

# NORTHERN TERRITORY OF AUSTRALIA

## WORK HEALTH ACT

As in force at 26 January 2005

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 26 January 2005

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## WORK HEALTH ACT

**An Act to promote occupational health and safety in the Territory to prevent workplace injuries and diseases, to protect the health and safety of the public in relation to work activities, to promote the rehabilitation and maximum recovery from incapacity of injured workers, to provide financial compensation to workers incapacitated from workplace injuries or diseases and to the dependants of workers who die as the results of such injuries or diseases, to establish certain bodies and a fund for the proper administration of the Act, and for related purposes**

### Part 1 Preliminary

#### 1 Short title

This Act may be cited as the *Work Health Act*.

#### 2 Commencement

- (1) Sections 1, 2 and 194 and Part II shall come into operation on the day on which the Administrator's assent to this Act is declared.
- (2) The remaining provisions of this Act shall come into operation on such date or dates as is or are fixed by the Administrator by notice in the *Gazette*.

#### 3 Interpretation

- (1) In this Act, unless the contrary intention appears:

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

**act** includes an omission.

**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.

**Authority** means the Work Health Authority established by section 6.

**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.

**Chief Executive Officer** means the Chief Executive Officer, within the meaning of the *Public Sector Employment and Management Act*, of the Agency administering this Act.

**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.

**Court** means the Work Health Court.

**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 V.

**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 Judge, a magistrate or a member of the Police Force, means the Territory.

**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***, in relation to a worker, means a physical or mental injury arising before or after the commencement of the relevant provision of this Act out of or in the course of his or her employment and includes:

- (a) a disease; and
- (b) the aggravation, acceleration, exacerbation, recurrence or deterioration of a pre-existing injury or disease,

but does not include an injury or disease suffered by a worker as a result of reasonable disciplinary action taken against the worker or failure by the worker to obtain a promotion, transfer or benefit in connection with the worker's employment or as a result of reasonable administrative action taken in connection with the worker's employment.

***insurer*** means:

- (a) a body corporate authorized under the *Insurance Act 1973* of the Commonwealth to carry on insurance business; or
- (b) the Territory Insurance Office established under the *Territory Insurance Office Act*,

and includes a person who, at the time a relevant policy of insurance or indemnity was taken out, was authorized as referred to in paragraph (a).

***Judicial Registrar*** means a Judicial Registrar of the Court appointed under section 100(2).

***managing magistrate*** means the managing magistrate for the Court appointed under section 99A.

***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.

***Registrar*** means the Registrar of the Court appointed under section 100 and includes a Judicial Registrar.

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

**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 VII, subject to section 118(2) – the Territory.

**ship** includes a vessel, boat or other craft.

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

**this Act** includes the Regulations.

**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.

**worker** means:

- (a) for the purposes of the provisions of this Act relating to occupational health and safety – a natural person who, under a contract or agreement of any kind (whether expressed or implied, oral or in writing or under a law of the Territory or not), performs work or a service of any kind for another person; and
- (b) for the purposes of the provisions of this Act relating to compensation and rehabilitation – a natural person:
  - (i) who, under a contract or agreement of any kind (whether expressed or implied, oral or in writing or under a law of the Territory or not), performs work or a service of any kind for another person unless and until the person notifies the other person, in writing, of a number that is, or purports to be, the ABN of that person for the purposes of the work or service; or
  - (ii) who is a person, or a member of a class of persons, prescribed for the purposes of this definition;

but does not include a person:

- (iii) who is employed in the service of the Commonwealth;

- (iv) subject to subsection (2), who is a member of the immediate family of the employer;
- (v) subject to subsection (3), who is a director (by whatever name called) of a body corporate;
- (vi) subject to subparagraph (b)(ii) of this definition and to subsections (7), (8) and (9), who is employed 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;
- (vii) who is a person, or a member of a class of persons prescribed for the purposes of this definition;
- (viii) 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;
- (ix) subject to subsection (5) – who is employed or engaged by a householder; or
- (x) who is employed or engaged otherwise 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.

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

- (2) A prescribed member of the immediate family of an employer who has not notified the employer in writing of a number that is, or purports to be, the ABN of the member for the purposes of such employment and whose name, nature of employment and estimated wages are disclosed to the employer's insurer at the time when the employment of that member is commenced or the relevant insurance or indemnity is effected, whichever is the later, and thereafter where the policy is renewed, is a worker for the purposes of this Act.
- (3) A director of a body corporate who has not notified the body corporate in writing of a number that is, or purports to be, the ABN of the director for the purposes of such employment and whose name, nature of employment and estimated remuneration (by whatever name called) are disclosed to the body corporate's insurer at the time of the appointment of the director or the relevant insurance or indemnity is effected, whichever is the later, and thereafter where the policy is renewed, is a worker for the purposes of this Act.

- (4) A natural person performing work under a community work order under section 53(1)(e) of the *Juvenile Justice Act* is to be taken to be a worker in the employ of the Territory during the time the person is performing work under the order and, where the person is a worker during normal working hours and was so employed during those hours immediately preceding the time he or she performed work under the order, his or her normal weekly earnings in that employment shall be deemed, for the purpose of this Act, to be his or her normal weekly earnings when performing work under the order.
- (5) A prescribed employee employed by a householder who earns more than, or is paid at a rate that would exceed, the prescribed amount is a worker of the householder for the purposes of this Act.
- (6) A person is a worker for the purposes of this Act, despite that he or she has notified in writing the person for whom he or she performs work or a service of a number that is, or purports to be, the ABN of the person, if the person and the person for whom he or she performs work or a service agree in writing that the ABN no longer applies to the work or service performed by the person.
- (6A) If a person has notified in writing a person for whom he or she performs work or a service of a number that is, or purports to be, the ABN of that person, the person is not a worker for the purposes of this Act in respect of any subsequent work or service performed for that other person unless the person and the person for whom he or she performs the work or service agree in writing that the ABN no longer applies to the work or service performed by the person.
- (7) A natural person who, without remuneration or reward, voluntarily engages in assisting in emergency services, training exercises or other activities with the consent of or under the authority and supervision of, or in co-operation with, the Director, Regional Controller or Local Controller appointed under the *Disasters Act*, shall be deemed to be a worker in the employ of the Territory.
- (8) A natural person who, without remuneration or reward, voluntarily engages in fighting a fire, training exercises or other activities with the consent of or under the authority and supervision of, or in co-operation with, a volunteer fire brigade established by the Council, within the meaning of the *Bushfires Act*, is to be taken to be a worker who is employed by the Territory.
- (8A) A natural person who, without remuneration or reward, voluntarily engages in fighting fires or dealing with other emergencies, or training exercises or other activities, as a volunteer member, within the meaning of the *Fire and Emergency Act*, shall be deemed to be a worker in the employ of the Territory.

- (9) A natural person who, without remuneration or reward (other than reasonable travelling, accommodation or other out-of-pocket expenses), voluntarily engages in work or training of a kind by reference or in relation to which a person or class of persons is prescribed for the purposes of paragraph (b)(ii) of the definition of **worker** in subsection (1), shall be deemed to be a worker employed under a contract of employment by the person or organization prescribed.
- (10) Notwithstanding anything in this Act, a person shall be deemed not to be a worker for the purposes of this Act while he or she is, in pursuance of a contract:
- (a) participating as a contestant in a sporting or athletic activity;
  - (b) engaged in training or preparing himself or herself with a view to his or her so participating; or
  - (c) travelling in connection with his or her so participating or being so engaged,

unless, under the contract, he or she 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 his or her receiving remuneration of not less than that amount.

- (11) Where in this Act the expression **Default 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 penalty specified after that expression for each day during which the offence continues.

#### **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 he or she:
- (a) on a working day that he or she attends at his or her 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 his or her

employment or during an ordinary recess and does not during that absence voluntarily subject himself or herself to an abnormal risk of injury;

- (b) is travelling by the shortest convenient route between his or her place of residence and his or her workplace;
  - (c) is travelling by the shortest convenient route between:
    - (i) his or her place of residence or his or her workplace; and
    - (ii) a trade, technical or other training school which he or she is required to attend by the terms of his or her employment or as an apprentice or which he or she is expected to attend by his or her employer;
  - (d) is in attendance at a school referred to in paragraph (c)(ii) whilst so required to attend;
  - (e) is travelling by the shortest convenient route between:
    - (i) his or her place of residence or his or her workplace; and
    - (ii) any other place for the purpose of obtaining a medical certificate, receiving medical, surgical or hospital advice, attention or treatment, or receiving a payment of compensation in connection with an injury for which he or she is entitled to receive compensation or for the purpose of submitting to a medical examination required by or under this Act;
  - (f) is in attendance at a place referred to in paragraph (e)(ii) for a purpose so referred to; or
  - (g) 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 his or her place of employment for another employer.
- (2) Subsection (1) 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 his or her employment or attendance at a school or place referred to in subsection (1)(c)(ii) or (1)(e)(ii), which, having regard to all the circumstances, would ordinarily have materially added to the risk of injury.

- (2A) Notwithstanding subsection (1), an injury to a worker shall be taken not to arise ***out of or in the course of his or her employment*** if the injury is sustained in an accident, as defined in the *Motor Accidents (Compensation) Act*, while he or she:
- (a) having been at his or her workplace, is temporarily absent during an ordinary recess;
  - (b) except as provided in subsection (2B), is travelling in circumstances referred to in subsection (1)(b) or (g); or
  - (c) is travelling between his or her place of residence and a place referred to in subsection (1)(c)(ii) or (e)(ii).
- (2B) Subsection (2A)(b) does not apply where a worker:
- (a) is travelling between his or her place of residence and a workplace, which is not his or her normal or usual workplace, at the request of his or her employer; or
  - (b) is required by his or her employer to work outside his or her normal hours of work while he or she is travelling between his or her place of residence and a workplace and, in accordance with the terms of his or her employment, he or she is paid, in whole or in part, for the time taken to travel to that workplace.
- (3) In a case referred to in paragraph (g) of subsection (1), the injury shall be deemed to have occurred while the worker was being employed by the employer last mentioned in that paragraph.
- (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 a disease, or a disease of a kind, specified in Column 1 of Schedule 1 as related to employment of a kind specified in Column 2 of that Schedule opposite to that disease in Column 1; 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.

## 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.

## **Part II                    Work Health Authority**

### **6                    Establishment of Work Health Authority**

- (1) There is established by this Act an authority by the name of the Work Health Authority.
- (2) The Authority:
  - (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 Authority affixed to a document and shall assume that it was duly affixed.

### **7                    Composition of Authority**

- (1) The Authority shall be constituted by the Chief Executive Officer.
- (2) The establishment of the Authority is not affected by reason only of there being a vacancy in the office of the Chief Executive Officer.

### **10                  Functions of Authority**

The functions of the Authority are to administer and enforce this Act and, in particular:

- (a) to advise the Minister on matters relating to occupational health and safety policy in the Territory;
- (b) to develop, publish and recommend occupational health and safety standards for the Territory;
- (c) to enforce, in accordance with this Act, compliance with occupational health and safety standards required by or under this Act to be observed;
- (d) to encourage employers and workers to consult with each other about safe work practices in the workplace;
- (e) to identify priorities and needs in occupational health and safety in the Territory;

- (f) to promote a co-ordinated and integrated approach by government authorities to inspection responsibilities in occupational health and safety;
- (g) to advise and assist employers and workers on occupational health and safety matters generally and particularly in the performance of their health and safety obligations under this or any other Act and advise them of the assistance available to them in carrying out those obligations;
- (h) where the Minister so directs, to carry out investigations at a workplace;
- (j) if it thinks fit, where an incident occurs at a workplace, to carry out investigations at the workplace in relation to that incident;
- (k) to liaise with and, where required by the Minister, represent the Territory at meetings and in communicating with, Commonwealth and State occupational health and safety authorities;
- (m) to facilitate and encourage liaison between employers, workers, insurers and persons and authorities providing health and rehabilitation services to ensure and encourage the provision of appropriate and early rehabilitation treatment of workers incapacitated or impaired in a compensable incident;
- (n) to identify rehabilitation services needs in the Territory arising from compensable incidents;
- (p) to provide financial and other assistance to bodies established by this Act;
- (q) to monitor, collect and analyze data on compensable or other incidents in the Territory and recommend to the Minister appropriate priorities on the basis of such analyses;
- (r) to provide information, advice and education to employer and worker groups and government departments and authorities on matters to which this Act relates;
- (s) to approve insurers to provide workers' compensation insurance in the Territory;
- (t) to ensure, as far as practicable, compliance with the compulsory insurance provisions of this Act;
- (u) to approve forms for the purposes of this Act;
- (w) to advise the Minister on the operation of this Act;

(y) to prosecute persons for offences against this Act; and

(z) to further the objects of this Act,

and such other functions as are imposed on it by or under this or any other Act.

