moneys as may lawfully be paid out of it.

**164 Annual estimates, determinations etc.**

- (1) As soon as practicable in the financial year commencing 1 July 2001 and in each subsequent financial year, the Nominal Insurer:
- (a) must estimate the total of the amounts already paid and the amounts to be paid from the Fund during that financial year;
  - (b) must determine the amounts (if any) to be set aside to meet expenditure from the Fund in future years and specify the purpose or purposes for which each amount is to be set aside;



- (c) must estimate the total of the amounts already received and the amounts to be received into the Fund during that financial year, other than contributions from approved insurers and self-insurers under section 164A;
  - (d) may recommend a total amount to be contributed to the Fund under section 164A by approved insurers and self-insurers during that financial year, as determined in accordance with the Regulations; and
  - (e) must submit in writing to the Minister for his or her approval the estimates, determinations and recommendation (if any) referred to in paragraphs (a), (b), (c) and (d).
- (2) The estimates, determinations and recommendation of the Nominal Insurer referred to in subsection (1) do not have effect until they are approved by the Minister.

**164A Contributions by approved insurers and self-insurers**

- (1) If the Minister approves a recommendation of the Nominal Insurer made under section 164(1)(d), each approved insurer and self-insurer must contribute to the Fund an amount determined by the Nominal Insurer in accordance with the Regulations.
- (3) An approved insurer or self-insurer must pay to the Nominal Insurer the amount that he or she is required by this section to contribute to the Fund in the instalments, and at the times, that are determined by the Nominal Insurer.
- (4) The Nominal Insurer must, in writing, notify each approved insurer and self-insurer of particulars of the contribution, including the amounts of the instalments and the times at which they are payable, that the approved insurer or self-insurer is required by this section to contribute to the Fund.
- (5) If an approved insurer or self-insurer fails to pay the full amount of an instalment within 30 days after the time specified in a notice under subsection (4):
  - (a) the full amount of the contribution to be paid or the full amount of the balance then remaining unpaid (as applicable) is immediately payable and is a debt due to the Nominal Insurer by the approved insurer or self-insurer; and
  - (b) the approved insurer or self-insurer is guilty of a regulatory offence.

Maximum penalty: 100 penalty units.

## **164B Contributions by employers**

- (1) The Minister may determine that all employers are required to make contributions to the Fund.
- (2) If the Minister makes a determination under subsection (1), each employer must contribute to the Fund an amount that is equal to a percentage, determined by the Minister, of:
  - (a) in the case of an employer who holds a policy of insurance or indemnity under section 126(1):
    - (i) the premium payable by the employer in accordance with the policy; or
    - (ii) the total amount of wages payable by the employer in relation to the policy as included in the statement given under section 130; and
  - (b) in the case of an employer who is a self-insurer:
    - (i) if the Minister makes a determination under paragraph (a)(i) – the premium that would have been payable by the employer if he or she were the holder of a policy of insurance or indemnity under section 126(1); or
    - (ii) if the Minister makes a determination under paragraph (a)(ii) – the total amount of wages that would, if the employer were the holder of a policy of insurance or indemnity under section 126(1), have been included in a statement given under section 130 in relation to the policy.
- (3) Before making a determination under subsection (1), the Minister may decide that for the purposes of the determination the Territory is taken to be an employer approved under section 120 to self-insure.
- (4) The Minister must cause to be published in the *Gazette* a notice of the determination made under subsection (1) containing the following particulars:
  - (a) the amount each employer must contribute to the Fund, expressed as the percentage determined by the Minister under subsection (2)(a)(i) and (b)(i) or under subsection (2)(a)(ii) and (b)(ii);
  - (b) the date on which the determination comes into force;

- (c) if the Minister has made a decision under subsection (3) – a statement that for the purposes of the determination the Territory is taken to be an employer approved under section 120 to self-insure;
  - (d) if the contributions required by the determination are for the purpose of discharging a particular liability:
    - (i) a brief description of that liability; and
    - (ii) a statement that the contributions are required only until such time as that liability is discharged.
- (5) The Minister, by notice in the *Gazette*:
- (a) may vary or revoke a determination under this section; and
  - (b) if a determination requires contributions for the purpose of discharging a particular liability – must revoke the determination when that liability is discharged.
- (6) While a determination under this section is in force, a policyholder must pay to his or her approved insurer the required contribution on or before any of the following dates that are applicable in the circumstances:
- (a) the date on which the premium is payable under the policy;
  - (b) if the policyholder pays an amount of premium before the date on which the policy is issued or renewed – the date on which that amount is paid;
  - (c) if the policyholder is required to pay an additional amount of premium as a result of an adjustment of the premium payable under the policy – the date on which that amount is payable.
- (7) If an approved insurer refunds to a policyholder an amount of premium in respect of which the policyholder has paid the required contribution:
- (a) the insurer must refund to the policyholder an amount of the required contribution that is proportionate to the amount of premium refunded; and
  - (b) may apply in writing to the Nominal Insurer for repayment of the amount refunded under paragraph (a), giving full particulars of the refund.

- (8) The Nominal Insurer must, as soon as practicable, repay to an approved insurer who applies for repayment under subsection (7)(b) the amount of required contribution refunded by the approved insurer under subsection (7)(a).
- (9) An approved insurer must, not later than 30 days after the end of each month a determination is in force:
- (a) pay to the Nominal Insurer all the money the approved insurer has received under subsection (6) during that month in respect of the determination; and
  - (b) give to the Nominal Insurer a written statement setting out the following particulars:
    - (i) each amount of required contribution the approved insurer received under subsection (6) during that month;
    - (ii) each amount of required contribution payable to the approved insurer during that month but not paid;
    - (iii) any other particulars that are prescribed.
- (10) While a determination under this section is in force:
- (a) a self-insurer is taken to hold a policy that is for the period of insurance or indemnity commencing on 1 July in each year and expiring at the end of the following 30 June; and
  - (b) the self insurer must pay in respect of each period of insurance or indemnity referred to in paragraph (a) the required contribution in the following amounts and on the following dates that are applicable in the circumstances:
    - (i) if the self-insurer is the Territory by virtue of a decision under subsection (3) – the amount payable for that period, to be paid not later than 1 September in that period;
    - (ii) if the approval of the self-insurer under section 120 has effect on 1 July – the amount payable for that period, to be paid not later than 1 September in that period;
    - (iii) if the approval of the self-insurer under section 120 takes effect after 1 July – the proportionate amount payable for the remainder of that period, to be paid not later than 60 days after the date the approval takes effect.

(11) If a self-insurer who has paid a required contribution under subsection (10) would have been entitled to a refund of premium had he or she held a policy:

- (a) the self-insurer is entitled to a refund of an amount of required contribution that is proportionate to the amount of premium that would have been refunded to him or her; and
- (b) the Nominal Insurer must, on written application by the self-insurer, refund to the self-insurer that amount of required contribution.

(12) In this section:

**policy** means a policy of insurance or indemnity referred to in section 126(1).

**policyholder** means an employer who holds, or has tendered the premium for, a policy.

**required contribution** means the contribution a policyholder or self-insurer is required by a determination under this section to pay in respect of the policy held or taken to be held by the policyholder or self-insurer.

## **165 Refund of moneys recovered or otherwise received by Nominal Insurer**

- (1) All moneys recovered by the Nominal Insurer in respect of a claim referred to in section 137(1):
- (a) by virtue of its exercising the rights of the approved insurer under that section;
  - (b) by virtue of its exercising a right of subrogation referred to in section 137(3)(a); or
  - (c) under an agreement, contract, treaty or other document relating to reinsurance referred to in section 137(3)(c),

and all moneys received as a result of the winding up of a company that was an approved insurer required under section 164A to pay an amount to the Nominal Insurer shall, at such times as the Minister determines, be paid to the approved insurers (other than the defaulting insurer) and self-insurers by whom contributions under section 164A were paid for the purpose of meeting the Nominal Insurer's liability under this Act or the repealed Act arising out of the default of the defaulting insurer, in the same proportions as those contributions were made or, at the direction of the Minister, the amounts payable under this section to the approved

insurers and self-insurers shall be credited against their respective obligations under section 164A to pay instalments referred to in that subsection that are uncalled.

- (2) The Minister may, in writing, authorise the Nominal Insurer to repay to the approved insurers and self-insurers in the proportions in which they contributed to the Fund in or in relation to the relevant year, any surplus money of the Fund contributed in pursuance of section 164A of this Act or section 16Q(6) of the repealed Act but not required for the purposes for which it was contributed, and the Nominal Insurer shall repay those amounts accordingly.

### **166 Temporary advances to Fund**

- (1) Where, at any time, the amount of the Fund is insufficient to meet a payment required by this Act to be made out of the Fund, the Treasurer may make temporary advances to the Fund out of the Public Account within the meaning of the *Financial Management Act 1995*.
- (2) The appropriation for the purposes of subsection (1) is established or increased to the extent necessary.
- (3) Where a temporary advance is made under this section out of the Public Account, the amount of the advance, together with interest at such rate as the Treasurer determines, shall be a first charge on the Fund and shall be recouped to the Public Account progressively as moneys are paid into the Fund.

## **Division 7 Claims by and against Nominal Insurer**

### **167 Claims for payment against Nominal Insurer when employer dead, wound up, etc.**

- (1) Subject to this Part and Part 5, a person may make a claim for compensation against the Nominal Insurer if the following conditions are met:
  - (a) the person claims to be entitled to compensation from an employer:
    - (i) who employed a worker at the time the worker sustained a compensable injury; or
    - (ii) if the compensable injury is a disease – who last employed the worker in the employment that caused the disease;

- (b) the employer is dead, cannot be located or, in the case of a company, has been wound up;
  - (c) the approved insurer of that employer cannot be identified;
  - (d) a principal contractor, within the meaning of section 127, is not liable under that section to pay the compensation.
- (2) A person may also make a claim for compensation against the Nominal Insurer if:
- (a) the person claims to be entitled to compensation from an employer; and
  - (b) the liability of the employer to pay the compensation is not covered in full by one or more policies of insurance or indemnity in accordance with this Act.

**170 Effect of service of claim on Nominal Insurer**

- (1) Where a claim for compensation under Part 5 or section 167 is made against the Nominal Insurer:
- (a) the liability of the employer to pay compensation under the claim shall be discharged, save to the extent of any compensation previously paid; and
  - (b) any agreement, order, demand or determination, admission or deemed admission shall be of no force or effect in respect of the liability of the Nominal Insurer to make payments of compensation to the person making the claim.
- (2) Where a claim for compensation mentioned in subsection (1) is made against the Nominal Insurer, the claim shall be dealt with and determined as if the Nominal Insurer were the employer of the worker making the claim or in respect of whom it relates, and for that purpose:
- (a) the claim, if made under section 167, shall be deemed to have been made under Part 5;
  - (b) a reference to an employer in Part 5 (other than in section 75A) or 6A shall be read and construed (with necessary changes) as a reference to the Nominal Insurer; and
  - (c) the Nominal Insurer shall have the same rights, powers, duties and liabilities in respect of the claim (other than under section 75A) as the employer.