## **11 Powers of Authority**

The Authority has such powers as are necessary to enable it to perform its functions or as are conferred on it by or under this or any other Act.

## **12 Delegation**

(1) The Authority may, by instrument in writing, delegate to a person 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 Authority.

(3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Authority.

## **13 Ministerial control**

The Authority, in the exercise of its powers and the performance of its functions, is subject to the directions of the Minister.

## **14 Obtaining of information by Authority**

(1) The Authority may, by notice in writing, require a person to provide information that the Authority requires for the performance of its functions under this Act.

(1A) A notice under subsection (1) is to specify:

(a) the information required;

(b) the form in which the information is to be provided; and

(c) the time within which the information is to be provided.

- (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 Authority allows, is guilty of an offence.

Penalty: In the case of a body corporate – \$10,000.

In the case of a natural person – \$2,000.

Default penalty: In the case of a body corporate – \$500.

In the case of a natural person – \$100.

- (3) The Authority may, in writing, authorize a person to audit the employment, wages and other records of an employer necessary to enable it to carry out its functions under this Act and a person so authorized has such of the powers of entry or otherwise of an officer under Part IV as are necessary to enable him or her to perform his or her functions as an auditor.

## **15 Restrictions on disclosure of information by Authority**

- (1) This section applies to and in relation to information obtained under section 14 by the Authority being:
- (a) information:
- (i) furnished by a person involved in a business, commercial or financial undertaking;
  - (ii) relating to trade secrets or other matters of a business, commercial or financial nature; and
  - (iii) disclosure of which would be likely to expose that undertaking to competitive disadvantage; or
- (b) information the disclosure of which would involve the unreasonable disclosure of information relating to the personal affairs of a natural person.
- (2) The Authority shall not, except in accordance with this section, disclose information to or in relation to which this section applies.
- (3) Where the Authority determines that the public interest in favour of disclosure of information to or in relation to which this section applies outweighs considerations of competitive disadvantage to an undertaking or of privacy, it may disclose that information.

- (4) In making a determination under subsection (3), the Authority shall consider whether disclosure of the information is necessary for protecting or promoting the objects of this Act.
- (5) Where the Authority has determined under subsection (3) to disclose information, it shall give notice in writing of its determination to the person who furnished the information and, subject to subsection (7), shall not disclose that information until the expiration of 10 days after the person has received that notice.
- (6) A person who receives a notice under subsection (5) may, within 10 days after receiving the notice, or such longer period as the Court allows, apply to the Court for a review of the determination of the Authority.
- (7) A person who applies under subsection (6) to the Court shall immediately give notice of that application to the Authority and the Authority, on receiving the notice, shall not disclose the information in respect of which the application is made pending the decision of the Court.
- (8) Notwithstanding anything in this section, the Authority may, at any time, disclose information referred to in subsection (1):
  - (a) to the Minister;
  - (b) for the purposes of section 145;
  - (c) to the Commissioner, as defined in the *Taxation Administration Act*; or
  - (d) to any person if the Minister is of the opinion that it is in the public interest that the information be disclosed.

## **Part III                      Work Health Advisory Council**

### **19                      Definitions**

In this Part, unless the contrary intention appears:

***Chairperson*** means the Chairperson of the Council.

***Council*** means the Work Health Advisory Council constituted under section 20.

***member*** means a member of the Council.

**20 Work Health Advisory Council**

- (1) There shall be a council by the name of the Work Health Advisory Council.
- (2) The Council shall consist of the Chief Executive Officer, who shall be its Chairperson, and not more than 10 other members appointed by the Minister.
- (3) Before appointing the members of the Council 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, insurers or professional persons concerned with medical and rehabilitation treatment of workers, or with occupational health and safety, 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).

**21 Period of appointment**

Subject to this Part, 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.

**22 Leave of absence**

The Minister may grant leave of absence to a member on such terms and conditions as the Minister thinks fit.

**23 Resignation of members**

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

**24 Dismissal of members**

- (1) The Minister may terminate the appointment of a member for inability, inefficiency, misbehaviour or physical or mental incapacity.
- (2) The Minister shall terminate the appointment of a member who:
  - (a) is absent, except on leave granted by the Council, or under section 22 by the Minister, from 3 consecutive meetings of the Council; or

- (b) becomes bankrupt, applies to take the benefit of any 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.

## **25 Functions and powers of Council**

- (1) The functions of the Council are:
  - (a) to inquire into and report to the Minister on matters referred to it by the Minister;
  - (b) to investigate and make recommendations to the Minister about any matter under this Act or relating to the administration of this Act; and
  - (c) such other functions as are imposed on it by or under this or any other Act.
- (2) The Council 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.

## **26 Meetings of Council**

- (1) The Chairperson shall call such meetings of the Council as are necessary for the performance of its functions and the exercise of its powers.
- (2) The Minister may at any time direct the Chairperson to convene a meeting of the Council and the Chairperson shall convene a meeting accordingly.
- (3) The Chairperson shall preside at all meetings of the Council.
- (4) At a meeting of the Council:
  - (a) the Chairperson and 50% of the other 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 shall have a casting vote as well as a deliberative vote; and
  - (c) subject to this Act, the Council shall determine the procedure to be followed at or in connection with the meeting.
- (5) The Council shall keep records of its meetings.

## 27 Annual report of Council

- (1) The Council shall, on or before 30 September in each year, prepare and submit to the Minister a report of its operations and the operation of this Act during the year ending on the preceding 30 June.
- (2) The Minister shall cause the report submitted under subsection (1) to be laid before the Legislative Assembly within 6 sitting days of the Assembly after he or she receives the report.

## Part IV Occupational health and safety

### Division 1 Preliminary

#### 28 Definitions

In this Part, unless the contrary intention appears:

**improvement notice** means an improvement notice under section 40.

**occupier**, in relation to a workplace, means a person who has the management or control of the workplace.

**officer** means a work health officer appointed under section 35 and includes the Chief Executive Officer, and also includes a person authorized under section 14(3) while he or she is performing his or her functions as an auditor.

**owner**, in relation to a building, structure or plant, means a person who has right or title to, and management of, or control over, the building, structure or plant, and includes a person who is exercising such management or control as an agent of the owner.

**practicable**, in relation to a hazard or risk, means practicable having regard to:

- (a) its severity;
- (b) the state of knowledge about the hazard or risk and the ways of removing or mitigating it;
- (c) the availability and suitability of ways to remove or mitigate it; and
- (d) the cost of removing or mitigating it.

**prohibition notice** means a prohibition notice under section 41.

**28A Part not to apply to mining site or mining activity**

This Part does not apply in relation to:

- (a) a mining site within the meaning of the *Mining Management Act*; or
- (b) work or services performed in relation to a mining activity within the meaning of the *Mining Management Act*.

**28B Part not to apply to workplace etc. under *Petroleum Act***

This Part does not apply in relation to:

- (a) a workplace; or
- (b) work or service of any kind performed at a workplace, to which Part IIIA of the *Petroleum Act* applies.

**29 Duties of employers**

- (1) An employer shall, so far as is practicable:
  - (a) provide and maintain a working environment at a workplace that is safe and without risk to the health or safety of the workers working at the workplace; and
  - (b) ensure that the health and safety of any other person is not adversely affected as a result of the work in which the employer or any worker is engaged.

Penalty: In the case of a body corporate – \$125,000.

In the case of a natural person – \$25,000.

- (2) Without limiting the generality of subsection (1), an employer contravenes that subsection if he or she fails to:
  - (a) provide and maintain plant and systems of work that are, so far as is practicable, safe and without risk to health;
  - (b) make arrangements for ensuring, so far as is practicable, safety and absence of risk to health in connection with the use, handling, storage and transporting of plant and substances;
  - (c) maintain, so far as is practicable, a workplace under his or her control and management in a condition that is safe and without risk to health;

- (d) provide such information, instruction, training and supervision to a worker as is necessary to enable the worker to perform his or her work in a manner that is safe and without risk to health; or
  - (e) ensure that visitors to a workplace under his or her control and management are aware of the safety requirements relevant to such visitors and that they abide by those requirements or remove a visitor who refuses or fails to abide by those requirements.
- (3) The Regulations may provide that a prescribed employer or a member of a prescribed class of employers shall:
- (a) monitor the health of his or her workers;
  - (b) keep information and records relating to the health and safety of his or her workers;
  - (c) employ or engage a person who, being suitably qualified in relation to occupational health and safety, is able to provide advice to the employer in relation to the health and safety of the employer's workers;
  - (d) monitor conditions likely to affect the health and safety of his or her workers at a workplace under his or her control and management; or
  - (e) prepare a written health and safety policy,
- or any combination of those things, and the employer shall, accordingly, do that thing or those things.
- (4) An employer shall:
- (a) subject to subsection (5), where he or she is required under subsection (3) to monitor the health of his or her workers or conditions at a workplace under his or her control and management or keep information and records relating to the health and safety of his or her workers, at all reasonable times, at the request of a worker employed by him or her, make the results of that monitoring or the information, or those records, as the case may be, available to the worker or a person authorized in writing by the worker to receive or examine them or it;
  - (b) at the request of a worker employed by him or her, provide the worker with a copy of the health and safety policy of the employer, if it is reduced to writing;

- (c) so far as is practicable, provide such other information as a worker employed by him or her requests relating to health and safety at the worker's workplace; and
  - (d) so far as is practicable, consult with the relevant workers about the development of measures to promote health and safety at workplaces under his or her control and management.
- (5) Nothing in subsection (4)(a) shall be taken to require or authorize an employer to make available to or on behalf of a worker information or a record relating to the health of any other worker or whereby a worker other than the worker to or on whose behalf the information or record is made available can be readily identified, except with the permission in writing of that other worker.

### **30 Duties of occupiers of workplaces**

An occupier of a workplace shall ensure, as far as is practicable, that the workplace and the means of access to and egress from it are safe and without risk to health.

Penalty: In the case of a body corporate – \$125,000.

In the case of a natural person – \$25,000.

### **30A Duties of self-employed persons**

A self-employed person shall, so far as is practicable:

- (a) take reasonable care to ensure that his or her health or safety at a workplace; and
- (b) ensure that the health and safety of any other person, whether or not at a workplace,

is not adversely affected as a result of the work in which the self-employed person is engaged.

Penalty: \$25,000.

### **30B Duties of manufacturers, &c.**

- (1) A person who designs, manufactures, imports or supplies any plant or substance for use at a workplace shall, so far as is practicable:
- (a) ensure that the design and construction of the plant, or the characteristics of the substance, are such that a person who properly uses the plant or substance is not exposed to hazards in doing so;

- (b) test and examine, or arrange for the testing and examination of, the plant or substance to ensure that it complies with paragraph (a); and
- (c) ensure that adequate information in respect of:
  - (i) any danger associated with the plant or substance;
  - (ii) the specifications of the plant or substance and the data obtained at the testing of the plant or substance under paragraph (b); and
  - (iii) the conditions necessary to ensure that a person properly using the plant or substance is not exposed to hazards in so doing,

is provided when the plant or substance is supplied.

- (2) A person who erects or installs any plant for use at a workplace shall, so far as is practicable, ensure that it is erected or installed so that a person who properly uses the plant is not subjected to any hazard that arises from, or is increased by, the way in which the plant is erected or installed.
- (3) A person who manufactures, imports or supplies any substance for use at a workplace shall, so far as is practicable, ensure that adequate toxicological data in respect of the substance and such other data as is relevant to the safe use, handling, processing, storage, transportation and disposal of the substance is provided when the substance is supplied and thereafter whenever requested.