**171 Notice of claim to be given to employer**

- (1) Where a claim for compensation under section 84(3) is made against the Nominal Insurer, the Nominal Insurer shall, on being served with the claim, notify the employer, in writing, of the claim having been made.
- (2) A notice under subsection (1) may be served by posting or delivering it to the employer at the employer's last known residence or place of business.
- (3) Subsection (2) is in addition to and not in derogation of provisions of the Corporations Act 2001 relating to the service of documents.
- (4) An employer given notice of a claim under subsection (1) shall forthwith provide to the Nominal Insurer all information relating to the claim which is in the possession of the employer or of which the employer has knowledge.

Maximum penalty: 85 penalty units.

- (5) Notwithstanding that the Nominal Insurer fails to notify an employer of a claim, section 172(2) shall apply to and in relation to the claim and the Nominal Insurer shall be entitled to recover from the employer under that subsection any amount paid under the claim by the Nominal Insurer.

**172 Conduct of claim by Nominal Insurer**

- (1) The conduct by the Nominal Insurer of a claim for compensation under this Act shall be within the absolute and unfettered discretion of the Nominal Insurer, and no action, decision or omission of the Nominal Insurer in the conduct of the claim shall prejudice the Nominal Insurer's right of recovery of any money paid in respect of the claim.
- (2) Where the Nominal Insurer pays an amount under this Act in respect of its liability (including costs incurred or moneys expended in the conduct of the claim):
  - (a) the amount is a debt due and payable by the employer to the Nominal Insurer; and
  - (b) the Nominal Insurer has the right to subrogation in respect of all rights that the employer has against any person in relation to the incident which gave rise to the claim for compensation.
- (3) Where the Nominal Insurer pays an amount under this Act in respect of the liability of an employer and the payment arises out of the employer's failure to insure under this Act or the repealed Act



against his or her liability or any other default of the employer in obtaining adequate insurance cover in respect of the liability, the employer shall, in addition to any other amount he or she is required under this Act to pay, pay to the Nominal Insurer an amount equal to the highest premium payment (calculated at rates payable at the time of the relevant compensable incident) for insurance to indemnify the employer for his or her liability to the worker or other workers employed by him or her for the period and to the extent that he or she did not have the required insurance cover.

**173 Persons excluded from making claim**

Notwithstanding anything to the contrary in this Act, a claim for compensation shall not be made under this Act against the Nominal Insurer by or in respect of a person who is:

- (a) a director (by whatever named called), or a member of the governing body, of a body corporate in respect of an injury arising out of or in the course of his or her employment with that body corporate; or
- (b) a member of the immediate family of an employer in respect of an injury arising out of or in the course of his or her employment with that employer; or
- (c) a person who may recover compensation from a principal contractor under section 127, if the principal contractor has or had a policy of insurance or indemnity obtained in accordance with this Act to cover the principal contractor's liability in respect of the claim.

**Division 8 General**

**175 Worker's right to information**

- (1) A worker shall be entitled to inquire of his or her employer the name and address of the insurer from whom the employer has obtained a policy of insurance or indemnity against his or her liability under this Act (and, if he or she so requires, to examine the policy document) or, if the employer is a self-insurer, to be so informed.

- (2) An employer or a person acting for an employer in the management of the business in which a worker is employed who refuses to supply to the worker particulars requested under subsection (1) or the policy document for examination or who, in reply to an inquiry under that subsection, gives false or misleading information, is guilty of a regulatory offence.

Maximum penalty: 12 penalty units.

### **176 Remedies against employer and a stranger**

- (1) Subject to this Act, if an injury in respect of which compensation is payable under this Act is caused under circumstances that appear to create a legal liability in some person other than the employer to pay damages in respect of the injury, the person entitled to compensation may take proceedings against that person to recover damages and may also make a claim against the employer for compensation.
- (2) Where a person receives compensation and recovers damages from another person in respect of the same injury:
- (a) he or she shall repay to the employer such amount of the compensation as does not exceed the amount of those damages recovered from that person; and
  - (b) on notice to that other person, the employer shall have a first charge on moneys representing those damages payable by that person to the first-mentioned person to the extent of compensation which the employer has paid.
- (3) Where a person has received compensation under this Act but no damages to which subsection (2) applies, or less than the full amount of those damages to which he or she is entitled, the person liable to pay the damages shall indemnify the employer against so much of the compensation paid to the first-mentioned person as does not exceed those damages for which the person is liable and subsequent payment of that money shall, to the extent of the amount paid, be a satisfaction of the liability of that person to the first-mentioned person.
- (4) Where the Nominal Insurer makes a payment under this Act to a person, this section applies as if references to the employer included references to the Nominal Insurer, but so that:
- (a) the Nominal Insurer is not entitled to receive, under subsection (2), more than the amounts paid by it under this Act; and

- (b) the rights of the Nominal Insurer under this section shall have priority over any rights of the employer under this section arising out of payment of compensation by the employer.

**177        Fines etc. to be paid into Fund**

All fines or other pecuniary penalties recovered for an offence against or under this Part shall be paid into the Fund.

**Part 8            Miscellaneous**

**Division 1        Legal proceedings**

**178        General penalties**

A person who contravenes a provision of this Act in respect of which no penalty, other than by this section, is provided is guilty of an offence.

Maximum penalty:        In the case of a body corporate – 25 penalty units.

   In the case of a natural person – 8 penalty units, or imprisonment for 3 months.

Default maximum penalty:    In the case of a body corporate – 4 penalty units.

   In the case of a natural person – \$50.

**179        Time limit etc. for complaint**

No information or complaint shall be laid or made in respect of an offence against this Act except:

- (a) by or with the approval in writing of the Authority or a delegate of the Authority; and
- (b) within 3 years after the date on which the alleged offence occurred.

**180        Offences by bodies corporate**

- (1) Where an offence against this Act committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to a wilful neglect on the part of, an officer of the body corporate or person purporting to act as such an officer, that officer or person is also guilty of that offence and liable to the penalty for that offence.

- (2) When in proceedings under this Act it is necessary to establish the intention of a body corporate, it is sufficient to show that a servant or agent of the body corporate had that intention.
- (3) In subsection (1) **officer**, in relation to a body corporate means:
  - (a) a director, secretary or executive officer of the body corporate;
  - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or
  - (c) a person concerned in the management of the body corporate.

### **181        Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
  - (a) an inspector;
  - (b) a member of the Council;
  - (ba) a mediator appointed under section 103C(1);
  - (c) a member of the Scheme Monitoring Committee;
  - (d) a member of the Nominal Insurer.
- (2) Subsection (1) does not affect any liability the Territory or the Authority would, apart from that subsection, have for the act or omission.
- (3) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.

### **182        Time for taking proceedings**

- (1) Subject to subsections (2) and (3), proceedings for the recovery under this Act of compensation shall not be maintainable unless notice of the injury has been given before the worker has voluntarily left the employment in which he or she was injured and unless the claim for compensation has been made:
  - (a) within 6 months after the occurrence of the injury or, in the case of a disease, the incapacity arising from the disease; or

- (b) in the case of death, within 6 months after advice of the death has been received by the claimant.
- (2) The want of notice or a defect or inaccuracy in the notice shall not be a bar to the maintenance of the proceedings referred to in subsection (1) if it is found in the proceedings for the settling of the claim that the employer is not, or would not if a notice or an amended notice were then given and the hearing postponed, be prejudiced in his or her defence by the want, defect or inaccuracy, or that the want, defect or inaccuracy was occasioned by mistake, absence from the Territory or other reasonable cause.
- (3) The failure to make a claim within the period specified in subsection (1) shall not be a bar to the maintenance of the proceedings if it is found that the failure was occasioned by mistake, ignorance of a disease, absence from the Territory or other reasonable cause.
- (4) For the purposes of subsection (1), where a worker left his or her employment only by reason of the fact that, because of an injury received in that employment, he or she was unable to continue in that employment, he or she shall be taken not to have voluntarily left that employment.
- (5) Without limiting the generality of the meaning of **reasonable cause** in subsection (3):
- (a) the making of a payment to a person which the person believes to be a payment of compensation; or
- (b) any conduct on the part of the employer or his or her insurer or agent, or on the part of an employee of any of them purporting to act on behalf of the employer, by which a person is led to believe that compensation will or will probably be paid to him or her or by which he or she is led to believe that he or she is not entitled to compensation,

shall be taken to be a reasonable cause within the meaning of that expression.

## **Division 2      General**

### **183      Use of interpreters**

Where the Authority, an officer or any other person performing a function under this Act uses the assistance of an interpreter in connection with its or his or her performance of that function, an inquiry of or request to a person made on behalf of the Authority, officer or other person by the interpreter shall be deemed to have

been made by the Authority, officer or other person, as the case may be, and answers to the inquiry or request made to the interpreter shall be deemed to have been made to the Authority, officer or other person.

**184 Survival of claims**

- (1) This section does not apply to or in relation to compensation under section 71.
- (2) Where a person who is entitled to make a claim for compensation dies, that claim may be made by his or her legal personal representative.
- (3) A claim for compensation is not affected by the death of the claimant after the claim was given or served on the employer, the Nominal Insurer or the Authority, as the case may be.
- (4) A reference in this Act to a claimant shall:
  - (a) in the case of a claim referred to in subsection (2) – be read as a reference to the legal personal representative who made the claim; and
  - (b) in the case of a claim referred to in subsection (3) – be read, in relation to any time after the death of the person who made the claim, as a reference to the legal personal representative of that person.
- (5) Section 62 applies in relation to an amount payable as the result of a claim referred to in this section as if the deceased person had died after the relevant determination of the Court referred to in that section was made.

**185 Provisions applicable on death of beneficiary**

- (1) Where an amount of compensation (other than compensation under section 71) is payable to a person and the person dies before the amount is paid, the amount forms part of the estate of the person.
- (2) Where an employer or the insurer of an employer holds an amount of compensation for the benefit of a person entitled under this Act to receive it and that person dies, that amount forms part of the estate of the person.

**186 Compensation not assignable**

An assignment of compensation payable under this Act is void as against an employer or an insurer.

### **186A Contracting out**

- (1) This Act applies notwithstanding anything to the contrary contained in any contract or agreement, whether entered into before or after the commencement of this section.
- (2) A contract or agreement which purports to exclude or limit the application of this Act or to exclude or limit the rights or entitlements of a person under this Act is, to that extent, null and void.
- (3) A person who urges, prevails on, persuades or offers an inducement to another person to enter into a contract or agreement whereby that other person would, but for this section, consent or agree to the application of this Act being excluded or limited in respect of that other person, or to waive or limit that other person's rights, benefits or entitlements under this Act, is guilty of an offence.

Maximum penalty: 860 penalty units.

- (4) A reference in this section to a contract or agreement is not to be taken to include a reference to an agreement under section 78A or 78B.

### **186B Confidential information**

- (1) A person commits an offence if the person:
  - (a) obtains information in the course of exercising a power or performing a function under this Act; and
  - (b) engages in conduct that results in the disclosure of the information to someone else.