Penalty: In the case of a body corporate – \$125,000.

In the case of a natural person – \$25,000.

### **30C Duties of owners**

The owner of:

- (a) a building or structure at or used as a workplace, including fixtures and fittings under his or her control; or
- (b) plant used at a workplace,

shall ensure, so far as is practicable, that the health and safety of any person is not adversely affected as a result of its condition or use.

Penalty: In the case of a body corporate – \$125,000.

In the case of a natural person – \$25,000.

### **31 Duties of workers**

- (1) A worker while at his or her workplace shall take appropriate care for his or her own health and safety and for the health and safety of all persons who may be affected by his or her acts at the workplace.
- (2) A worker shall, as far as is practicable, follow all reasonable directions given to him or her by his or her employer or his or her employer's representative in relation to his or her own and any other person's health and safety at the worker's workplace and shall use relevant safety equipment when provided or made available for his or her use.
- (3) A worker shall not:
  - (a) wilfully or recklessly interfere with or misuse anything provided in the interests of health and safety in pursuance of this Act; or
  - (b) wilfully place at risk the health or safety of a person at the worker's workplace.

Penalty: \$5,000.

### **32 Immediate threat**

- (1) Where there is an immediate risk of severe injury to a worker at a workplace and that risk is not removed by the employer, the worker may cease work in the area in which the risk is present.
- (2) During a period during which a worker has, under subsection (1), ceased work, his or her employer may assign him or her to alternative work.
- (3) A dispute between a worker and his or her employer as to whether there is an immediate risk to the worker may be referred by either party to the Authority, or a person to whom the power of the Authority under subsection (4) is delegated, for a ruling.

- (4) The Authority or its delegate shall, immediately on receiving a request for a ruling under subsection (3), investigate the matter and, where it or its delegate, as the case may be, is satisfied that:
- (a) the risk exists, take action appropriate under section 41; or
  - (b) there is no such risk, advise the employer and the worker accordingly and the employer may require the worker to resume forthwith his or her usual work.

**33 Compliance with Regulations is compliance with this Part**

Where the Regulations make provision for or in relation to a duty, obligation, act, matter or thing to which this Part applies, a person who complies with the Regulations in relation to that duty, obligation, act, matter or thing shall be deemed to have complied with this Part in relation to it.

**34 Civil liability not affected by this Part**

Nothing in this Part shall be construed as:

- (a) conferring a right of action in a civil proceeding in respect of a contravention of this Part;
- (b) conferring a defence to an action in a civil proceeding or as otherwise affecting a right of action in a civil proceeding; or
- (c) affecting the extent, if any, to which a right of action arises or a civil proceeding may be taken in respect of a breach of duty imposed by the Regulations.

**Division 2 Work health officers**

**35 Work health officers**

The Authority may appoint such persons as it thinks fit to be work health officers.

**36 Functions and powers of officers**

- (1) An officer shall perform such functions and may exercise such powers as are imposed or conferred on him or her by or under this or any other Act or delegated to him or her by the Authority.
- (2) An officer may, for the purposes of performing a function or exercising a power referred to in subsection (1), seek, whenever necessary, the assistance of any person and where the function or power requires the entry of the officer to a workplace the occupier of or employer at the workplace shall also permit that person

access to the workplace.

## **Division 3 Investigations**

### **37 Investigations**

- (1) An officer shall not conduct an investigation at a workplace until he or she has taken reasonable steps to notify the employer or the employer's representative of his or her having entered the workplace.
- (2) On concluding an investigation at a workplace an officer shall give to the employer information about his or her observations and the steps, if any, he or she proposes to take as a result of that investigation.
- (3) Where an officer proposes to take and remove a sample from a workplace for the purposes of analysis, he or she shall notify the employer and after having taken the sample he or she shall:
  - (a) where practicable, divide the sample taken into as many parts as are reasonably necessary for the analysis and for the purposes of this section and mark and seal, or mark and fasten up, each part in such manner as its nature will permit;
  - (b) where such division is practicable, deliver one part to the employer on being requested to do so by the employer; and
  - (c) retain one part for future comparison.
- (4) Where an officer takes possession of a plant, substance or thing from a workplace, the occupier of or employer at the workplace may appeal to the Court against that action or the continued possession by the Authority of that plant, substance or thing.
- (5) No person shall be required under this Division to answer a question or give information tending to incriminate himself or herself.

### **38 Employers, &c., to assist officer**

The owner or occupier of, or employer at, a workplace and his or her agents and employees shall provide such reasonable assistance as an officer requires for an entry, investigation, examination or inquiry, or for the exercise of the powers of the officer, under this or any other Act.

### **39 Offences in relation to investigations**

- (1) A person who:
- (a) refuses access to a workplace to an officer;
  - (b) obstructs an officer in the exercise of his or her powers under this or any other Act or induces or attempts to induce a person to do so;
  - (c) fails to produce a document required under this or any other Act to be produced to an officer;
  - (d) conceals the location or existence of a person or any plant or substance from an officer;
  - (e) prevents or attempts to prevent a person from assisting an officer; or
  - (f) in any other way, hinders, impedes or opposes an officer in the performance of the officer's functions or exercising of his or her powers under this or any other Act,

is guilty of an offence.

Penalty: In the case of a body corporate – \$5,000.

In the case of a natural person – \$1,000, or imprisonment for 6 months.

- (2) The occupier of, and employer at, a workplace at which an offence against subsection (1) occurs is guilty of the same offence and is subject to the same penalty unless he or she proves that the act constituting the offence took place without his or her knowledge and that he or she did not know and could not reasonably have known of the act.
- (3) In this section **officer** includes a person assisting an officer.

## **Division 4 Improvement and prohibition notices**

### **40 Authority may issue improvement notice**

- (1) Where the Authority is of the opinion that a person:
- (a) is contravening this Act; or
  - (b) has contravened this Act in circumstances that make it likely that the contravention will continue or be repeated,

it may issue to the person an improvement notice requiring the person to remedy the contravention or the matters or activities giving rise to its opinion that the contravention will be repeated.

- (2) An improvement notice shall:
- (a) state that the Authority is of the opinion that the person:
    - (i) is contravening this Act; or
    - (ii) has contravened this Act in circumstances that make it likely that the contravention will continue or be repeated;
  - (b) state the reasons for that opinion;
  - (c) specify the provision of this Act in respect of which that opinion is held; and
  - (d) specify the day (being a day later than 7 days after the day on which the notice is issued) before which the person is required to remedy the contravention or the matters or activities giving rise to its opinion that the contravention will be repeated.
- (3) A person:
- (a) to whom an improvement notice is issued and in relation to which an appeal has not been made under section 43; and
  - (b) who contravenes or fails to comply with it,
- is guilty of a regulatory offence.

Penalty: In the case of a body corporate – \$10,000.

In the case of a natural person – \$2,000, or imprisonment for 6 months.

Default penalty: In the case of a body corporate – \$500.

In the case of a natural person – \$100.

#### **41 Authority may issue prohibition notice**

- (1) Where the Authority is of the opinion that at a workplace there is occurring or may occur an act which involves or will involve an immediate risk to the health or safety of a person, it may issue to the person who has or it reasonably believes has control over the act or the activity in which the act may occur a prohibition notice prohibiting the continuation of the act or the carrying out of the activity until the Authority certifies in writing that the immediate risk has been removed or, in its opinion, the act will not occur.

- (2) A prohibition notice shall:
- (a) state that the Authority is of the opinion that in the workplace there is occurring or may occur an act which involves or will involve an immediate risk to the health or safety of a person;
  - (b) state the reasons for that opinion;
  - (c) specify the act which, in the Authority's opinion, involves or will involve the risk and the matters which give or will give rise to the risk; and
  - (d) where in the Authority's opinion the act involves or will involve a contravention or likely contravention of this Act, specify the relevant provision and state the reasons for that opinion.
- (3) A person:
- (a) to whom a prohibition notice is issued and in relation to which an appeal has not been made under section 43; and
  - (b) who contravenes or fails to comply with it,
- is guilty of a regulatory offence.
- Penalty: In the case of a body corporate – \$15,000.  
In the case of a natural person – \$3,000, or imprisonment for 6 months.
- Default penalty: In the case of a body corporate – \$1,000.  
In the case of a natural person – \$200.
- (4) Where an appeal has been made under section 43, against a prohibition notice, the Authority shall not certify under subsection (1) until after the appeal is withdrawn or decided.
- (5) Where the Authority issues a prohibition notice in respect of an act relating to the use of any plant at a workplace, the Authority may place a mark on the plant, or any part of the plant, to indicate that the plant, or the part so marked, is not to be used until the Authority certifies, under subsection (1), in respect of the act in respect of which the prohibition notice was issued.
- (6) A person who:
- (a) uses any plant, or a part of any plant, on which a mark has been placed; or

- (b) without the permission of the Authority, removes, obliterates or otherwise interferes with a mark placed on any plant, or a part of any plant,

under subsection (5) is guilty of a regulatory offence.

Penalty: In the case of a body corporate – \$15,000.

In the case of a natural person – \$3,000 or imprisonment for 6 months.

Default Penalty: In the case of a body corporate – \$1,000.

In the case of a natural person – \$200.

#### **41A Issuing of notices**

- (1) For the purposes of sections 40 and 41, a notice under those sections may be issued to a person by:
- (a) delivering it personally to the person;
  - (b) leaving it at the person's usual or last known place of residence or business with some other person, apparently resident or employed there and who is apparently in charge or in a position of authority; or
  - (c) posting it in a prepaid letter addressed to the person at the person'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.

#### **42 Notices may include directions**

- (1) The Authority may include in an improvement notice or a prohibition notice directions as to the measures to be taken to remedy the matters to which the notice relates.
- (2) A direction under subsection (1) may:
- (a) refer to an approved code of practice; and
  - (b) offer the person to whom it is issued a choice of ways in which to remedy the matters to which the notice relates.

### **43 Appeals against notices**

- (1) A person to whom an improvement notice or a prohibition notice is issued or, where that person is a worker, that person's employer, may, within 7 days after the notice is issued or such further time as the Court allows, appeal in writing to the Court against the notice.
- (2) Pending the decision by the Court on an appeal under subsection (1), the operation of the notice shall:
  - (a) in the case of an improvement notice – be suspended; and
  - (b) in the case of a prohibition notice – continue unless the Authority decides otherwise.
- (3) Where:
  - (a) the Court affirms an improvement notice or a prohibition notice or affirms such a notice with modifications; and
  - (b) the person to whom the notice was issued does not comply with the notice as so affirmed or modified,that person is guilty of an offence and shall be liable to the penalty applying in the case of an offence against section 40 or 41, as the case may be.
- (4) In this section ***improvement notice*** includes a further notice referred to in section 44(1).

### **44 Authority may carry out work**

- (1) Where an improvement notice requires the doing of work by the person to whom it was issued or his or her employer who has the responsibility for carrying out the work and that work has not been done or carried out:
  - (a) where no appeal has been lodged under section 43 against the notice – within 7 days after the date allowed by the notice; or
  - (b) where an appeal has been so lodged and the Court has affirmed the notice or modified it in such a way that work is required to be done – within 7 days after the date on which the decision of the Court was made known or by such date, earlier or later than the date allowed by the notice, as the Court allows,

for doing that work, the Authority may give to the person responsible for carrying out the work a further notice advising him

or her that after a specified day, not being earlier than 7 days after the service of the further notice on the person, it intends to carry out or cause to be carried out the work and it may after that day, on being satisfied that an appeal has not been lodged under section 43 against the further notice, carry out or cause to be carried out the work and for that purpose may enter on the land comprising the relevant workplace with such workers and machinery as are or is reasonably necessary and do all things reasonably necessary to be done.

- (2) The costs reasonably incurred by the Authority in exercising its powers under subsection (1) shall be a debt due and payable to the Authority by the person required by the notice or decision to carry out the work.

## **Division 4A Health and safety committees**

### **44A Health and safety committees**

- (1) An employer who employs more than 20 workers at a workplace shall, if requested by a majority of those workers, establish a health and safety committee for that workplace.
- (2) An employer shall establish a health and safety committee not later than 3 weeks after being requested to do so under subsection (1).
- (3) For the purposes of this section, where a person (in this subsection called *the principal contractor*) contracts with another person (in this subsection called *the 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 to be taken to be the employer of a worker employed by the subcontractor in the execution of the work.

### **44B Composition of health and safety committees**

- (1) A health and safety committee for a workplace shall consist of:
  - (a) workers working at the workplace elected by the workers working at the workplace; and
  - (b) persons appointed by the employer of the workers.
- (2) Subject to this section, the number of workers to be elected or persons to be appointed for the purposes of this section shall be as agreed between the employer and the workers.
- (3) Not less than half of the members of a health and safety committee shall be workers elected by the workers at the workplace.

#### **44C Functions of health and safety committees**

The functions of a health and safety committee are:

- (a) to facilitate consultation and co-operation between the employer and workers working at the workplace in initiating, developing and implementing measures designed to ensure the health and safety of the workers at the workplace;
- (b) to keep itself informed about standards relating to health and safety generally recommended or prevailing in workplaces of a comparable nature, and to review and make recommendations to the employer on rules and procedures at the workplace relating to the health and safety of the workers;
- (c) to recommend to the employer the establishment, maintenance and monitoring of programs, measures and procedures at the workplace relating to the health and safety of the workers;
- (d) to keep, in an accessible place and form, such information as is provided under this Act and by the employer regarding the hazards to workers that arise or may arise at the workplace;
- (e) to consider and make recommendations relating to changes to be made at the workplace that may reasonably be expected to affect the health and safety of the workers;
- (f) to consider and make recommendations relating to training and education in, and promotion of, health and safety at the workplace;
- (g) to consider, and make recommendations relating to changes to be made at the workplace following an accident or dangerous occurrence; and
- (h) to perform such other functions as may be prescribed, or given to the committee, with its consent, by an employer.

#### **44D Inspection of workplace**

A person nominated by a health and safety committee may inspect the workplace or any part of the workplace for which the committee is established:

- (a) at such times as are agreed with the employer; or
- (b) where the workplace or any part of it has not been inspected in the preceding 30 days, at any time on giving reasonable notice to the employer.

#### **44E Meetings**

- (1) The members of a health and safety committee shall elect one of the members to be the Chairperson.
- (2) Subject to subsection (3), a health and safety committee may determine its own procedures.
- (3) A health and safety committee shall meet at intervals, not longer than 3 months, or at more frequent intervals as approved by the employer.

#### **44F Duties of employers in relation to health and safety committees**

Where there is a health and safety committee at a workplace, the employer shall:

- (a) make available to the committee such information as the employer has, or could reasonably be expected to have, relating to:
  - (i) hazards to persons that arise or may arise at the workplace;
  - (ii) so far as it is relevant to the hazards referred to in subparagraph (i), the plant and substances used, and the systems of work, at the workplace; and
  - (iii) the health and safety of workers at the workplace;
- (b) consult with the health and safety committee on changes proposed to be made at the workplace which may reasonably be expected to affect the health or safety of workers at the workplace;
- (c) where an accident or dangerous occurrence occurs at the workplace, ensure that the committee is notified as soon as possible;
- (d) provide the committee with reasonable facilities and assistance for the purposes of the performance of its functions under this Act; and
- (e) permit members of the committee to carry out their functions under this Act and to participate in relevant courses of training relating to health and safety of workers.

**44G Exemption from application of Division**

The Authority may, subject to such conditions as it thinks fit:

- (a) exempt an employer from compliance with this Division, in whole or in part; or
- (b) vary compliance with this Division, in whole or in part;

if it is satisfied that the employer has effected a health and safety management policy which, in the opinion of the Authority, satisfies the intent of this Division.

**Division 5 General**

**45 Discrimination against workers, &c.**

An employer shall not:

- (a) dismiss a worker; or
- (b) act in any way detrimental to a worker in the worker's employment with the employer,

for the reason only that the worker:

- (c) assists or has assisted or gives or has given information to the Authority or an officer;
- (d) makes or has made a reasonable complaint in relation to health and safety to the employer, the Authority or an officer; or
- (e) ceases work under section 32(1).

Penalty: In the case of a body corporate – \$10,000.

In the case of a natural person – \$2,000, or imprisonment for 12 months.

**46 Orders in proceedings for offences against section 45**

Where a person is found guilty of an offence against section 45, the court by which he or she is found guilty may, in addition to imposing a penalty on the person:

- (a) order him or her to pay within a specified period to the person against whom the offender discriminated, such amount as it thinks fit to compensate that person; or

- (b) order that the worker be reinstated or re-employed in the worker's former position or, where that position is not available, in a similar position,

or both.

#### **48A        Notification of accidents**

Where:

- (a) an accident occurs at a workplace, whether or not it causes the death of, or bodily injury to, any person; or
- (b) there is an occurrence at or in relation to a workplace which affects the health or safety of any person at the workplace,

which is a prescribed accident or occurrence required to be notified under this section:

- (c) the employer at the workplace; or
- (d) such other person as is prescribed,

shall give notice of the accident or occurrence in the prescribed form and manner.

## **Part V            Workers compensation and rehabilitation**

### **Division 1        Preliminary**

#### **49            Interpretation for Part V**

- (1) In this Part, unless the contrary intention appears:

***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.

**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 person registered under the *Health Practitioners Act* in the category of health care practice of medicine, dentistry, Aboriginal health work, chiropractic, occupational therapy, osteopathy, physiotherapy or psychology;
  - (ii) a person registered under a corresponding law of a State or another Territory of the Commonwealth in one of those categories of health care practice; or
  - (iii) if there is no such corresponding law – a person providing an attendance, examination or treatment which, 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;
- (b) the provision of a certificate 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;
- (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;

- (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;
- (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 Practitioners Act* in the category of health care practice of pharmacy or under a corresponding law of a State or another Territory of the Commonwealth in that category of health care practice.

**medical practitioner** includes a person registered as a medical practitioner (by whatever name called) in a State or another Territory of the Commonwealth.

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

**normal weekly earnings**, in relation to a worker, means:

- (a) subject to paragraphs (b), (c) and (d), remuneration for the worker's normal weekly number of hours of work calculated at his or her ordinary time rate of pay;
- (b) in the case of a worker who had entered into concurrent contracts of service with 2 or more employers under which he or she worked full-time at one time for one employer and part-time at another time for one or more other employers – the gross remuneration for the worker's normal weekly number of hours of work calculated at his or her ordinary time rate of pay in respect of his or her full-time employment;

- (c) in the case of a worker who had entered into concurrent contracts of service with 2 or more employers under which he or she worked part-time at one time for one employer and part-time at another time for one or more other employers:
- (i) the gross remuneration for the worker's normal weekly number of hours of work calculated at his or her ordinary time rate of pay in respect of both or all of his or her part-time employments; or
  - (ii) the gross remuneration that would have been payable to the worker if he or she had been engaged full-time in the part-time employment in which he or she usually was engaged for the more or most hours of employment per week at the date of the relevant injury,

whichever is the lesser; or

- (d) where:
- (i) by reason of the shortness of time during which the worker has been in the employment of his or her employer, it is impracticable at the date of the relevant injury to calculate the rate of relevant remuneration in accordance with paragraph (a), (b) or (c); or
  - (ii) subject to paragraph (b) or (c), the worker is remunerated in whole or in part other than by reference to the number of hours worked,

the average gross weekly remuneration which, during the 12 months immediately preceding the date of the relevant injury, was earned by the worker during the weeks that he or she was engaged in paid employment.

***normal weekly number of hours of work*** means:

- (a) in the case of a worker who is required by the terms of his or her employment to work a fixed number of hours, not being hours of overtime other than where the overtime is worked in accordance with a regular and established pattern, in each week – the number of hours so fixed and worked; or
- (b) in the case of a worker who is not required by the terms of his or her employment to work a fixed number of hours in each week – the average weekly number of hours, not being hours of overtime other than where the overtime is worked in accordance with a regular and established pattern, worked by him or her during the period actually worked by him or her in the service of his or her employer during the 12 months

immediately preceding the date of the relevant injury.

**nursing service** means a nursing service provided by a registered nurse otherwise than at a hospital or as a member of the nursing staff of a hospital.

**ordinary time rate of pay** means:

- (a) in the case of a worker who is remunerated in relation to an ordinary time rate of pay fixed by the terms of his or her employment – the time rate of pay so fixed; or
- (b) in the case of a worker:
  - (i) who is remunerated otherwise than in relation to an ordinary time rate of pay so fixed, or partly in relation to an ordinary time rate of pay so fixed and partly in relation to any other manner; or
  - (ii) where no ordinary time rate of pay is so fixed for a worker's work under the terms of his or her employment,

the average time rate of pay, exclusive of overtime other than where the overtime is worked in accordance with a regular and established pattern, earned by him or her during the period actually worked by him or her in the service of his or her employer during the period of 12 months immediately preceding the date of the relevant injury.

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

**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.

- (1A) For the purposes of the definition of 'normal weekly earnings' in subsection (1), a worker's remuneration does not include superannuation contributions made by the employer.

- (1B) Subsection (1A) is taken to have come into operation on 1 January 1987.

*Note of section 49(1B)*

*Section 195 contains transitional matters specifying when subsection (1A) does not affect the calculation of compensation by reference to remuneration otherwise excluded by that subsection.*

- (2) For the purposes of the definition of **normal weekly earnings** and **ordinary time rate of pay** in subsection (1), a worker's remuneration includes an over-award payment, climate allowance, district allowance, leading hand allowance, qualification allowance, shift allowance (where shift work is worked in accordance with a regular and established pattern) and service grant, but does not include any other allowance.
- (3) In determining whether overtime is worked in accordance with a regular and established pattern for the purposes of the definitions of **normal weekly number of hours of work** and **ordinary time rate of pay** in subsection (1), or shift work is worked in accordance with a regular and established pattern for the purpose of the definitions of **normal weekly earnings** and **ordinary time rate of pay** as referred to in subsection (2):
- (a) regard shall be had to the overtime or shift work, as the case may be, worked by a worker in his or her employment with his or her employer at the time of the relevant injury during the period of 6 months immediately preceding the date of the injury; or
- (b) where the worker has been employed by his or her employer at the time of the relevant injury for less than 6 months, regard shall be had to the overtime or shift work, as the case may be, worked by the worker during the period of that employment and whether, in the normal course of that employment, he or she would have worked overtime or shift work had he or she not been injured.

## **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.

Penalty: \$10,000.

Default penalty: \$1,000.

## **Division 2 General**

### **51 Application to seamen**

- (1) In this section:

**port** includes a place or harbour.

**Territory ship** means a ship:

- (a) registered in the Territory;
  - (b) owned by or under charter to a body corporate or other person:
    - (i) whose principal office or place of business is in the Territory; or
    - (ii) whose principal office or place of business in respect of the management of the ship is in the Territory; or
  - (c) owned by or under charter to the Territory.
- (1A) This Part applies in relation to an injury to a sailor on a Territory ship.

- (2) The application of this Part in relation to an injury to a sailor is subject to the following modifications:
- (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 shall not be payable if the owner or charterer of the ship is liable to pay the expenses of burial or cremation under a law in force in the Territory;
  - (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:
- (a) a ship shall be deemed to have been lost with all hands on board if it is shown by an official return produced out of official custody or other evidence that the ship left a port of departure not later than 12 months before the institution of proceedings under this Act and has not been heard of since that departure; and
  - (b) a duplicate agreement or list of the crew of a ship lost with all hands made out and produced by the proper officer out of official custody shall, in the absence of proof to the contrary, be sufficient evidence that the sailors named were on board at the time the ship was lost.

## 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* 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**

Subject to this Part, where a 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.