Maximum penalty: 200 penalty units or imprisonment for 2 years.

- (2) Subsection (1) does not apply if the person engages in the conduct:
  - (a) in exercising a power or performing a function under this Act; or
  - (b) for legal proceeding arising out of the operation of this Act; or
  - (c) with the consent of the person to whom the information relates.

*Note for section 186B*

*Under sections 23 and 26 of the Criminal Code a person is not guilty of an offence if an act constituting the offence is done in the exercise of a right granted or recognised by law or in execution of the law or in obedience to, or in conformity with, the law.*

## **187 Regulations**

(1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act,

and in particular:

- (c) prescribing procedures for the medical examination of injured workers;
- (d) prescribing the duties and fees of medical referees appointed under this Act;
- (e) prescribing the procedure relating to compulsory insurance and approval of insurance companies;
- (f) relating to the furnishing of returns to the Authority by employers and approved insurers in relation to the policies of insurance or indemnity taken out by employers against their liability under this Act;
- (g) prescribing the amount of compensation payable or by reference to which compensation is to be calculated;
- (h) prescribing the rate of interest for the purpose of the formula in section 89;
- (ha) relating to the procedure for the mediation of disputes;
- (j) relating to the information an employer is to supply an insurer for the purposes of section 130(1)(a);
- (m) relating to the manner of verification of a statement referred to in section 130(1)(a);
- (n) prescribing the particulars to be kept by an employer in relation to the wages paid to workers employed by him or her;
- (p) prescribing an amount of premium payable for the purposes of section 131(1)(b);
- (q) prescribing interest to be paid for the purposes of section 131(3) by an employer on amounts owing to an insurer;



- (qa) regulating or prohibiting:
  - (i) the manufacture, supply or use of any plant;
  - (ii) the manufacture, supply, use, storage or transport of any substance; or
  - (iii) the carrying on of any process or the carrying out of any operation;
- (qb) relating to the safety of workers engaged in construction and other work;
- (qc) relating to the registration of a workplace or any plant or substance;
- (qd) relating to the licensing of a person carrying out processes or activities under this Act;
- (qe) relating to the imposition of conditions applying to registrations and licences (including the imposition of conditions by prescribed persons);
- (qf) relating to the service of notices under the Regulations;
- (qg) relating to matters of evidence, including the averring of facts, in respect of prosecutions of offences against the Regulations;
- (qh) relating to the rehabilitation of injured workers;
- (qj) providing for the exemption of persons, places or activities from the application of all or part of the Regulations;
- (qk) providing for the payment of a prescribed amount in lieu of a penalty which may otherwise be imposed for an offence against this Act or for a breach of the Regulations;
- (ql) providing for the service of notices on persons alleged to have infringed this Act or breached the Regulations and particulars to be included in such notices;
- (qm) relating to fees and charges payable under the Regulations;
- (r) prescribing the powers of the Authority or officers in relation to investigations at workplaces; and
- (s) prescribing penalties, not exceeding 40 penalty units, for a breach of the Regulations.

- (2) The Regulations may incorporate or adopt by reference the provisions of any document, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body whether:
  - (a) wholly or partly, or as amended by the Regulations;
  - (b) as formulated, issued, prescribed or published at the time the Regulations are made or at any time before then; or
  - (c) as amended after the making of the Regulations, but only where the Minister has published in the *Gazette* a notice that the particular amendment is to be incorporated in the Regulations.

### **187A Codes of practice**

- (1) For the purpose of providing practical guidance on any matter relating to this Act, the Minister may, on the recommendation of the Authority, by notice in the *Gazette*, approve a code of practice.
- (2) A code of practice may consist of a code, standard, rule, specification or provision relating to matters in this Act formulated, prepared or adopted by the Authority and may apply, incorporate or refer to a document formulated or published by a body or authority as in force at the time the code of practice is approved or as amended, formulated or published from time to time.
- (3) A notice under subsection (1) shall indicate where a copy of the approved code of practice to which it relates, and all documents incorporated or referred to in the code, may be inspected by members of the public without charge, and the times during which it may be inspected, and the Minister shall make the code and those documents available for that purpose accordingly.
- (4) Subject to subsection (5), the Authority may, in writing, approve a code of practice in relation to a particular workplace presented to it by employers under whose care and management the workplace is and, on its so doing, that code of practice shall be the approved code of practice applicable to and in relation to that workplace.
- (5) The Authority shall not approve under subsection (4) a code of practice which, in its opinion, adopts standards less stringent than the minimum relevant standards for the time being in a code of practice approved under subsection (1) and where at any time there is a relevant standard in a code of practice approved under subsection (1) that is more stringent than a standard in a code of practice approved under subsection (4), or a relevant standard in a code of practice approved under subsection (1) in relation to a matter that is not provided for in a code of practice approved under

subsection (4), that standard in the code of practice approved under subsection (1) shall prevail or apply, as the case may be, and shall be deemed to be incorporated in the code of practice approved under subsection (4).

- (6) A code of practice approved under subsection (4) shall be made available by the employer at the workplace to which it relates for inspection at all reasonable times by any person.
- (7) An employer who contravenes subsection (6) is guilty of a regulatory offence.

Maximum penalty: 4 penalty units.

- (8) A person shall not be liable to a civil or criminal action by reason only that he or she has failed to observe a provision of an approved code of practice.

### **187B Use of codes of practice in proceedings**

Where in proceedings under or for an offence against this Act it is alleged that a person contravened a provision of this Act in relation to which an approved code of practice was in force at the time of the alleged contravention:

- (a) the approved code of practice shall be admissible in evidence in those proceedings; and
- (b) if the court is satisfied in relation to a matter which it is necessary for the prosecution to prove in order to establish the alleged contravention that:
- (i) a provision of the approved code of practice is relevant to that matter; and
  - (ii) the person failed at a material time to observe that provision of the approved code of practice,

that matter shall be taken as proved unless the court is satisfied that in respect of that matter the person complied with that provision of this Act otherwise than by way of observance of that provision of the approved code of practice.

## **Part 9 Repeal, savings and transitional matters for Work Health Act 1986**

### **188 Repeal**

The Acts listed in Schedule 3 are repealed.

**189 Claim etc. before or after commencement of Act**

- (1) Where a cause of action in respect of an injury to or death of a person arising out of or in the course of his or her employment arose before the commencement of this section, a claim or action (including a claim or action at common law) in respect of that injury or death may be made, commenced or continued after the commencement of this section as if this Act had never commenced and for that purpose the repealed Act shall be deemed to continue in force.
- (2) Notwithstanding subsection (1) but subject to subsection (3), a person may claim compensation under this Act in respect of an injury or death referred to in that subsection and on his or her so doing this Act shall apply as if the injury or death occurred after the commencement of this section, and subsection (1) shall have no effect.
- (3) Nothing in subsection (2) shall be construed as permitting a claim for compensation to be made under this Act in respect of an injury to or the death of a person arising out of or in the course of the person's employment before the commencement of this Act where, in respect of that injury or death, compensation has been paid:
  - (a) under the repealed Act;
  - (b) under any other law in force in the Territory relating to the payment of compensation in respect of the injury or death of the person arising out of or in the course of the person's employment; or
  - (c) at common law.
- (4) Where, but for subsection (2), a person would have been entitled to weekly incapacity benefits under this Act in respect of an injury that occurred before 1 January 1987:
  - (a) the person is entitled to weekly incapacity benefits payable at the rate determined under section 65(7) of this Act as in force immediately before 15 October 1991 multiplied by the average weekly earnings at the date of payment and divided by the average weekly earnings at 15 October 1991; and
  - (b) subsection (1) has no effect.

**190 Nominal Insurer continues for certain purposes**

- (1) For the purposes of the commencing, continuing or enforcing of a claim or action by or against the Nominal Insurer in respect of an injury to a person, or the death of a person as the result of an injury,

arising out of or in the course of the employment of the person, the Nominal Insurer established by section 150 is the same person as the Nominal Insurer established by section 16D of the repealed Act.

- (2) Where before the commencement of section 164 the Nominal Insurer as then constituted made an estimate or determination under section 16Q of the repealed Act in respect of the year commencing 1 July 1986, that estimate or determination shall, for the purposes of section 164, be deemed to have been made and approved under section 164 and any amount contributed to the former Fund before that commencement as a result of such a determination shall be taken into account in determining a persons liability to contribute to the Fund after that commencement.

### **191 Continuation etc. of existing policies**

Where immediately before the commencement of Part 7 there was in force a policy of insurance or indemnity issued in pursuance of the repealed Act, that policy shall, on that commencement, be deemed to have been issued in the terms of Schedule 2 and, subject to this Act, shall continue in force, and it shall not be cancelled or lapse without the approval in writing of the Authority.

### **192 Continuation of self-insurance**

Where immediately before the commencement of Part 7 an employer was authorized under section 18(1) of the repealed Act to undertake the liability to pay compensation to his or her own workers he or she shall, on and from that commencement, for a period of 3 months, be a self-insurer for the purposes of this Act as if, on that commencement, the Authority approved the employer, under section 117, to self-insure during that period, and this Act (including the power of the Authority under section 124) shall apply accordingly.

### **193 Transitional**

- (1) A person is not guilty of an offence against section 125(1) by reason only that he or she held himself or herself out to be a person who undertakes, or undertakes or offers to undertake, workers compensation insurance business in the Territory for the purpose of discharging liabilities assumed by him or her before the commencement of that section.
- (2) An insurer:
  - (a) who carried on workers compensation insurance business in the Territory before the commencement of section 125;

(b) whose period of approval under and for the purposes of the repealed Act has not expired; and

(c) who has not been refused approval under section 119,

is not guilty of an offence against section 125(1) by reason only that, not being approved under section 119 for the purposes of this Act, he or she carries on workers compensation insurance business in the Territory during the period of 3 months after that commencement.

(3) An insurer who:

(a) carried on workers compensation insurance business in the Territory before the commencement of section 125;

(b) has, within 3 months after that commencement and before the period of his or her approval under and for the purposes of the repealed Act has expired, applied under section 119(1) for approval for the purposes of this Act; and

(c) has not withdrawn the application or been refused approval under section 119(2),

is not guilty of an offence against section 125(1) by reason only that, not being approved under section 119 for the purposes of this Act, he or she carries on workers compensation insurance business in the Territory after the expiration of 3 months after that commencement.

## **Part 10                      Transitional matters for Work Health Amendment Act 2004**

### **194              Definition**

In this Part:

***commencement date*** means the commencement date of the *Work Health Amendment Act 2004*.

### **195              Calculation of normal weekly earnings**

(1) Section 49(1A) does not affect the following compensation, the calculation of which involved the calculation of normal weekly earnings by reference to remuneration that included a superannuation contribution referred to in section 49(1A):

(a) compensation paid under section 64 or 65 before the commencement date;

- (b) compensation payable under section 64 or 65 in respect of a period before the commencement date in accordance with an order of the Court or Supreme Court made before the commencement date.
- (2) Despite anything to the contrary in section 12 of the *Interpretation Act 1978* or in any other law in force in the Territory, and subject to subsection (1), section 49(1A) and (1B) applies in relation to the calculation of compensation:
- (a) paid before the commencement date; or
  - (b) payable on or after the commencement date, even if the right to claim compensation arose before the commencement date.
- (3) To avoid doubt, section 49(1A) applies in relation to compensation under section 64 or 65 that is, on the commencement date, the subject of any of the following:
- (a) a dispute to which Part 6A, Division 1 applies;
  - (b) proceedings under Part 6A, Division 2;
  - (c) an appeal, review or special case being considered under Part 6A, Division 3, 4 or 5;
  - (d) a commutation under section 74 not yet authorised by the Court.