**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.

**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**

- (1) 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.
- (2) Compensation is not payable under this Part unless any 2 of the following apply:
  - (a) the worker to or in relation to whom it is payable was a resident of the Territory at the time the relevant incident occurred;
  - (b) his or her employer was a resident of or carrying on business in the Territory at the time the relevant incident occurred;
  - (c) the relevant incident occurred in the Territory.
- (3) Where a worker is injured outside the Territory the worker shall, for the purposes of subsection (2)(a), be a resident of the Territory, if, at the time of the injury, the worker has retained in the Territory his or her primary dwelling-house or employment.

**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*, 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) Where the concentration of alcohol in the blood of a worker referred to in subsection (1) was at the time of the accident equal to 80 milligrams or more of alcohol per 100 millilitres of blood, the consumption of the alcoholic liquor shall be presumed to have materially contributed to the accident giving rise to the injury, unless the contrary is proved.
- (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 an 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 Territory Insurance Office:

- (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 Territory Insurance Office.

(5) In this section:

**accident** has the same meaning as in the MAC Act.

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

**Territory Insurance Office** means the Territory Insurance Office established by the *Territory Insurance Office Act*.

## **Division 3 Amount of compensation**

### **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 260 times average weekly earnings at the time the payment is made.
- (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

Column 1	Column 2
Dependants	Proportion
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* who shall hold the amount on trust for the benefit of that child until the child attains the age of 18 years.

### 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) Subject to sections 65A, 65B and 66, a worker who is totally or partially incapacitated for work as the result of an injury shall be paid, in addition to any other compensation to which under this Part he or she is entitled, compensation equal to the difference between what he or she actually earned in employment during a week and his or her normal weekly earnings immediately before the date on which he or she first became entitled to compensation, in respect of any period during which the total period, or aggregate of the periods, of his or her total or partial incapacity, as the case may be, arising out of or materially contributed to by the same injury does not exceed 26 weeks.
- (2) A worker shall be paid compensation under subsection (1) notwithstanding that his or her retirement has intervened between the date he or she sustained the injury out of which the incapacity arose and the date on which his or her entitlement to the payment of the compensation would otherwise cease and, for the purposes of calculating his or her continuing entitlement, his or her normal weekly earnings applying immediately before his or her retirement shall be deemed to continue to be his or her normal weekly earnings.

### **65 Long-term incapacity**

- (1) Subject to this Part, 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 which materially contributed to it shall be paid, in addition to any other compensation to which under this Part he or she is entitled, after the first 26 weeks referred to in section 64, compensation equal to 75% of his or her loss of earning capacity or 150% of average weekly earnings at the time the payment is made, whichever is the lesser amount, until:
  - (a) he or she attains the age of 65 years; or
  - (b) if the normal retiring age for workers in the industry or occupation in which he or she was employed at the time of the injury is more than 65 years – he or she attains that normal retiring 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 purpose of calculating his or her loss of earning capacity or for the purposes of subsection (8) or (9) at a particular date shall be taken to be his or her normal weekly earnings immediately before the date on which he or she first became entitled to compensation multiplied by the average weekly earnings at the particular date and divided by the average weekly earnings applying at the date on which he or she first became entitled to compensation.
- (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 (1) is less than the amount calculated in accordance with subsection (12), the worker shall, notwithstanding subsection (1), 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 (1), 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 49 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.

**65A Compensation not payable while worker in prison**

A worker is not entitled to be paid compensation under section 64 or 65 during any period the worker is detained in a penal institution within or outside the Territory.

**65B Compensation not payable while worker resides outside Australia**

A worker is not entitled to be paid compensation under section 64 or 65 during any period the worker resides outside Australia unless the worker's rehabilitation is complete.

**66 Prescribed compensation for certain persons**

- (1) A person who, by virtue of section 3(7), (8) or (8A), shall be deemed to be a worker in the employ of the Territory and who is totally or partially incapacitated for work as the result of an injury, shall be paid compensation under this Subdivision calculated as prescribed.
- (2) The amount of the compensation payable to a person by virtue of this section shall not in any case be less than 50% of average weekly earnings.

**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;
  - (aa) the person receiving the compensation fails to provide to his or her employer a certificate under section 91A within 14 days after being requested to do so in writing by his or her employer;
  - (b) the medical certificate referred to in section 82 specifies that the person receiving the compensation is fit for work on a particular date, being not longer than 4 weeks after the date of the injury in respect of which the claim was made, and the person fails to return to work on that date or to provide his or her employer on or before that date with another medical certificate as to his or her incapacity for work;
  - (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 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 prescribed guides, 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 prescribed for the purposes of 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.

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

#### **73 Compensation for medical, surgical and rehabilitation treatment, &c.**

Subject to this Part and the Regulations, where a worker sustains an injury, his or her employer is liable to pay the costs reasonably incurred by the worker as a result of that injury for:

- (a) medical, surgical and rehabilitation treatment;
- (b) hospitalization and hospital treatment;
- (c) travelling, or being transported, to and from any place for the purpose of medical, surgical and rehabilitation treatment, hospitalization or hospital treatment;
- (d) where it is necessary for him or her to be accommodated away from his or her normal place of residence for the purpose of medical, surgical and rehabilitation treatment – such accommodation; and
- (e) attendance by a registered or enrolled nurse, or by some other person, where the disability is such that the worker must have nursing or personal attendance,

and such other costs as are prescribed.

## **Subdivision E Commutation of certain entitlements**

### **74 Commutation**

- (1) Where it appears to the Court on the application in writing:
  - (a) of or on behalf of the employer or the person to whom it is payable that, because of the small amount of regular payments of compensation under section 63 or 65, the administrative costs in calculating and paying the compensation is disproportionate to the benefit received; or
  - (b) of a worker receiving regular payments of compensation under section 65 that:
    - (i) his or her condition has stabilized;
    - (ii) rehabilitation is complete;
    - (iii) he or she is not totally incapacitated within the meaning of section 65(6); and
    - (iv) he or she has received financial counselling before so applying,

and, in either case, it is satisfied that the person to whom that compensation is payable is fully aware of the effects of the proposed commutation in relation to future benefits under this Act, the Court may, in writing, authorise the commutation of those section 63 or 65 payments at discounted present values and those payments may be commuted and, subject to subsection (3), the commuted amount paid accordingly.

- (2) Compensation payments shall not be commuted except in accordance with this section and where payment of compensation is commuted as a result of an authorisation under this section, no person is entitled to any future payments under section 63 or 65 in respect of the injury to which the compensation relates.
- (3) The maximum amount that may be paid as a result of a commutation under this section is not to be greater than an amount equal to 156 times the worker's normal weekly earnings indexed in accordance with section 65(3) or 156 times average weekly earnings (whichever is the greater amount) at the time the payment is made.
- (4) Where the calculated commutation exceeds the maximum amount referred to in subsection (3), the Court is not prevented from authorising the commutation of a payment to that maximum amount if it appears to the Court fair and equitable to do so.

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

### **75 Purpose**

- (1) The purpose of this Division is to ensure the rehabilitation of an injured worker following an injury.
- (2) For the purposes of subsection (1), **rehabilitation** means the process necessary to ensure, as far as is practicable, having regard to community standards from time to time, that an injured worker is restored to the same physical, economic and social condition in which the worker was before suffering the relevant injury.

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

- (1) An employer liable under this Part to compensate an injured worker shall:
  - (a) take all reasonable steps to provide the injured worker with suitable employment; and
  - (b) so far as is practicable, participate in efforts to retrain the worker.

Penalty: In the case of a body corporate – \$3,000.

In the case of a natural person – \$1000 or imprisonment for 3 months.

Default penalty: In the case of a body corporate – \$500.

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

- (2) Where an employer liable under this Part to compensate an injured worker is unable to provide the worker with suitable employment in accordance with subsection (1)(a), the employer must refer the worker to an alternative employer incentive scheme developed by the Authority.

Penalty: In the case of a body corporate – \$3,000.

In the case of a natural person – \$1000 or imprisonment for 3 months.

Default penalty: In the case of a body corporate – \$500.

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

- (3) Where an injured worker for whose injury an employer is liable under this Part is employed by another employer under an alternative employer incentive scheme referred to in subsection (1),

the first employer is liable to compensate the injured worker for any aggravation, acceleration or exacerbation of the injury that occurs within one 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) In this section ***attendant care services***, in relation to an injured worker, means services (other than medical and surgical services or nursing care) which are required to provide for his or her essential and regular personal care.

## Division 5 Claim procedures and determination

### 79 Definition

In this Division ***weekly payment*** means a weekly payment of compensation.

**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;
  - (b) unless it is a claim for compensation under section 62, 63 or 73, be accompanied by a certificate in a form approved by the Authority from a medical practitioner or other prescribed person; and
  - (c) subject to section 84(3), be given to or served on the employer.
- (2) If the claim and certificate 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 certificate 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) A worker shall authorise the release to his or her employer and the employer's insurer of all information concerning the worker's injury or disease, if the claim form specifies that the worker is required to authorise the release of that information, and the claim for compensation by the worker shall be deemed not to have been made until the authorisation is given.
- (5) An authorisation under subsection (4) is irrevocable.
- (6) A certificate 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 or is uninsured – forward a copy of the claim to the Authority;
  - (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) Notwithstanding sections 81 and 82, if a person making a claim for compensation becomes aware that the employer:
  - (a) has not complied or is not likely to comply with subsection (1)(a) or (b);
  - (b) is refusing to receive the claim;
  - (c) cannot be identified;
  - (d) cannot be found;
  - (e) is dead; or
  - (f) is a corporation which has been wound up,he or she may lodge a claim for compensation with the relevant insurer or the Authority.
- (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.

Penalty for an offence against this section:

In the case of a body corporate – \$10,000.

In the case of a natural person – \$3,000.

Default penalty: In the case of a body corporate – \$750.

In the case of a natural person – \$150.

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

- (1) 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) where the claim is for weekly payments and relates to an injury involving mental stress – sections 75A(1) and 75B apply during the period of deferral to the employer and the person making the claim as if the employer had accepted liability for the compensation claimed.
- (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.

- (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.

**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.

Penalty: In the case of a body corporate – \$10,000.

In the case of a natural person – \$2,000.

## **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.

Penalty: In the case of a body corporate – \$3,000.

In the case of a natural person – \$1000 or imprisonment for 3 months.

Default penalty: In the case of a body corporate – \$500.

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**

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.

## **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.

Penalty: In the case of a body corporate – \$15,000.

In the case of a natural person – \$3,000.

Default penalty: In the case of a body corporate – \$750.

In the case of a natural person – \$150.

- (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**

Where a 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 he or she is required to do so, the worker shall, 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:

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

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.

**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.

Penalty: \$3,000 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.

Penalty: \$2,000.

**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 medical certificate**

- (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 certificate 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 certificate for a period during which he or she remains incapacitated for work.

## **Part VI            Work Health Court**

### **Division 1        Preliminary**

#### **92                Definitions**

In this Part, unless the contrary intention appears:

***Assistant Registrar*** means an Assistant Registrar of the Court.

***Rules*** means rules made under section 95.

### **Division 2        Establishment and jurisdiction**

#### **93                Work Health Court**

- (1) There is established by this Act a court to be known as the Work Health Court.
- (2) Each magistrate is a magistrate of the Court.
- (3) A magistrate sitting alone or the Registrar or a Judicial Registrar when exercising powers under section 102 shall constitute the Court.
- (4) The Court is a court of record and shall have a seal which shall be affixed to all process issued out of the Court.

#### **94                Powers of Court**

- (1) The Court has power to hear and determine:
  - (a) claims for compensation under Part V and all matters and questions incidental to or arising out of such claims; and
  - (b) all other matters required or permitted by this Act to be referred to the Court for determination,and such other powers as are conferred on it by or under this or any other Act.
- (2) The Court may expand or abridge a time prescribed by or under this Part as it thinks fit.