**196 Limitation of time for application for mediation**

Section 103D(1A) applies only in relation to a claimant who, after the commencement date, receives a statement containing the information referred to in section 69(1)(b)(ii) or 85(8)(b) as amended by the *Work Health Amendment Act 2004*.

**Part 11 Transitional matters for Work Health and Safety (National Uniform Legislation) Implementation Act 2011**

**197 Continuation of Council**

The change in the constitution of the Council effected by the amendment of section 10 by the *Work Health and Safety (National Uniform Legislation) Implementation Act 2011* does not affect:

- (a) the continuity of the Council; or

- (b) the continuation in existence, force or operation of any act, matter or thing relating to the Council that was in existence, force or operation immediately before the commencement of Part 3, Division 1 of that Act.

## **Part 12 Transitional matters for Workers Rehabilitation and Compensation Legislation Amendment Act 2012**

### **198 Provision of ABN before commencement**

- (1) A person (a **relevant person**) may be a worker within the meaning of this Act as in force after the commencement of this section even if the relevant person was not a worker within the meaning of this Act as in force immediately before the commencement.
- (2) For subsection (1), it is irrelevant if, before the commencement, the relevant person:
  - (a) gave written notice to the person for whom the relevant person performed work or a service of a number that was, or purported to be, the ABN of the relevant person; and
  - (b) agreed with the other person mentioned in paragraph (a) that the relevant person was or was not a worker for this Act.

### **199 Consideration of benefits provided to worker in form other than an amount of money paid or credited to worker**

- (1) This section applies to a worker if, before the commencement of this section, the worker suffered an injury that:
  - (a) resulted in, or materially contributed to, the worker's total or partial incapacity for work before the commencement; or
  - (b) results in, or materially contributes to, the worker's total or partial incapacity for work after the commencement.
- (2) In determining the worker's remuneration for the definitions **normal weekly earnings** and **ordinary time rate of pay** in section 49, that section as in force immediately before the commencement applies as if section 5 of the *Workers Rehabilitation and Compensation Legislation Amendment Act 2012* had not commenced.



**200 Continuation of entitlement under section 65 before commencement**

- (1) This section applies to a worker who, before the commencement, was totally or partially incapacitated for work as mentioned in previous section 65.

*Note for subsection (1)*

*The date of the injury of a worker incapacitated as mentioned in previous section 65 would be before the commencement.*

- (2) Subject to subsection (3), the worker's right to the payment of compensation under previous section 65 continues as if section 6 of the *Workers Rehabilitation and Compensation Legislation Amendment Act 2012* had not commenced.
- (3) Unless one of the following happened before the commencement, compensation under previous section 65 must be paid until:
- (a) if the normal retiring age for the worker is more than the injury pension age for the worker – the worker attains that normal retiring age; or
  - (b) otherwise – the worker attains the future pension age for the worker.
- (4) In this section:

**commencement** means the commencement of this section.

**future pension age**, for a worker, see section 65(14).

**injury pension age**, for a worker, see section 65(14).

**normal retiring age**, for a worker, see section 65(14).

**previous section 65** means section 65 as in force immediately before the commencement.

## **Part 13 Transitional matters for Workers Rehabilitation and Compensation Legislation Amendment Act 2015**

### **201 Definitions**

In this Part:

**amending Act** means the *Workers Rehabilitation and Compensation Legislation Amendment Act 2015*.

**commencement** means the commencement of the amending Act.

**post-commencement injury**, in relation to a worker, means an injury to the worker that arises on or after the commencement.

### **202 Limitation for post-commencement injury**

- (1) The following provisions, as amended by the amending Act, apply in relation to an injury suffered by a worker only if the injury is a post-commencement injury:
  - (a) section 3(1), definition **worker**;
  - (b) section 3(3);
  - (c) section 58;
  - (d) section 61A;
  - (e) section 64;
  - (f) section 65.
- (2) The provisions mentioned in subsection (1)(a), (b), (e) and (f), as in force before the commencement, continue to apply in relation to injuries other than post-commencement injuries as if the amending Act had not commenced.

### **203 Application of sections 49 and 49A**

- (1) Section 49, as amended by the amending Act, and section 49A, apply in relation to an injury suffered by a worker only if the injury is a post-commencement injury.
- (2) Section 49, as in force before the commencement, continues to apply in relation to an injury other than a post-commencement injury as if the amending Act had not commenced.

**203A Extended application of section 50A**

- (1) The presumption mentioned in section 50A(1) also applies in relation to a worker if the following conditions are met:
  - (a) the worker is or was a firefighter (including a person appointed to be an auxiliary member under the *Fire and Emergency Act 1996*) other than a volunteer firefighter;
  - (b) the disease is a prescribed disease;
  - (c) the worker:
    - (i) is, on the onset day for the prescribed disease, working as an active firefighter and had been so working for a period at least as long as the prescribed qualifying period for the prescribed disease; or
    - (ii) had been, within the 10 years immediately preceding that onset day, working as an active firefighter and had been so working for a period at least as long as the prescribed qualifying period for the prescribed disease;
  - (d) that onset day is before 4 July 2011;
  - (e) a claim for compensation is made by the worker within 3 months after the commencement.
- (2) If the conditions mentioned in subsection (1) are met, this Act applies as if the onset day were immediately before the commencement.
- (3) Without limiting subsection (2), a person making a claim under Part 5, Division 3, Subdivision A in respect of a worker who has died may do so only if the worker made a claim as mentioned in subsection (1)(e) before dying.

**204 Application of section 62**

- (1) Section 62, as amended by the amending Act, applies in relation to the death of a worker only if the death results from, or is materially contributed to by, a post-commencement injury.
- (2) Section 62, as in force before the commencement, continues to apply in relation to the death of a worker, other than a death of a worker mentioned in subsection (1), as if the amending Act had not commenced.

**205 Contribution under section 121A**

The obligation for an insurer or self-insurer to pay amounts under section 121A(1)(d) on and after the commencement applies even if approval, or renewal of approval, of the approved insurer or self-insurer was granted before the commencement.

**Part 14 Transitional matters for Return to Work Legislation Amendment Act 2015****206 Definitions**

In this Part:

***amending Act*** means the *Return to Work Legislation Amendment Act 2015*.

***commencement*** means the commencement of the amending Act.

***post-commencement injury***, in relation to a worker, means an injury to the worker that arises after the commencement.

**207 Application of section 3A**

- (1) Section 3A, as inserted by the amending Act, applies in relation to an injury suffered by a worker only if the injury is a post-commencement injury.
- (2) The definition ***injury*** in section 3, as in force before the commencement, continues to apply in relation to an injury other than a post-commencement injury as if the amending Act had not commenced.

**208 Limitation for post-commencement injury**

- (1) The following provisions, as amended or inserted by the amending Act, apply in relation to an injury suffered by a worker only if the injury is a post-commencement injury:
  - (a) section 4;
  - (b) section 61B;
  - (c) section 65C;
  - (d) section 73;
  - (e) section 75A;
  - (f) section 84;

- (g) section 85;
  - (h) section 87;
  - (i) section 103F;
  - (j) section 167;
  - (k) section 170;
  - (l) section 171;
  - (m) section 172;
  - (n) section 173.
- (2) The provisions mentioned in subsection (1)(a), and (d) to (n), as in force before the commencement, continue to apply in relation to injuries other than post-commencement injuries as if the amending Act had not commenced.

## **209 Offence provisions – before and after commencement**

- (1) An offence provision, as amended by the amending Act, applies only in relation to offences committed after the commencement of the offence provision (the **offence commencement**).
- (2) Section 75A, as in force before the offence commencement, continues to apply in relation to offences against that section committed before that offence commencement.
- (3) Section 103H, as in force before the offence commencement, continues to apply in relation to offences against that section committed before that offence commencement.
- (4) For this section, if any of the conduct constituting an offence occurred before the offence commencement, the offence is taken not to have been committed after the offence commencement.
- (5) In this section:

**offence provision** means:

- (a) any of the following provisions:
  - (i) section 7KD;
  - (ii) section 65C;
  - (iii) section 75A;

- (iv) section 92;
  - (v) section 103H;
  - (vi) section 126AA;
  - (vii) section 126AB; or
- (b) any provision that relates to offences against the provisions mentioned in paragraph (a) (including in relation to criminal responsibility, defences and penalties).

## **Part 15                      Transitional matters for Return to Work Legislation Amendment Act 2020**

### **210            Definitions**

In this Part:

***amending Act*** means the *Return to Work Legislation Amendment Act 2020*.

***commencement*** means the commencement of section 5 of the amending Act.

***post-commencement injury***, in relation to a worker, means an injury to the worker that arises after the commencement.

### **211            Worker**

- (1) Section 3B, as inserted by the amending Act, applies only in relation to a person who suffers a post-commencement injury.
- (2) A person who was not a worker under the Act as in force immediately before the commencement continues not to be a worker after the commencement in relation to an injury suffered before the commencement as if the amending Act had not commenced.

### **212            Out of or in course of employment**

- (1) Section 4, as amended by the amending Act, applies only in relation to a post-commencement injury.
- (2) Section 4, as in force immediately before the commencement, continues to apply in relation to an injury suffered by a worker before the commencement as if the amending Act had not commenced.

**213 Labour hire arrangement**

- (1) Sections 4A and 4B, as inserted by the amending Act, apply in relation to an individual who suffers a post-commencement injury, whether the contract or arrangement was entered into before, on or after the commencement.
- (2) However, the Act as in force immediately before the commencement continues to apply after the commencement in relation to an individual who suffered an injury before the commencement.

**214 Long-term incapacity**

- (1) Section 65, as amended by the amending Act, applies only in relation to a worker who suffers a post-commencement injury.
- (2) Section 65, as in force immediately before the commencement, continues to apply in relation to a worker who suffered an injury before the commencement as if the amending Act had not commenced.

**215 Dispute relating to costs**

- (1) Section 73(4), as amended by the amending Act, applies only in relation to costs incurred, or proposed to be incurred, after the commencement.
- (2) Section 73(4), as in force immediately before the commencement, continues to apply in relation to costs incurred before the commencement as if the amending Act had not commenced.

**216 Overpayment of benefits**

Section 74, as inserted by the amending Act, applies only in relation to an overpayment of benefits that occurs after the commencement.

**217 Rehabilitation costs**

Section 78(4), as inserted by the amending Act, applies only in relation to costs incurred after the commencement.

**218 Settlement by agreement**

- (1) Section 78A, as amended by the amending Act, applies only in relation to an agreement entered into after the commencement.
- (2) Section 78A, as in force immediately before the commencement, continues to apply in relation to an agreement entered into before the commencement as if the amending Act had not commenced.

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**Schedule 3 Acts repealed**

section 188

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**Number and year Act**


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No. 1, 1950	<i>Workmen's Compensation Ordinance 1949</i>
No. 1, 1951	<i>Workmen's Compensation Ordinance 1950</i>
No. 21, 1952	<i>Workmen's Compensation Ordinance 1952</i>
No. 22, 1954	<i>Workmen's Compensation Ordinance 1954</i>
No. 39, 1957	<i>Workmen's Compensation Ordinance 1957</i>
No. 10, 1959	<i>Workmen's Compensation Ordinance 1959</i>
No. 22, 1960	<i>Workmen's Compensation Ordinance 1960</i>
No. 9, 1961	<i>Workmen's Compensation Ordinance (No. 2) 1960</i>
No. 37, 1962	<i>Workmen's Compensation Ordinance 1962</i>
No. 60, 1963	<i>Workmen's Compensation Ordinance 1963</i>
No. 47, 1964	<i>Workmen's Compensation Ordinance 1964</i>
No. 28, 1965	<i>Workmen's Compensation Ordinance 1965</i>
No. 54, 1965	<i>Workmen's Compensation Ordinance (No. 2) 1965</i>
No. 26, 1966	<i>Workmen's Compensation Ordinance 1966</i>
No. 32, 1967	<i>Workmen's Compensation Ordinance 1967</i>
No. 10, 1968	<i>Workmen's Compensation Ordinance 1968</i>
No. 19, 1968	<i>Workmen's Compensation Ordinance (No. 2) 1968</i>
No. 40, 1969	<i>Workmen's Compensation Ordinance (No. 3) 1968</i>
No. 41, 1969	<i>Workmen's Compensation Ordinance 1969</i>
No. 1, 1970	<i>Workmen's Compensation Ordinance (No. 2) 1969</i>
No. 11, 1970	<i>Workmen's Compensation Ordinance 1970</i>
No. 37, 1970	<i>Workmen's Compensation Ordinance (No. 2) 1970</i>
No. 11, 1972	<i>Workmen's Compensation Ordinance 1972</i>
No. 30, 1972	<i>Workmen's Compensation Ordinance (No. 2) 1972</i>
No. 40, 1972	<i>Workmen's Compensation Ordinance (No. 3) 1972</i>
No. 25, 1973	<i>Workmen's Compensation Ordinance 1973</i>
No. 33, 1973	<i>Workmen's Compensation Ordinance (No. 3) 1973</i>
No. 44, 1973	<i>Workmen's Compensation Ordinance (No. 2) 1973</i>
No. 85, 1973	<i>Workmen's Compensation Ordinance (No. 4) 1973</i>
No. 53, 1974	<i>Workmen's Compensation Ordinance 1974</i>
No. 4, 1975	<i>Workmen's Compensation Ordinance 1975</i>
No. 12, 1977	<i>Workmen's Compensation Ordinance 1977</i>
No. 14, 1977	<i>Workmen's Compensation Ordinance (No. 2) 1977</i>
No. 15, 1977	<i>Workmen's Compensation Ordinance (No. 3) 1977</i>
No. 56, 1977	<i>Workmen's Compensation Ordinance (No. 4) 1977</i>
No. 77, 1978	<i>Workmen's Compensation Ordinance 1978</i>
No. 42, 1979	<i>Workmen's Compensation Act 1979</i>
No. 69, 1979	<i>Workmen's Compensation Act (No. 2) 1979</i>
No. 107, 1979	<i>Workmen's Compensation Act (No. 3) 1979</i>
No. 162, 1979	<i>Workmen's Compensation Act (No. 4) 1979</i>



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No. 53, 1980	<i>Workmen's Compensation Act 1980</i>
No. 79, 1982	<i>Workmen's Compensation Amendment Act 1982</i>
No. 80, 1982	<i>Workmen's Compensation Amendment Act (No. 2) 1982</i>
No. 47, 1984	<i>Workmen's Compensation Amendment Act 1984</i>

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**ENDNOTES**
**1****KEY**

Key to abbreviations

**amd = amended**  
**app = appendix**  
**bl = by-law**  
**ch = Chapter**  
**cl = clause**  
**div = Division**  
**exp = expires/expired**  
**f = forms**  
**Gaz = Gazette**  
**hdg = heading**  
**ins = inserted**  
**lt = long title**  
**nc = not commenced**

**od = order**  
**om = omitted**  
**pt = Part**  
**r = regulation/rule**  
**rem = remainder**  
**renum = renumbered**  
**rep = repealed**  
**s = section**  
**sch = Schedule**  
**sdiv = Subdivision**  
**SL = Subordinate Legislation**  
**sub = substituted**

**2****LIST OF LEGISLATION*****Work Health Act 1986 (Act No. 49, 1986)***

Assent date 16 December 1986  
 Commenced ss 1, 2, 6 to 18 and 194: 16 December 1986 (s 2(1));  
 rem: 1 January 1987 (Gaz S90, 24 December 1986)

***Statute Law Revision Act 1987 (Act No. 9, 1987)***

Assent date 27 May 1987  
 Commenced 27 May 1987

***Work Health Amendment Act 1988 (Act No. 50, 1988)***

Assent date 2 November 1988  
 Commenced 2 November 1988

***Local Court (Consequential Amendments) Act 1989 (Act No. 14, 1989)***

Assent date 5 June 1989  
 Commenced 1 January 1991 (s 2, s 2 *Local Court Act 1989* (Act No. 31, 1989) and Gaz G49, 12 December 1990, p 2)

***Corporations (Consequential Amendments) Act 1990 (Act No. 59, 1990)***

Assent date 14 December 1990  
 Commenced 1 January 1991 (s 2, s 2 *Corporations (NT) Act 1990* (Act No. 56, 1990) and Gaz S76, 21 December 1990)

***Work Health Amendment Act 1991 (Act No. 11, 1991)***

Assent date 7 March 1991  
 Commenced ss 17 and 20: 1 July 1991 (s 2(2)); ss 21 and 22:  
 24 December 1992 (Gaz S66, 24 December 1992);  
 rem: 7 March 1991 (s 2(1))

**Work Health Amendment Act (No. 2) 1991 (Act No. 59, 1991)**

Assent date 26 September 1991  
 Commenced 15 October 1991 (*Gaz S53*, 15 October 1991)

**Amending Legislation**

**Work Health Amendment Act (No. 2) 1991 Amendment Act 1992 (Act No. 8, 1992)**

Assent date 8 April 1992  
 Commenced 8 April 1992 (s 2)

**Work Health Amendment Act (No. 3) 1991 (Act No. 61, 1991)**

Assent date 6 November 1991  
 Commenced 1 January 1992 (*Gaz G50*, 18 December 1991, p 3)

**De Facto Relationships (Miscellaneous Amendments) Act 1991 (Act No. 82, 1991)**

Assent date 24 December 1991  
 Commenced 1 January 1992 (s 2)

**Work Health Amendment Act 1992 (Act No. 66, 1992)**

Assent date 28 October 1992  
 Commenced 28 October 1992

**Work Health Amendment Act 1993 (Act No. 8, 1993)**

Assent date 18 March 1993  
 Commenced 18 March 1993

**Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)**

Assent date 30 June 1993  
 Commenced 1 July 1993 (s 2, s 2 *Public Sector Employment and Management Act 1993* (Act No. 11, 1993) and *Gaz S53*, 29 June 1993)

**Work Health Amendment Act (No. 2) 1993 (Act No. 78, 1993)**

Assent date 23 November 1993  
 Commenced 1 January 1994 (*Gaz G51*, 22 December 1993, p 3)

**Statute Law Revision Act 1994 (Act No. 50, 1994)**

Assent date 20 September 1994  
 Commenced 20 September 1994

**Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)**

Assent date 21 March 1995  
 Commenced 1 April 1995 (s 2, s 2 *Financial Management 1995* and *Gaz S13*, 31 March 1995)

**Medical (Consequential Amendments) Act 1995 (Act No. 8, 1995)**

Assent date 10 April 1995  
 Commenced 1 June 1995 (s 2, s 2 *Medical Act 1995* (Act No. 7, 1995) and *Gaz S21*, 1 June 1995)

**Work Health Amendment Act 1995 (Act No. 17, 1995)**

Assent date 26 June 1995  
 Commenced ss 10, 11, 15: nc (rep by Act No. 3, 2007); rem: 26 July 1995  
 (Gaz G30, 26 July 1995, p 3)

**Amending Legislation**

**Work Health Amendment Act 2007 (Act No. 3, 2007)**

Assent date 8 March 2007  
 Commenced 26 April 2007 (Gaz G17, 26 April 1997, p 2)

**Fire and Emergency (Consequential Amendments) Act 1996 (Act No. 15, 1996)**

Assent date 19 April 1996  
 Commenced 1 May 1996 (s 2, s 2 *Fire and Emergency Act 1996* (Act No. 14, 1996) and Gaz S10, 1 May 1996)

**Sentencing (Consequential Amendments) Act 1996 (Act No. No. 17, 1996)**

Assent date 19 April 1996  
 Commenced s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 *Sentencing Act 1995* (Act No. 39, 1995) and Gaz S15, 13 June 1996)

**Amending Legislation**

**Sentencing (Consequential Amendments) Amendment Act 1996 (Act No. 30, 1996)**

Assent date 28 June 1996  
 Commenced 28 June 1996

**Work Health Amendment Act 1996 (Act No. 67, 1996)**

Assent date 31 December 1996  
 Commenced 8 March 1997 (s 2, s 2 *Sentencing Amendment Act (No. 2) 1996* (Act No. 65, 1996) and Gaz S7, 7 March 1997)

**Work Health Amendment Act 1997 (Act No. 27, 1997)**

Assent date 2 June 1997  
 Commenced 2 June 1997

**Work Health Amendment Act 1998 (Act No. 18, 1998)**

Assent date 30 March 1998  
 Commenced s 38: 15 October 1991 (s 2(1)); s 41: nc (rep by Act No. 3, 2007); rem: 20 May 1998 (Gaz G19, 20 May 1998, p 2)

**Amending Legislation**

**Work Health Amendment Act 2007 (Act No. 3, 2007)**

Assent date 8 March 2007  
 Commenced 26 April 2007 (Gaz G17, 26 April 1997, p 2)

**Work Health Amendment Act (No. 2) 1998 (Act No. 59, 1998)**

Assent date 3 September 1998  
 Commenced 1 August 1999 (Gaz G29, 28 July 1999, p 2)

**Statute Law Revision Act 1999 (Act No. 27, 1999)**

Assent date 18 June 1999  
 Commenced 18 June 1999

**Work Health Amendment Act 1999 (Act No. 72, 1999)**

Assent date 17 December 1999  
Commenced 1 July 1999 (s 2)