**95            Rules and procedures**

- (1) The Chief Magistrate, within the meaning of the *Magistrates Act*, may make such rules and give such practice directions, not inconsistent with this Part:
- (a) regulating the practice and procedures of the Court, including the practice and procedures to be followed in the registry;
  - (b) regulating and prescribing the awarding, scales and taxation of costs (including disbursements and witnesses' expenses); and
  - (c) regulating and prescribing all matters and things incidental or relating to any such practice or procedure or to such costs,
- as are necessary or convenient to be prescribed for the conduct of the business of the Court.
- (2) An amount provided in respect of a matter in a scale of costs in the Rules shall not exceed an amount prescribed as costs in respect of the same or a similar matter under the *Supreme Court Act*.
- (3) The Rules may impose or confer on the Registrar functions and powers in relation to the Court and proceedings before the Court and the Registrar shall perform those functions and may exercise those powers accordingly.
- (4) Subject to this Part, the practice and procedures of the Court in relation to a matter within its jurisdiction are in the discretion of the Court.

**96            Orders and commissions for examination of witness**

The Court may:

- (a) order the examination of a person on oath, orally or on interrogatories, before the Court or before the Registrar, an Assistant Registrar or other person, at any place within Australia;
- (b) order a commission or letters of request to be issued to take evidence;
- (c) by the same or a subsequent order, give any necessary directions touching the time, place and manner of the examination or taking of evidence; and

- (d) empower a party to a proceeding before it to give in evidence in the proceeding the evidence taken pursuant to an order under this section on such terms, if any, as the Court directs.

**97            Incidental powers and enforcement of orders**

- (1) In addition to any other powers it or he or she has under this Act, the Court or a magistrate has, in and in relation to a proceeding under this Act, except to the extent that the matter is specifically provided for under this Act, all the powers of a Local Court or a magistrate, as the case may be, under the *Local Court Act*, including the power to summon and examine witnesses, call for the production of documents or other things and dispose of documents or other things produced before or delivered to it or him or her.

- (2) Where:

- (a) the Court makes a determination under this Act awarding an amount of money (including costs) to a person; and
- (b) the amount awarded is not satisfied,

the Registrar shall, on application by or on behalf of the person and on payment of the prescribed fee (if any), issue to or for that person a certificate in the prescribed form of the award and shall make a minute or memorandum of the issue.

- (2A) Where, in pursuance of section 71, compensation is payable to a worker and that compensation has not been paid, the Registrar shall, on application by or on behalf of the worker or his or her employer and on payment of the prescribed fee (if any), and on being satisfied as to the amount of compensation payable under that section, issue to or for that worker or employer a certificate in the prescribed form of that amount and shall make a minute or memorandum of the issue.

- (3) A certificate issued under subsection (2) or (2A) may be filed in the Local Court and, on the filing of the certificate and payment of the appropriate filing fee (if any) prescribed by the *Local Court Rules*, the Clerk of the Local Court shall enter judgment for the person as if the award or the amount of compensation was a judgment of the Local Court for:

- (a) the amount awarded or to be paid as compensation or so much as remains unsatisfied;
- (b) the fees (if any) paid to the Registrar for the certificate; and
- (c) the fees (if any) paid to the Clerk of the Local Court for the filing of the certificate and entering of judgment.

**98 Representation before Court**

- (1) A party to a proceeding before the Court may appear personally or be represented by a legal practitioner or by a person who the Court is satisfied is acting on behalf, and at the request, of the party.
- (2) A legal practitioner or other person representing a party to a proceeding before the Court has the same protection and immunity as a legal practitioner representing a party in a proceeding before a Local Court.

**99 Witnesses**

Subject to section 50, a witness summoned to attend or appearing at a hearing before the Court has the same obligations and protection, and shall be subject to the same liabilities, as a witness in a proceeding before a Local Court.

**Division 3 Managing Magistrate and Registrars**

**99A Managing Magistrate**

The Chief Magistrate must appoint a magistrate to be the managing magistrate for the Court.

**100 Registrar and Judicial Registrars**

- (1) The Chief Magistrate must appoint a person to be the Registrar of the Court.
- (2) The Chief Magistrate may appoint one or more persons to be Judicial Registrars of the Court.

**101 Assistant Registrars, &c.**

- (1) A Registrar of the Local Court is an Assistant Registrar of the Work Health Court unless he or she or she has been appointed as the Registrar of the Work Health Court.
- (4) An Assistant Registrar may, subject to the directions of the Registrar, exercise a power or perform a function of the Registrar.
- (5) The Minister may appoint such other officers of the Court as he or she thinks fit.

## **102 Registrars may exercise certain powers of Court**

- (1) The Registrar may, subject to the directions of the Chief Magistrate, within the meaning of the *Magistrates Act*, exercise such powers of the Court as the Chief Magistrate may, from time to time, determine and while exercising those powers he or she shall be deemed to constitute the Court.
- (2) An order made or thing done by the Registrar while exercising a power of the Court under subsection (1) shall be deemed to be an order of or thing done by the Court.

## **103 Records of Court**

- (1) Each Assistant Registrar shall keep and maintain a register, in a form approved by the Chief Magistrate, in which he or she shall cause to be entered particulars of all proceedings instituted in his or her registry.
- (2) An Assistant Registrar shall, as soon as practicable, forward to the Registrar a copy of each entry made in the register kept and maintained by him or her pursuant to subsection (1).
- (3) The Registrar shall keep and maintain a register, in a form approved by the Chief Magistrate, in which he or she shall cause to be entered particulars of all proceedings instituted in the Court compiled from:
  - (a) entries made in the register kept and maintained by him or her pursuant to subsection (1); and
  - (b) copies of entries forwarded to him or her pursuant to subsection (2).

## **Part VIA Dispute resolution**

### **Division 1 Mediation**

#### **103A Definitions**

In this Division:

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

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

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

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

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

**teleconferencing** means the use of telephone or television.

### **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.

### **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;
  - (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;
  - (c) to require a party to provide specified written information to the mediator or another party, being information on which the first-mentioned party relies (including a medical report or any other report);
  - (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.
- (3) Within 28 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 is entitled:
  - (a) to be accompanied at a conference by another person who is not a lawyer; and
  - (b) to consult with that person during the conference,but is not entitled to be represented at the conference by that person.
- (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.

**103G      Parties to pay own costs**

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

**103H      Offence**

A party must, in the absence of reasonable excuse, comply with a requirement of a mediator that the party:

- (a) attend a conference;
- (b) provide specified written information to the mediator or another party; or

(c) provide that information within a specified time.

Penalty:          In the case of a body corporate – \$10,000.

                         In the case of a natural person – \$2,000.

### **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) For the purposes of the Court exercising its powers under section 94(1)(a), a person may, subject to this Act, commence proceedings before the Court for the recovery of compensation under Part V 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 magistrate shall 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.

### **108        Recording agreement**

- (1) Where an agreement is made:
  - (a) for the payment of an amount of compensation;
  - (b) for the variation of a weekly payment of compensation; or
  - (c) in respect of any other matter relating to compensation,a memorandum of the agreement in the form prescribed by the Rules shall be sent, in the manner prescribed by the Rules, by the employer or worker to the Registrar.
- (2) On receipt of the memorandum under subsection (1), the Registrar shall:
  - (a) submit it to the Court; and
  - (b) within 14 days, give notice in writing of the receipt of the memorandum to all persons who, in the opinion of the Court, have an interest in the agreement.
- (3) After the expiration of 21 days after the giving of the last of the notices under subsection (2)(b), the Court shall consider the memorandum and shall:
  - (a) where it considers that by reason of:
    - (i) its inaccuracy;
    - (ii) the inadequacy of the amount;
    - (iii) the agreement having been obtained by fraud, undue influence or other improper means;

- (iv) its being inconsistent with section 74; or
  - (v) for any other reason of justice,  
the memorandum ought not to be recorded – direct the Registrar not to record the memorandum; or
  - (b) in any other case – direct the Registrar to record the memorandum on such terms as the Court thinks fit.
- (4) Where the Court gives a direction under subsection (3), it may make such order (including an order as to an amount already paid under the agreement) as it thinks fit.
  - (5) Subject to the Rules, the Registrar shall, on receiving a direction under subsection (3)(b) to do so, record the memorandum in a special register in accordance with the terms of that direction.
  - (6) A memorandum, on being recorded under subsection (5), is enforceable as if it were a determination of the Court.
  - (7) The Court may, at any time within 6 months after the recording of a memorandum under subsection (5), order that the record be removed from the special register on proof that the agreement was obtained by fraud, undue influence or other improper means, and the Registrar shall remove the record accordingly.
  - (8) Where the Court makes an order under subsection (7), it may make such further orders (including an order as to an amount already paid under the agreement) as it thinks fit.
  - (9) The Court may, at any time, rectify a special register.

## **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**

- (1) The procedure of the Court under this Division is, subject to this Act, the Regulations and any rules or practice directions made or given specifically for the conduct of the business of the Court, within the discretion of the Court.
- (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 a proper consideration of the matter permits.
- (3) Subject to this Act, 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      Legal professional privilege and section 12(2) of *Evidence Act* 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) The common law rule, known as legal professional 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* 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 V) 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, 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 Registrar and Judicial Registrars**

##### **114A Appeal to magistrate**

- (1) Subject to subsection (2), a person affected by an order made or a thing done by the Registrar or a Judicial Registrar under this Act may appeal against the order or thing to a magistrate of the Court.
- (2) No appeal lies to a magistrate of the Court from the making, variation or revocation by the Registrar or a Judicial 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 a magistrate of the Court who is aggrieved by a decision or determination of the magistrate 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) The Supreme Court shall decide the matter of appeal under this section and may either dismiss the appeal or reverse or vary the decision or determination appealed against and may make such order as to the costs of the appeal or the proceeding before the Court, or both, as it thinks fit.
- (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 VII Insurance**

### **Division 1 Preliminary**

#### **117 Definitions**

In this Part, unless the contrary intention appears:

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

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

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

**Nominal Insurer** means the Nominal Insurer established by section 150.

#### **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, 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, 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.

### **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.

### **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, the amount determined by the Authority as the insurer's or self-insurer's contribution towards:
  - (a) the administration costs of the Court;
  - (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.
- (2) The Authority may establish and maintain procedures relating to payments to be made under this section, including procedures for the 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.

Penalty: \$15,000.

### **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 or fails to comply with the approval; or
  - (b) contravenes or fails to comply with 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 failure or that class of contravention or failure.
- (2) A notice under subsection (1) is to specify:
  - (a) the nature of the contravention or failure;
  - (b) the circumstances in which the contravention or failure occurred;
  - (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 or failure.

**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.

Penalty: \$50,000.

Default Penalty: \$2,000.

- (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 Compulsory insurance**

- (1) Every employer who is not a self-insurer shall obtain from an approved insurer a policy of insurance or indemnity for the full amount of his or her liability under this Act (other than Part IV) to all workers employed by him or her and for an amount of not less than the prescribed amount in respect of his or her liability independently of this Act for an injury to a worker in his or her employ, and shall maintain such policy in force.

Penalty: \$30,000.

Default penalty: \$2,000.

- (2) In a prosecution for an offence of contravening or failing to comply with subsection (1) in which it is alleged that an employer was not, at a particular time, the holder of a policy of insurance or indemnity or a self-insurer, the allegation of that fact in the complaint is prima facie evidence of that fact.
- (3) An approved insurer shall not, except with the consent in writing of the Authority, refuse to issue or renew a policy of insurance or indemnity referred to in subsection (1) to an employer who has tendered the premium for such a policy and who has complied with the approved conditions.

Penalty: \$30,000.

Default penalty: \$2,000.

- (4) An approved insurer shall ensure that each policy of insurance or indemnity referred to in subsection (1) issued by him or her is in accordance with Schedule 2 and does not contain provisions other than those in that Schedule except in relation to the employer's liability at common law or under any other law of the Territory and which are appropriate in the particular case.

Penalty: \$15,000.

- (5) A contravention of subsection (4) does not annul the policy of insurance or diminish or affect the liability of the insurer to the person insured under the policy.
- (6) Notwithstanding a contravention of section 125(1)(b), an insurer under a policy of insurance or indemnity referred to in subsection (1) is liable under the policy as if the policy were in accordance with subsection (4).
- (7) An offence against subsection (1), (3) or (4) is a regulatory offence.
- (8) Where an employer is found guilty of an offence against subsection (1), the court may, in addition to a penalty imposed under subsection (1) impose a penalty not exceeding an amount equal to the amount of the premium that would have been payable by that employer if he or she had obtained, in respect of the period or, where that period exceeds 2 years the last 2 years of the period, during which he or she has failed to comply with subsection (1), a policy of insurance or indemnity in accordance with that subsection.