**Work Health Amendment Act 2000 (Act No. 27, 2000)**

Assent date 27 June 2000  
Commenced 1 July 2000 (s 2)

**Work Health Amendment Act (No. 2) 2000 (Act No. 41, 2000)**

Assent date 31 August 2000  
Commenced 27 June 2000 (s 2 and s 2 *Petroleum Amendment Act 2000* (Act No. 31, 2000))

**Statute Law Revision Act 2001 (Act No. 3, 2001)**

Assent date 22 March 2001  
Commenced 22 March 2001 (s 6(4))

**Work Health Amendment Act 2001 (Act No. 10, 2001)**

Assent date 22 June 2001  
Commenced 22 June 2001

**Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)**

Assent date 29 June 2001  
Commenced 15 July 2001 (s 2, s 2 *Corporations Act 2001* (Cth Act No. 50, 2001) and Cth Gaz S285, 13 July 2001)

**Mining Management (Consequential Amendments) Act 2001 (Act No. 42, 2001)**

Assent date 19 July 2001  
Commenced 1 January 2002 (s 2, s 2 *Mining Management Act 2001* (Act No. 43, 2001) and Gaz G46, 21 November 2001, p 2)

**Sentencing (Consequential Amendments) Act 2001 (Act No. 56, 2001)**

Assent date 19 October 2001  
Commenced 22 October 2001 (s 2)

**Statute Law Revision Act (No. 2) 2001 (Act No. 62, 2001)**

Assent date 11 December 2001  
Commenced 11 December 2001

**Work Health Amendment Act 2002 (Act No. 23, 2002)**

Assent date 7 June 2002  
Commenced 7 June 2002

**Work Health Amendment Act (No. 2) 2002 (Act No. 42, 2002)**

Assent date 13 September 2002  
Commenced 1 November 2002 (Gaz G41, 16 October 2002, p 3)

**Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003 (Act No. 1, 2004)**

Assent date 7 January 2004  
Commenced 17 March 2004 (Gaz G11, 17 March 2004, p 8)

**Work Health Amendment Act 2004 (Act No. 63, 2004)**

Assent date 9 December 2004  
Commenced 26 January 2005 (Gaz G4, 26 January 2005, p 3)

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***Youth Justice (Consequential Amendments) Act 2005 (Act No. 33, 2005)***

Assent date 22 September 2005  
 Commenced 1 August 2006 (s 2, s 2 *Youth Justice Act 2005* (Act No. 32, 2005) and *Gaz G30*, 26 July 2006, p 3)

***Statute Law Revision Act 2005 (Act No. 44, 2005)***

Assent date 14 December 2005  
 Commenced 14 December 2005

***Work Health Amendment (Advisory Council) Act 2006 (Act No. 12, 2006)***

Assent date 26 April 2006  
 Commenced 31 May 2006 (*Gaz G22*, 31 May 2006, p 2)

***Work Health Amendment Act 2007 (Act No. 3, 2007)***

Assent date 8 March 2007  
 Commenced 26 April 2007 (*Gaz G17*, 26 April 1997, p 2)

***Law Reform (Work Health) Amendment Act 2007 (Act No. 30, 2007)***

Assent date 12 December 2007  
 Commenced 1 July 2008 (*Gaz S29*, 25 June 2008)

***Workers Rehabilitation and Compensation Amendment Act 2008 (Act No. 13, 2008)***

Assent date 23 May 2008  
 Commenced 1 July 2008 (*Gaz S29*, 25 June 2008)

***Financial Management Amendment Act 2009 (Act No. 15, 2009)***

Assent date 18 June 2009  
 Commenced 18 June 2009

***Statute Law Revision Act 2009 (Act No. 25, 2009)***

Assent date 1 September 2009  
 Commenced 16 September 2009 (*Gaz G37*, 16 September 2009, p 3)

***Health Practitioner (National Uniform Legislation) Implementation Act 2010 (Act No. 18, 2010)***

Assent date 20 May 2010  
 Commenced 1 July 2010 (s 2)

***Penalties Amendment (Justice and Treasury Legislation) 2010 (Act No. 38, 2010)***

Assent date 18 November 2010  
 Commenced 1 February 2011 (*Gaz S6*, 1 February 2011)

***Traffic and Other Legislation Amendment Act 2011 (Act No. 22, 2011)***

Assent date 22 August 2011  
 Commenced 1 September 2011 (*Gaz G35*, 31 August 2011, p 9)

***Justice (Corrections) and Other Legislation Amendment Act 2011 (Act No. 24, 2011)***

Assent date 31 August 2011  
 Commenced ss 3, 9 to 11, 15 to 17, 19, 20, 24, 33, 42, schs 1 and 2, sch 4 pt 1 and sch 5: 31 August 2011 (s 2); rem: 27 February 2012 (*Gaz S9*, 21 February 2012)

***Work Health and Safety (National Uniform Legislation) Implementation Act 2011 (Act No. 38, 2011)***

Assent date 14 December 2011  
 Commenced 1 January 2012 (*Gaz S78*, 30 December 2011)

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**Workers Rehabilitation and Compensation Legislation Amendment Act 2012 (Act No. 16, 2012)**

Assent date 27 April 2012  
 Commenced 1 July 2012 (*Gaz* G22, 30 May 2012, p 6)

**Health Practitioner (National Uniform Legislation) Implementation Act 2012 (Act No. 17, 2012)**

Assent date 22 May 2012  
 Commenced 1 July 2012 (s 2)

**Evidence (National Uniform Legislation) (Consequential Amendments) Act 2012 (Act No. 23, 2012)**

Assent date 21 November 2012  
 Commenced 1 January 2013 (*Gaz* G51, 19 December 2012, p 4)

**Marine Safety (Domestic Commercial Vessel) (National Uniform Legislation) Act 2013 (Act No. 11, 2013)**

Assent date 29 May 2013  
 Commenced 1 July 2013 (*Gaz* S24, 25 June 2013)

**Emergency Management Act 2013 (Act No. 27, 2013)**

Assent date 8 November 2013  
 Commenced 27 November 2013 (*Gaz* S62, 27 November 2013)

**Local Government Amendment Act 2014 (Act No. 19, 2014)**

Assent date 2 June 2014  
 Commenced s 16: 1 July 2014; s 18: 1 December 2014; rem: 2 June 2014 (s 2)

**Statute Law Revision Act 2014 (Act No. 38, 2014)**

Assent date 13 November 2014  
 Commenced 13 November 2014

**Territory Insurance Office (Sale) Act 2014 (Act No. 41, 2014)**

Assent date 28 November 2014  
 Commenced pt 6, divs 1 and 2: nc (exp without commencing);  
 pt 6, div 3: 00:01hrs 1 January 2015 (*Gaz* S131,  
 19 December 2014, p 8); rem: 28 November 2014 (s 2)

**Workers Rehabilitation and Compensation Legislation Amendment Act 2015 (Act No. 9, 2015)**

Assent date 23 April 2015  
 Commenced ss 3, 4, 5, 24, 25 and pt 4: 22 May 2015; rem: 1 July 2015  
 (*Gaz* S50, 22 May 2015)

**Return to Work Legislation Amendment Act 2015 (Act No. 25, 2015)**

Assent date 18 September 2015  
 Commenced 1 October 2015 (*Gaz* S98, 30 September 2015)

**Local Court (Related Amendments) Act 2016 (Act No. 8, 2016)**

Assent date 6 April 2016  
 Commenced 1 May 2016 (s 2, s 2 *Local Court (Repeals and Related Amendments) Act 2016* (Act No. 9, 2016) and *Gaz* S34, 29 April 2016)

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***Bushfires Management Act 2016 (Act No. 14, 2016)***

Assent date 7 June 2016  
Commenced 1 November 2016 (Gaz S111, 27 October 2016)

***Statute Law Revision Act 2018 (Act No. 10, 2018)***

Assent date 23 May 2018  
Commenced 20 June 2018 (Gaz S41, 20 June 2018)

***Health Practitioner Regulation (National Uniform Legislation) and Other Legislation Amendment Act 2018 (Act No. 28, 2018)***

Assent date 30 November 2018  
Commenced 1 December 2018 (s 2)

***Return to Work Legislation Amendment Act 2020 (Act No. 21, 2020)***

Assent date 1 July 2020  
Commenced 29 July 2020 (Gaz G28, 15 July 2020, p 1)

***Burial and Cremation Act 2022 (Act No. 16, 2022)***

Assent date 9 August 2022  
Commenced 28 November 2022 (Gaz S60, 23 November 2022)

***Justice and Other Legislation Amendment Act 2024 (Act No. 4, 2024)***

Assent date 14 March 2024  
Commenced pt 5, div 1: 30 October 2023 (s 2(2));  
pt 3, div 2: 25 March 2024 (s 2(3), s 2 *Sentencing and Other Legislation Amendment Act 2022* (Act No. 28, 2022) and Gaz S19, 22 March 2024); pt 4: 25 March 2024 (s 2(4), s 2 *Criminal Justice Legislation Amendment (Sexual Offences) Act 2023* (Act No. 20, 2023) and Gaz S20, 22 March 2024); rem: 15 March 2024 (s 2(1))

### 3 SAVINGS AND TRANSITIONAL PROVISIONS

- s 2 *Work Health Amendment Act 1991* (Act No. 11, 1991)
- s 14 *Work Health Amendment Act (No. 2) 1991* (Act No. 59, 1991) (sub Act No. 8, 1992, s 3)
- s 34 *Work Health Amendment Act (No. 3) 1991* (Act No. 61, 1991)
- s 25 *Work Health Amendment Act (No. 2) 1993* (Act No. 78, 1993)
- s 5(2) *Work Health Amendment Act 1995* (Act No. 17, 1995)
- s 40 *Work Health Amendment Act 1998* (Act No. 18, 1998)
- s 36 *Work Health Amendment Act (No. 2) 1998* (Act No. 59, 1998)
- s 4 *Work Health Authority Amendment Act 1999* (Act No. 72, 1999)
- s 4 *Work Health Amendment Act 2000* (Act No. 27, 2000)
- s 21 *Work Health Amendment Act (No. 2) 2002* (Act No. 42, 2002)
- s 82 *Law Reform (Gender, Sexuality and De Facto Relationships) Act 2003* (Act No. 1, 2004)

### 4 GENERAL AMENDMENTS

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 3, 4, 7A, 7B, 7C, 10, 50A, 52, 53AA, 60, 61, 62, 65A, 72A, 110A, 110B, 121A, 151, 152, 166, 195 and 203A.



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**5 LIST OF AMENDMENTS**

lt	amd No. 17, 1995, s 4; No. 59, 1998, s 4 sub No. 30, 2007, s 4
pt 1 hdg s 1	amd No. 30, 2007, s 10; No. 16, 2012, s 11 sub No. 30, 2007, s 5
s 2	amd No. 9, 2015, s 4 rep No. 30, 2007, s 6 ins No. 9, 2015, s 5
s 3	amd No. 11, 1991, s 4; No. 59, 1991, s 4; No. 61, 1991, s 4; No. 28, 1993, s 3; No. 78, 1993, s 4; No. 17, 1995, s 5; No. 15, 1996, s 3; No. 17, 1996, ss 5 and 6; No. 67, 1996, s 3; No. 18, 1998, ss 4 and 39; No. 59, 1998, s 5; No. 72, 1999, s 3; No. 27, 2000, s 3; No. 3, 2001, s 6; No. 56, 2001, s 4; No. 62, 2001, s 15; No. 63, 2004, s 4; No. 33, 2005, s 5; No. 3, 2007, s 4; No. 30, 2007, ss 6 and 10; No. 25, 2009, s 10; No. 38, 2010, s 3; No. 38, 2011, s 5; No. 24, 2011, s 39; No. 16, 2012, s 4; No. 27, 2013, s 128; No. 41, 2014, s 53; No. 9, 2015, s 6; No. 25, 2015, s 4; No. 8, 2016, s 45; No. 14, 2016, s 120; No. 21, 2020, s 4; No. 16, 2022, s 222
s 3A	ins No. 25, 2015, s 5
s 3B	ins No. 21, 2020, s 5 amd No. 4, 2024, s 50
s 4	amd No. 59, 1991, s 5; No. 18, 1998, ss 4 and 39; No. 9, 2015, s 7; No. 25, 2015, s 6; No. 21, 2020, s 6
s 4A – 4B	ins No. 21, 2020, s 7
s 5A	ins No. 25, 2015, s 7
pt 2 hdg pt 2	sub No. 30, 2007, s 7
div 1 hdg s 6	ins No. 38, 2011, s 6 sub No. 30, 2007, s 7 amd No. 38, 2011, s 7
s 7 pt 2	sub No. 30, 2007, s 7; No. 38, 2011, s 8
div 2 hdg pt 2 div 2	ins No. 38, 2011, s 9
sdiv 1 hdg s 7A	ins No. 38, 2011, s 9 ins No. 38, 2011, s 9 amd No. 19, 2014, s 26
ss 7B – 7C pt 2 div 2	ins No. 38, 2011, s 9
sdiv 2 hdg ss 7D – 7J s 7K	ins No. 38, 2011, s 9 ins No. 38, 2011, s 9 ins No. 38, 2011, s 9 amd No. 8, 2016, s 45
pt 2 div 2	
sdiv 2A hdg ss 7KA – 7KE	ins No. 25, 2015, s 8 ins No. 25, 2015, s 8
pt 2 div 2	
sdiv 3 hdg ss 7L – 7M	ins No. 38, 2011, s 9 ins No. 38, 2011, s 9
pt 3 hdg s 8	ins No. 30, 2007, s 7 rep No. 28, 1993, s 3 ins No. 30, 2007, s 7

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s 9	rep No. 28, 1993, s 3 ins No. 30, 2007, s 7 amd No. 38, 2011, s 10
s 10	amd No. 18, 1998, s 6 sub No. 30, 2007, s 7 amd No. 38, 2011, s 11
ss 11 – 12	sub No. 30, 2007, s 7
s 13	sub No. 30, 2007, s 7 amd No. 38, 2011, s 12
s 14	amd No. 18, 1998, ss 7 and 39 sub No. 30, 2007, s 7
s 15	sub No. 30, 2007, s 7
ss 16 – 17	rep No. 18, 1998, s 8
s 18	rep No. 5, 1995, s 19
pt III hdg	amd No. 11, 1991, s 5 rep No. 30, 2007, s 7
s 19	amd No. 11, 1991, s 6; No. 18, 1998, s 39; No. 12, 2006, s 4 rep No. 30, 2007, s 7
s 20	amd No. 11, 1991, s 7; No. 18, 1998, s 39; No. 12, 2006, s 5 rep No. 30, 2007, s 7
s 21	amd No. 18, 1998, s 39; No. 12, 2006, s 6 rep No. 30, 2007, s 7
s 22	amd No. 12, 2006, s 6 rep No. 30, 2007, s 7
ss 23 – 24	amd No. 18, 1998, s 39; No. 12, 2006, s 6 rep No. 30, 2007, s 7
ss 26 – 27	amd No. 18, 1998, s 39 rep No. 30, 2007, s 7
pt IV hdg	rep No. 30, 2007, s 7
pt IV	
div 1 hdg	rep No. 30, 2007, s 7
s 28	amd No. 11, 1991, s 8; No. 17, 1995, s 6; No. 18, 1998, s 39 rep No. 30, 2007, s 7
s 28A	ins No. 8, 1993, s 2 sub No. 42, 2001, s 3 rep No. 30, 2007, s 7
s 28B	ins No. 41, 2000, s 3 rep No. 30, 2007, s 7
s 29	amd No. 11, 1991, s 9; No. 27, 1997, s 3; No. 18, 1998, s 39 rep No. 30, 2007, s 7
s 30	amd No. 17, 1995, s 7; No. 27, 1997, s 4 rep No. 30, 2007, s 7
s 30A	ins No. 17, 1995, s 8 amd No. 27, 1997, s 5; No. 18, 1998, s 39 rep No. 30, 2007, s 7
s 30B	ins No. 17, 1995, s 8 amd No. 27, 1997, s 6 rep No. 30, 2007, s 7
s 30C	ins No. 17, 1995, s 8 amd No. 27, 1997, s 7; No. 18, 1998, s 39 rep No. 30, 2007, s 7
s 31	amd No. 11, 1991, s 10; No. 18, 1998, s 39 rep No. 30, 2007, s 7
s 32	amd No. 18, 1998, s 39 rep No. 30, 2007, s 7
pt IV	
div 2 hdg	rep No. 30, 2007, s 7
ss 35 – 36	rep No. 30, 2007, s 7

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pt IV	
div 3 hdg	rep No. 30, 2007, s 7
ss 37 – 38	rep No. 30, 2007, s 7
s 39	amd No. 18, 1998, s 39 rep No. 30, 2007, s 7
pt IV	
div 4 hdg	rep No. 30, 2007, s 7
s 40	rep No. 30, 2007, s 7
s 41	amd No. 11, 1991, s 11 rep No. 30, 2007, s 7
s 41A	ins No. 11, 1991, s 12 amd No. 41, 2000, s 4; No. 17, 2001, s 21 rep No. 30, 2007, s 7
ss 42 – 43	rep No. 30, 2007, s 7
s 44	amd No. 18, 1998, s 39 rep No. 30, 2007, s 7
pt IV	
div 4A hdg	ins No. 61, 1991, s 5 rep No. 30, 2007, s 7
s 44A	ins No. 61, 1991, s 5 amd No. 59, 1998, s 6 rep No. 30, 2007, s 7
ss 44B – 44D	ins No. 61, 1991, s 5 rep No. 30, 2007, s 7
s 44E	ins No. 61, 1991, s 5 amd No. 18, 1998, s 39 rep No. 30, 2007, s 7
ss 44F – 44G	ins No. 61, 1991, s 5 rep No. 30, 2007, s 7
pt IV	
div 5 hdg	rep No. 30, 2007, s 7
s 45	amd No. 61, 1991, s 6 rep No. 30, 2007, s 7
s 46	amd No. 17, 1996, s 6; No. 18, 1998, s 39 rep No. 30, 2007, s 7
ss 47 – 48	rep No. 61, 1991, s 7
s 48A	ins No. 11, 1991, s 13 rep No. 30, 2007, s 7
ss 48B – 48C	ins No. 11, 1991, s 13 rep No. 17, 1995, s 9 amd No. 30, 2007, s 10
pt V hdg	
pt 5	
div 1 hdg	amd No. 16, 2012, s 11
s 49	amd No. 59, 1991, s 6; No. 61, 1991, s 8; No. 82, 1991, s 11; No. 78, 1993, s 5; No. 8, 1995, s 4; No. 27, 1997, s 8; No. 18, 1998, s 39; No. 42, 2002, s 4; No. 1, 2004, s 62; No. 63, 2004, s 5; No. 44, 2005, s 22; No. 30, 2007, s 10; No. 18, 2010, s 87; No. 16, 2012, s 5; No. 17, 2012, s 55; No. 9, 2015, s 8; No. 28, 2018, s 25; No. 21, 2020, s 22
s 49A	ins No. 9, 2015, s 9
s 50	rep No. 61, 1991, s 9 ins No. 27, 1997, s 9 amd No. 38, 2010, s 3
s 50A	ins No. 9, 2015, s 10 amd No. 14, 2016, s 120; No. 10, 2018, s 6
s 50AA	ins No. 25, 2015, s 9
s 51	amd No. 18, 1998, s 9; No. 3, 2007, s 5; No. 16, 2022, s 222
s 52	amd No. 50, 1988, s 2
s 53	amd No. 18, 1998, s 39; No. 3, 2007, s 6

## ENDNOTES

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s 53AA	ins No. 3, 2007, s 7 amd No. 11, 2013, s 66; No. 25, 2015, s 10
ss 53AB –	
53AC	ins No. 3, 2007, s 7
s 53A	ins No. 18, 1998, s 10
s 54	amd No. 61, 1991, s 10 sub No. 18, 1998, s 11
ss 55 – 56	amd No. 18, 1998, s 39
s 57	amd No. 61, 1991, s 11; No. 18, 1998, s 39; No. 3, 2007, s 8
s 58	rep No. 61, 1991, s 12 ins No. 9, 2015, s 11
s 59	rep No. 61, 1991, s 12
s 60	amd No. 59, 1991, s 7; No. 22, 2011, s 42
s 61	rep No. 61, 1991, s 12 ins No. 18, 1998, s 12 amd No. 41, 2014, s 53; No. 21, 2020, s 8
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sdiv AA hdg	ins No. 9, 2015, s 12
s 61A	ins No. 9, 2015, s 12 amd No. 25, 2015, s 11
s 61B	ins No. 25, 2015, s 12
s 62	amd No. 11, 1991, s 14; No. 61, 1991, s 13; No. 42, 2002, s 5; No. 9, 2015, s 13; No. 25, 2015, s 13
s 63	amd No. 59, 1991, s 8
s 64	amd No. 18, 1998, ss 13 and 39; No. 42, 2002, s 6; No. 13, 2008, s 4 sub No. 9, 2015, s 14 amd No. 25, 2015, s 14
s 65	amd No. 59, 1991, s 9; No. 17, 1995, s 12; No. 18, 1998, s 39; No. 42, 2002, s 7; No. 16, 2012, s 6; No. 9, 2015, s 15; No. 25, 2015, s 15; No. 21, 2020, s 9
s 65A	ins No. 18, 1998, s 14 amd No. 42, 2002, s 8 sub No. 25, 2015, s 16
s 65B	ins No. 42, 2002, s 9 sub No. 16, 2012, s 7
s 65C	ins No. 25, 2015, s 17
s 66	amd No. 3, 2001, s 6 sub No. 13, 2008, s 5
s 67	rep No. 61, 1991, s 12
s 68	amd No. 61, 1991, s 14; No. 18, 1998, s 39; No. 42, 2002, s 10
s 69	sub No. 61, 1991, s 15 amd No. 78, 1993, s 6; No. 18, 1998, ss 15 and 39; No. 59, 1998, s 7; No. 42, 2002, s 11; No. 63, 2004, s 6; No. 9, 2015, s 16; No. 21, 2020, s 22
s 70	amd No. 59, 1991, s 10; No. 9, 2015, s 17
s 71	amd No. 59, 1991, s 11; No. 42, 2002, s 12
s 72	amd No. 78, 1993, s 7; No. 18, 1998, s 39; No. 59, 1998, s 8; No. 42, 2002, s 13; No. 9, 2015, s 18
s 72A	ins No. 38, 2011, s 13; No. 8, 2016, s 45
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sdiv D hdg	amd No. 16, 2012, s 11
s 73	amd No. 18, 1998, s 39; No. 44, 2005, s 22; No. 18, 2010, s 88; No. 16, 2012, s 11 sub No. 25, 2015, s 18 amd No. 21, 2020, s 10