#### **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 under Division 4 of Part VI 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 under that Division, 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 Schedule 2, 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 or fails to comply with subsection (1) is guilty of a regulatory offence.

Penalty: \$3,000.

(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.

Penalty: \$10,000.

- (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.

Penalty: \$2,000.

### **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 by reason of the fact that:
- (a) the policy was obtained by a false statement or misrepresentation or non-disclosure, whether fraudulent, material or otherwise;
  - (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 breach 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 or a failure by that employer to comply with such a term, condition, warranty or provision.
- (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 breach of or failure to comply with a term, condition, warranty or provision referred to in subsection (1)(d) – that the breach or failure 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.

Penalty: In the case of a body corporate – \$1,000.

In the case of a natural person – \$500.

Default penalty: In the case of a body corporate – \$100.

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, unless the contrary intention appears:

***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*.

**152 Alternate member**

- (1) The Minister may appoint an employee within the meaning of the *Public Sector Employment and Management Act* 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 after having regard to the amount standing to the credit of the Fund at the beginning of that year including:
    - (i) amounts set aside in earlier years as provision to meet expenditure in later years; and
    - (ii) the amount estimated to be received into the Fund during the year otherwise than from approved insurers and self-insurers under section 164A; 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 that is equal to a percentage, determined by the Nominal Insurer in accordance with subsection (2), of:
  - (a) in the case of an approved insurer – the premium income (whether received by or owing to the insurer) of the approved insurer in respect of policies of insurance or indemnity effected

with the approved insurer by employers in the preceding financial year in compliance with section 126(1); and

- (b) in the case of a self-insurer – the premium that would have been payable by the self-insurer if he or she had obtained, in respect of that year, or the part of that year during which he or she was a self-insurer, a policy in accordance with section 126(1).
- (2) The percentage determined by the Nominal Insurer for the purposes of subsection (1) is to be:
- (a) such as, in the opinion of the Nominal Insurer, will be sufficient to yield the total amount to be contributed to the Fund by approved insurers and self-insurers during the then current financial year as determined under section 164(1)(d); and
  - (b) uniform for all approved insurers and self-insurers.
- (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.

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, &c.**

- (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, authorize 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*.
- (2) The Allocation 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, &c.**

**167 Claims for payment against Nominal Insurer where employer defaults or dead, &c.**

- (1) Subject to this Part, where:
  - (a) a claim has been made against an employer that the employer is liable to pay compensation;
  - (b) in relation to the claim:
    - (i) the employer has accepted liability for the compensation under section 85;
    - (ii) the employer is, by virtue of section 87, deemed to have accepted liability for the compensation;
    - (iii) the Court has ordered or determined that the employer pay compensation; or
    - (iv) a memorandum of an agreement to pay compensation has been recorded under section 108;
  - (c) the liability of the employer to pay the compensation is not covered in full by a policy or policies of insurance or indemnity obtained in accordance with this Act;
  - (d) the employer defaults in payment of any amount of compensation referred to in paragraph (b); and

- (e) a principal contractor, within the meaning of section 127, is not liable under that section to pay the compensation,

the person entitled to the compensation may make a claim for compensation against the Nominal Insurer.

- (2) Where:

- (a) the employer:

(i) who employed a worker at the time the worker sustained a compensable injury; or

(ii) where the compensable injury is a disease, who last employed the worker in the employment which caused the disease,

is dead, cannot be located or, in the case of a company, has been wound up; and

- (b) the approved insurer of that employer cannot be identified,

a person claiming to be entitled to compensation may make a claim for compensation against the Nominal Insurer.

## **168 Form of claim against Nominal Insurer**

- (1) A claim for compensation under section 167 shall:

(a) be in the approved form;

(b) unless it is a claim for compensation under section 62, 63 or 73, be accompanied by a certificate in a form approved by the Authority from a medical practitioner or other prescribed person; and

(c) be served on the Nominal Insurer.

- (2) If the claim and certificate are not served at the same time, the claim for compensation shall be deemed not to have been made until the day on which the remaining document is served on the Nominal Insurer.

- (3) A defect, omission or irregularity in a claim or certificate shall not affect the validity of the claim and, notwithstanding the defect, omission or irregularity, the claim shall be dealt with in accordance with this Division unless the defect, omission or irregularity is such that the Nominal Insurer is unable to make a proper decision to admit, deny or defer the claim in accordance with section 85, as applied by section 170.

**169 Time limit for making claim**

- (1) A claim for compensation under section 167(1) shall be served on the Nominal Insurer within:
  - (a) 60 days after the right to make the claim arose; or
  - (b) such further period as the Court, on application to it, may allow if, in all the circumstances of the case, it is just to grant the extension of time.
- (2) An application under subsection (1)(b) may be made to the Court at any time, and notice of the application shall be served on the Nominal Insurer not less than 28 days before the date of the hearing of the application.
- (3) At the hearing of an application under subsection (1)(b), the Nominal Insurer shall be entitled to be heard in respect of the application.

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

- (1) Where a claim for compensation under section 167(1) is made against the Nominal Insurer:
  - (a) the liability of the employer to pay compensation under the claim referred to in that section shall be discharged, save to the extent of any compensation previously paid; and
  - (b) any agreement, order, demand or determination, admission or deemed admission referred to in section 167(1)(b) 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 under section 167(1) or (2) 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 shall be deemed to have been made under Part V;
  - (b) a reference to an employer in Part V (other than in sections 75A and 84) or Part VI or VIA 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 sections 75A and 84) as the employer.

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

- (1) Where a claim for compensation under section 167(1) 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.

Penalty: \$10,000.

- (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 section 167 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 Part 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 section 167(1) 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.

**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.

Penalty: \$1,500.

**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, &c., 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 VIII      Miscellaneous**

### **Division 1      Legal proceedings**

#### **178      General penalties**

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

Penalty:      In the case of a body corporate – \$3,000.

In the case of a natural person – \$1,000, or imprisonment for 3 months.

Default penalty: In the case of a body corporate – \$500.

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

#### **179      Time limit, &c., 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 of authority, officers, &c.**

No action or proceeding, civil or criminal, shall lie or be continued against the Authority or any other body, corporated or unincorporated, established by or under this Act, or a member, officer, employee or delegate of the Authority or such a body, for or in respect of an act or thing done in good faith by the Authority or that body, or by such member, officer, employee or delegate, in its or his or her capacity as such.

**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.

Penalty: \$100,000.

(4) A reference in this section to a contract or agreement is not to be taken to include a reference to:

(a) a proposed commutation under section 74; or

- (b) an agreement under section 108.

**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 \$5,000, 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 or fails to comply with subsection (6) is guilty of a regulatory offence.

Penalty: \$500.

- (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 or failed to comply with a provision of this Act in relation to which an approved code of practice was in force at the time of the alleged contravention or failure:

- (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 or failure 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.

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**Part IX                    Repeal, savings and transitional matters for  
Work Health Act 1986****188            Repeal**

The Acts listed in Schedule 3 are repealed.

**189            Claim, &c., 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, &c., of existing policies**

Where immediately before the commencement of Part VII 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 VII 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 X                      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* 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 VIA, Division 1 applies;
  - (b) proceedings under Part VIA, Division 2;
  - (c) an appeal, review or special case being considered under Part VIA, 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*.

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**Schedule 1 Occupational diseases**

section 4

Column 1	Column 2
Occupational diseases	Work involving exposure to risk
1. Pneumoconioses caused by sclerogenic mineral dust (including silicosis, anthracosilicosis and asbestosis) and silico-tuberculosis, provided that silicosis is an essential factor in causing the resultant incapacity or death	All work involving exposure to the risk concerned
2. Bronchopulmonary diseases caused by hard-metal dust	"
3. Bronchopulmonary diseases caused by cotton dust (byssinosis) or flax, hemp or sisal dust	"
4. Diseases caused by beryllium or its toxic compounds	"
5. Diseases caused by cadmium or its toxic compounds	"
6. Diseases caused by phosphorus or its toxic compounds	"
7. Diseases caused by chromium or its toxic compounds	"
8. Diseases caused by manganese or its toxic compounds	"
9. Diseases caused by arsenic or its toxic compounds	"
10. Diseases caused by mercury or its toxic compounds	"
11. Diseases caused by lead or its toxic compounds	"

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12.	Diseases caused by fluorine or its toxic compounds	"
13.	Diseases caused by carbon bisulphide	"
14.	Diseases caused by the toxic halogen derivatives of aliphatic or aromatic hydrocarbons	"
15.	Diseases caused by benzene or its toxic homologues	"
16.	Diseases caused by nitro-and amino-derivatives of benzene or its homologues	"
17.	Diseases caused by nitroglycerin or other nitric acid esters	"
18.	Diseases caused by asphyxiants; carbon monoxide, hydrogen cyanide or its toxic derivatives, hydrogen sulphide	"
19.	Hearing impairment caused by noise	"
20.	Diseases caused by vibration (disorders of muscles, tendons, bones, joints, peripheral blood vessels or peripheral nerves)	"
21.	Diseases caused by work in compressed air	"
22.	Diseases caused by ionizing radiations	All work involving exposure to the action of ionizing radiations
23.	Primary epitheliomatous cancer of the skin caused by tar, pitch, bitumen, mineral oil, anthracene, or the compounds, products or residues of these substances	All work involving exposure to the risk concerned
24.	Lung cancer or mesotheliomas caused by asbestos	"
25.	Brucellosis, Leptospirosis and Q fever	Employment at, in, about or in connection with a meat works or involving the handling of meat, hides, skins or carcasses

26. Anthrax infection	Work in connection with animals infected with anthrax.
	Handling of animal carcasses or parts of animal carcasses including hides, hoofs and horns
	Loading and unloading or transport of merchandise
27. Hepatitis A and B	Employment in or connected with a hospital or other medical or dental centre or blood bank, including laboratory work
28. A.I.D.S.	"

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## Schedule 2 Employer's indemnity policy

section 126(4)

Estimated Wages, \$                      Premium, \$  
(Subject to adjustment as

provided below)

Whereas by virtue of the *Work Health Act* (hereinafter called the Act) it is provided that every employer shall obtain from an insurer approved by the Work Health Authority (hereinafter called the Authority) for the purposes of the Act, a policy of insurance or indemnity for the full amount of his or her liability under the Act (other than Part IV of the Act) to all workers employed by him or her and for an amount of not less than \$2,000,000 in respect of his or her liability independently of the Act for an injury to a worker in his or her employ and shall maintain such policy in force; and whereas

of

(hereinafter called the Employer) is carrying on business for the purpose of this Indemnity in the Northern Territory of Australia, and has made to \_\_\_\_\_, an insurer approved by the Authority for the purposes of the Act (hereinafter called the Insurer), a written proposal and declaration, dated the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, containing certain particulars and statements which it is hereby agreed shall be the basis of this contract and be considered as incorporated herein.

Now this policy witnesseth that in consideration of the payment by the Employer to the Insurer of the abovementioned premium (which premium is subject to adjustment as hereinafter provided) if, between the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and 4 o'clock in the afternoon of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, and thereafter to 4 o'clock in the afternoon of the last day of any subsequent period in respect of which the premium has been paid to and accepted by the Insurer, the Employer shall be liable to pay compensation under the Act to or in respect of any person who is or is deemed by the Act to be a worker of such employer, or to pay an amount not exceeding \$ \_\_\_\_\_ in respect of his or her liability independently of the Act for an injury to a worker in his or her employ, then and in every such case, the Insurer will indemnify the Employer against all such sums for which the Employer shall be so liable; the Insurer will also pay all costs and expenses incurred with the written consent of the Insurer in connection with the defence of any legal proceedings in which such liability is alleged. Provided that this policy shall not extend to any business or occupation other than that described herein, unless and until such particulars thereof shall have been supplied to and accepted by the Insurer and the acceptance of such extension endorsed hereon by the Insurer. And it is hereby further agreed that the above indemnity is made subject to the due and proper observance and fulfilment by the Employer of the conditions hereunder. Provided lastly that

this policy shall be subject to the Act and the Rules and Regulations made thereunder, all of which shall be deemed to be incorporated in and form part of this policy.