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- pt 5  
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sdiv E hdg      rep No. 25, 2015, s 19  
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- s 74                amd No. 59, 1991, s 12; No. 17, 1995, s 13; No. 18, 1998, s 39; No. 42,  
                    2002, s 14  
                    rep No. 25, 2015, s 19  
                    ins No. 21, 2020, s 11
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div 4 hdg        amd No. 61, 1991, s 16  
s 74A             ins No. 21, 2020, s 12  
s 75               sub No. 61, 1991, s 17; No. 25, 2015, s 20  
s 75A             ins No. 61, 1991, s 17  
                    amd No. 27, 1997, s 10; No. 59, 1998, s 9; No. 42, 2002, s 15; No. 38, 2010,  
                    s 3  
                    sub No. 25, 2015, s 20  
                    amd No. 21, 2020, ss 13 and 22
- s 75B             ins No. 61, 1991, s 17  
                    amd No. 17, 1995, s 14; No. 27, 1997, s 11; No. 18, 1998, s 39
- s 76               amd No. 61, 1991, s 18; No. 18, 1998, s 39
- s 77               amd No. 18, 1998, s 39
- s 78               amd No. 18, 1998, s 39; No. 21, 2020, s 14
- pt 5  
div 4A hdg      ins No. 25, 2015, s 21  
s 78A             ins No. 25, 2015, s 21  
                    amd No. 21, 2020, s 15
- s 78B             ins No. 25, 2015, s 21  
                    amd No. 21, 2020, s 16
- s 79               rep No. 25, 2015, s 22
- s 81               amd No. 18, 1998, s 39
- s 82               amd No. 78, 1993, s 8; No. 18, 1998, ss 16 and 39; No. 63, 2004, s 7; No. 9,  
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- s 83               amd No. 59, 1990, s 4; No. 41, 2000, s 4; No. 17, 2001, s 21
- s 84               amd No. 11, 1991, s 15; No. 18, 1998, ss 17 and 39; No. 59, 1998, s 10;  
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- s 85               amd No. 61, 1991, s 19  
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- s 85A             ins No. 18, 1998, s 19  
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- s 86               amd No. 59, 1998, s 12; No. 38, 2010, s 3
- s 87               amd No. 61, 1991, s 20  
                    sub No. 78, 1993, s 10; No. 18, 1998, s 20  
                    amd No. 13, 2008, s 6; No. 25, 2015, s 25
- s 88               amd No. 18, 1998, ss 21 and 39; No. 59, 1998, s 35; No. 38, 2010, s 3
- s 89               amd No. 18, 1998, s 39; No. 16, 2012, s 8
- s 90               amd No. 18, 1998, ss 22 and 39; No. 59, 1998, s 35; No. 38, 2010, s 3
- s 90A             ins No. 18, 1998, s 23  
                    amd No. 38, 2010, s 3
- s 90B             ins No. 63, 2004, s 9
- s 91               amd No. 9, 1987, s 2; No. 61, 1991, s 21; No. 63, 2004, s 10
- s 91A             ins No. 61, 1991, s 22  
                    sub No. 78, 1993, s 11  
                    amd No. 18, 1998, s 39; No. 9, 2015, s 20

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s 91B	ins No. 61, 1991, s 22 sub No. 78, 1993, s 11 amd No. 18, 1998, s 39 rep No. 59, 1998, s 13
s 91BA	ins No. 66, 1992, s 2 rep No. 78, 1993, s 11
s 91C	ins No. 61, 1991, s 22 amd No. 66, 1992, s 3 rep No. 78, 1993, s 11
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s 94	amd No. 78, 1993, s 13; No. 59, 1998, s 15; No. 30, 2007, s 10 rep No. 38, 2011, s 14
ss 95 – 96 s 97	rep No. 38, 2011, s 14 amd No. 61, 1991, s 23; No. 78, 1993, s 14; No. 18, 1998, s 39 rep No. 38, 2011, s 14
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s 99A	ins No. 59, 1998, s 17 rep No. 38, 2011, s 14
s 100	amd No. 78, 1993, s 15; No. 18, 1998, s 24 sub No. 59, 1998, s 17 rep No. 38, 2011, s 14
s 101	amd No. 14, 1989, s 7; No. 18, 1998, s 39 rep No. 38, 2011, s 14
s 102	amd No. 78, 1993, s 16; No. 18, 1998, s 39 rep No. 38, 2011, s 14
s 103	amd No. 18, 1998, s 39 rep No. 38, 2011, s 14
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s 103B	ins No. 59, 1998, s 18
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s 103E	ins No. 59, 1998, s 18
s 103F	ins No. 59, 1998, s 18 amd No. 25, 2015, s 30

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s 103FA	ins No. 25, 2015, s 31 amd No. 21, 2020, s 17
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s 103H	ins No. 59, 1998, s 18 amd No. 38, 2010, s 3 sub No. 25, 2015, s 32
s 103J	ins No. 59, 1998, s 18 amd No. 42, 2002, s 18
s 103K	ins No. 59, 1998, s 18 sub No. 3, 2001, s 6
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s 104	amd No. 59, 1998, s 19 amd No. 9, 1987, s 2; No. 61, 1991, s 24; No. 78, 1993, s 17; No. 59, 1998, s 20; No. 42, 2002, s 19; No. 30, 2007, s 10; No. 38, 2011, s 16
s 105	amd No. 18, 1998, s 39; No. 59, 1998, s 21; No. 38, 2011, s 17; No. 8, 2016, s 45
s 106	amd No. 61, 1991, s 25; No. 78, 1993, s 18 sub No. 59, 1999, s 22
s 107	amd No. 9, 1987, s 2; No. 78, 1993, s 19 sub No. 59, 1998, s 22
s 108	amd No. 38, 2011, s 18 rep No. 25, 2015, s 33
s 109	amd No. 27, 1997, s 12; No. 18, 1998, s 39
s 110	amd No. 59, 1998, s 23
s 110A	ins No. 78, 1993, s 20 amd No. 38, 2011, s 19
s 110B	ins No. 78, 1993, s 20 amd No. 18, 1998, s 39; No. 23, 2012, s 32
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s 112	amd No. 30, 2007, s 9
s 114	amd No. 78, 1993, s 21
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s 114A	ins No. 59, 1998, s 25 amd No. 38, 2011, s 20 ins No. 59, 1998, s 25 amd No. 38, 2011, s 21; No. 8, 2016, s 45
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s 117	amd No. 16, 2012, s 11 amd No. 16, 2012, s 11; No. 25, 2015, s 34
s 118	sub No. 18, 1998, s 25 amd No. 23, 2002, s 2
s 119	amd No. 25, 2015, s 35
s 120	amd No. 25, 2015, s 36
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s 121	amd No. 18, 1998, ss 26 and 39; No. 25, 2015, s 38
s 121A	ins No. 59, 1998, s 28 amd No. 42, 2002, s 20; No. 38, 2011, s 23; No. 9, 2015, s 21
s 122	amd No. 18, 1998, s 39; No. 38, 2010, s 3
s 124	amd No. 18, 1998, s 39; No. 59, 1998, s 29

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s 124A	ins No. 59, 1998, s 30 amd No. 16, 2012, s 11
s 125	amd No. 17, 1996, s 6; No. 18, 1998, s 39; No. 59, 1998, s 35; No. 38, 2010, s 3
s 126	amd No. 17, 1996, s 6, No. 18, 1998, s 39; No. 59, 1998, s 31; No. 3, 2007, s 9; No. 30, 2007, s 10; No. 38, 2010, s 3 sub No. 25, 2015, s 39
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s 126A	ins No. 78, 1993, s 22 amd No. 18, 1998, s 27; No. 30, 2007, s 10; No. 38, 2011, s 24
s 127	amd No. 61, 1991, s 27 sub No. 18, 1998, s 28
s 129	amd No. 18, 1998, s 39; No. 25, 2015, s 40
s 130	amd No. 11, 1991, s 16; No. 18, 1998, ss 29 and 39; No. 59, 1998, s 35; No. 38, 2010, s 3; No. 16, 2012, s 11
ss 131 – 132	amd No. 18, 1998, s 39
ss 135 – 136	amd No. 18, 1998, s 39; No. 16, 2012, s 11
ss 137 – 138	amd No. 18, 1998, s 39
s 138A	ins No. 11, 1991, s 17
s 139	amd No. 18, 1998, s 39
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s 141	amd No. 18, 1998, ss 32 and 39
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s 145	amd No. 59, 1991, s 13; No. 18, 1998, s 33
s 147	amd No. 18, 1998, s 39; No. 38, 2010, s 3
s 148	amd No. 18, 1998, s 39
s 149	amd No. 18, 1998, s 39; No. 16, 2012, s 11
s 150	amd No. 18, 1998, s 34
s 151	amd No. 18, 1998, s 35
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ss 153 – 156	amd No. 18, 1998, s 39
s 158	amd No. 18, 1998, s 39
s 160	amd No. 18, 1998, s 39
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s 164A	ins No. 10, 2001, s 4 amd No. 38, 2010, s 3; No. 21, 2020, s 19
s 164B	ins No. 10, 2001, s 4 amd No. 23, 2002, s 3
s 165	amd No. 10, 2001, s 5; No. 16, 2012, s 11
s 166	amd No. 27, 1999, s 15; No. 15, 2009, s 16
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s 169	sub No. 61, 1991, s 28 rep No. 25, 2015, s 41



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- s 170 sub No. 61, 1991, s 28  
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- s 171 sub No. 61, 1991, s 28  
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- s 178 amd No. 59, 1998, s 35; No. 38, 2010, s 3; No. 16, 2012, s 11
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- s 181 amd No. 18, 1998, s 39  
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- s 186A ins No. 11, 1991, s 18  
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- s 187A ins No. 61, 1991, s 30  
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- s 187B ins No. 61, 1991, s 30  
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- s 189 amd No. 61, 1991, s 31; No. 18, 1998, s 39; No. 16, 2012, s 11
- s 191 amd No. 16, 2012, s 11
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- pt X hdg ins No. 63, 2004, s 13; No. 30, 2007, s 10
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- s 195 ins No. 63, 2004, s 13  
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- s 196 ins No. 63, 2004, s 13
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