#### Conditions

#### NOTICES

1. Every notice or communication to be given or made under this policy shall be delivered in writing at the office of the Insurer from which the policy has been issued.

#### CLAIMS

2. The Employer shall give notice to the Insurer of any injury to which the policy relates as soon as practicable after information as to the happening of the injury, or of any incapacity arising therefrom, comes to the knowledge of the Employer or of the Employer's representative for the time being, and shall forward to the Insurer forthwith after receipt thereof every written notice of claim, conferences or proceedings and all information as to any verbal notice of claim, conferences or proceedings.

#### EMPLOYER NOT TO MAKE ADMISSIONS

3. The Employer shall not, without the written authority of the Insurer, incur any expense of litigation, or make a payment, settlement or admission of liability in respect of an injury to or claim made by a worker.

#### DEFENCE OF PROCEEDINGS

4. The Insurer shall in respect of anything indemnified under this policy, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the Insurer, be entitled to use the name of the Employer. The Employer shall give all necessary information and assistance, and forward all documents to enable the Insurer to settle or resist a claim as the Insurer may think fit.

#### SUBROGATION

5. The Insurer shall be entitled to use the name of the Employer in proceedings to enforce, for the benefit of the Insurer, an order made for costs or otherwise, and shall have the right of subrogation, in respect of all rights which the Employer may have against a person or persons who may be responsible to the Employer or otherwise in respect of a claim for an injury covered by this policy, and the Employer shall as and when required execute the necessary documents for the purpose of vesting such rights in the Insurer.

#### PRECAUTIONS

6. The Employer shall take all reasonable precautions to prevent injuries.

### INJURIES

7. So far as practicable, no alteration or repair shall, without the consent of the Insurer, be made in any ways, works, machinery or plant after an injury to a worker occurring in connection therewith until the Insurer has had an opportunity of examining them.

### INSPECTION

8. The Insurer shall have the right and opportunity at all reasonable times to inspect the works, machinery, plant and appliances used in the Employer's business.

### PREMIUM

9. The first and every subsequent premium that may be accepted shall be regulated by the amount of wages, salaries and all other forms of remuneration paid or allowed to workers during each period of indemnity.

### WAGES BOOKS MUST BE KEPT

10. The names and earnings of every worker employed by the Employer shall be entered regularly in a proper wages book, so that a record may exist of such workers as are entitled to call upon the Employer for compensation.

### ADJUSTMENT OF PREMIUM

11. The Employer shall at all times allow a person duly authorized by the Insurer to inspect the wages book, and shall supply the Insurer with a correct account of all wages, salaries and other forms of remuneration paid or allowed during a period of indemnity within 28 days after the expiry of such period of indemnity, and if the total amount differs from the amount on which premium has been paid, the difference in premium shall be met by a further proportionate payment to the Insurer or by a refund by the Insurer, as the case may be, subject always to the retention by the Insurer of the minimum premium stated in the proposal.

### ASSIGNMENT

12. No assignment of interest under this policy shall bind the Insurer unless the written consent of the Insurer is endorsed hereon.

### CANCELLATION OF POLICY

13. The Insurer may at any time, by giving written notice to the Employer, cancel this policy. The notice of cancellation shall be posted to the Employer at the Employer's address shown in this policy, and the cancellation of the policy shall be effective on the expiration of 7 days after the date of posting the notice. Notwithstanding the cancellation of the policy, the Employer shall furnish a statement of wages showing the amount paid up to the time of

cancellation, and the premium for the period of insurance prior to the cancellation shall be adjusted on a pro rata basis in the manner provided by Condition 11 of this policy; provided that the policy may not be cancelled without the prior consent of the Authority.

#### NO WAIVER OF CONDITIONS

14. No condition or provision of this policy shall be waived or altered except with the prior consent of the Insurer endorsed hereon, nor shall notice to an agent, nor shall knowledge possessed by an agent, or by any person, be held to effect a waiver or alteration in this contract or any part of it.

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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;  
 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))

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**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 26 July 1995 (*Gaz G30*, 26 July 1995, p 3)

***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. 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 41: nc; rem: 20 May 1998 (*Gaz G19*, 20 May 1998, 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))

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**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)

**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)

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**4 LIST OF AMENDMENTS**

It	amd No. 17, 1995, s 4; No. 59, 1998, s 4
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
s 4	amd No. 59, 1991, s 5; No. 18, 1998, ss 4 and 39
ss 8 – 9	rep No. 28, 1993, s 3
s 10	amd No. 18, 1998, s 6
s 14	amd No. 18, 1998, ss 7 and 39
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
s 19	amd No. 11, 1991, s 6; No. 18, 1998, s 39
s 20	amd No. 11, 1991, s 7; No. 18, 1998, s 39
s 21	amd No. 18, 1998, s 39
ss 23 – 24	amd No. 18, 1998, s 39
ss 26 – 27	amd No. 18, 1998, s 39
s 28	amd No. 11, 1991, s 8; No. 17, 1995, s 6; No. 18, 1998, s 39
s 28A	ins No. 8, 1993, s 2 sub No. 42, 2001, s 3
s 28B	ins No. 41, 2000, s 3
s 29	amd No. 11, 1991, s 9; No. 27, 1997, s 3; No. 18, 1998, s 39
s 30	amd No. 17, 1995, s 7; No. 27, 1997, s 4
s 30A	ins No. 17, 1995, s 8 amd No. 27, 1997, s 5; No. 18, 1998, s 39
s 30B	ins No. 17, 1995, s 8 amd No. 27, 1997, s 6
s 30C	ins No. 17, 1995, s 8 amd No. 27, 1997, s 7; No. 18, 1998, s 39
s 31	amd No. 11, 1991, s 10; No. 18, 1998, s 39
s 32	amd No. 18, 1998, s 39
s 39	amd No. 18, 1998, s 39
s 41	amd No. 11, 1991, s 11
s 41A	ins No. 11, 1991, s 12 amd No. 41, 2000, s 4; No. 17, 2001, s 21
s 44	amd No. 18, 1998, s 39
pt IV	
div 4A hdg	ins No. 61, 1991, s 5
s 44A	ins No. 61, 1991, s 5 amd No. 59, 1998, s 6
ss 44B – 44D	ins No. 61, 1991, s 5
s 44E	ins No. 61, 1991, s 5 amd No. 18, 1998, s 39
ss 44F – 44G	ins No. 61, 1991, s 5
s 45	amd No. 61, 1991, s 6
s 46	amd No. 17, 1996, s 6; No. 18, 1998, s 39
ss 47 – 48	rep No. 61, 1991, s 7
s 48A	ins No. 11, 1991, s 13
ss 48B – 48C	ins No. 11, 1991, s 13 rep No. 17, 1995, s 9
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
s 50	rep No. 61, 1991, s 9 ins No. 27, 1997, s 9

## ENDNOTES

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s 51	amd No. 18, 1998, s 9
s 52	amd No. 50, 1988, s 2
s 53	amd No. 18, 1998, s 39
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
ss 58 – 59	rep No. 61, 1991, s 12
s 60	amd No. 59, 1991, s 7
s 61	rep No. 61, 1991, s 12 ins No. 18, 1998, s 12
s 62	amd No. 11, 1991, s 14; No. 61, 1991, s 13; No. 42, 2002, s 5
s 63	amd No. 59, 1991, s 8
s 64	amd No. 18, 1998, ss 13 and 39; No. 42, 2002, s 6
s 65	amd No. 59, 1991, s 9; No. 17, 1995, s 12; No. 18, 1998, s 39; No. 42, 2002, s 7
s 65A	ins No. 18, 1998, s 14 amd No. 42, 2002, s 8
s 65B	ins No. 42, 2002, s 9
s 66	amd No. 3, 2001, s 6
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
s 70	amd No. 59, 1991, s 10
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
s 73	amd No. 18, 1998, s 39
s 74	amd No. 59, 1991, s 12; No. 17, 1995, s 13; No. 18, 1998, s 39; No. 42, 2002, s 14
pt V	
div 4 hdg	amd No. 61, 1991, s 16
s 75	sub No. 61, 1991, s 17
s 75A	ins No. 61, 1991, s 17 amd No. 27, 1997, s 10; No. 59, 1998, s 9; No. 42, 2002, s 15
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
ss 77 – 78	amd No. 18, 1998, s 39
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
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; No. 41, 2000, s 4
s 85	amd No. 61, 1991, s 19 sub No. 78, 1993, s 9 amd No. 50, 1994, s 16; No. 18, 1998, ss 18 and 39; No. 59, 1998, s 11; No. 42, 2002, s 16; No. 63, 2004, s 8
s 85A	ins No. 18, 1998, s 19
s 86	amd No. 59, 1998, s 12
s 87	amd No. 61, 1991, s 20 sub No. 78, 1993, s 10; No. 18, 1998, s 20
s 88	amd No. 18, 1998, ss 21 and 39; No. 59, 1998, s 35
s 89	amd No. 18, 1998, s 39
s 90	amd No. 18, 1998, ss 22 and 39; No. 59, 1998, s 35

## ENDNOTES

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s 90A	ins No. 18, 1998, s 23
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
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
ss 91D – 91F	ins No. 61, 1991, s 22 rep No. 78, 1993, s 11
s 93	amd No. 78, 1993, s 12; No. 59, 1998, s 14
s 94	amd No. 78, 1993, s 13; No. 59, 1998, s 15
s 97	amd No. 61, 1991, s 23; No. 78, 1993, s 14; No. 18, 1998, s 39
pt VI	
div 3 hdg	sub No. 59, 1998, s 16
s 99A	ins No. 59, 1998, s 17
s 100	amd No. 78, 1993, s 15; No. 18, 1998, s 24 sub No. 59, 1998, s 17
s 101	amd No. 14, 1989, s 7; No. 18, 1998, s 39
s 102	amd No. 78, 1993, s 16; No. 18, 1998, s 39
s 103	amd No. 18, 1998, s 39
pt VIA hdg	ins No. 59, 1998, s 18
pt VIA	
div 1 hdg	ins No. 59, 1998, s 18
ss 103A – 103C	ins No. 59, 1998, s 18
s 103D	ins No. 59, 1998, s 18 amd No. 42, 2002, s 17; No. 63, 2004, s 11
ss 103E – 103H	ins No. 59, 1998, s 18
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
pt VI	
div 4 hdg	amd No. 59, 1998, s 19
s 104	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
s 105	amd No. 18, 1998, s 39; No. 59, 1998, s 21
s 106	amd No. 61, 1991, s 25; No. 78, 1993, s 18 sub No. 59, 1998, s 22
s 107	amd No. 9, 1987, s 2; No. 78, 1993, s 19 sub No. 59, 1998, s 22
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
s 110B	ins No. 78, 1993, s 20 amd No. 18, 1998, s 39
pt VI	
div 5 hdg	amd No. 59, 1998, s 24
s 111	amd No. 61, 1991, s 26

## ENDNOTES

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s 114	amd No. 78, 1993, s 21
pt VI	
div 4 hdg	ins No. 59, 1998, s 25
s 114A	ins No. 59, 1998, s 25
pt VI	
div 6 hdg	amd No. 59, 1998, s 26
s 116	amd No. 59, 1998, s 27
s 118	sub No. 18, 1998, s 25 amd No. 23, 2002, s 2
s 121	amd No. 18, 1998, ss 26 and 39
s 121A	ins No. 59, 1998, s 28 amd No. 42, 2002, s 20
s 122	amd No. 18, 1998, s 39
s 124	amd No. 18, 1998, s 39; No. 59, 1998, s 29
s 124A	ins No. 59, 1998, s 30
s 125	amd No. 17, 1996, s 6; No. 18, 1998, s 39; No. 59, 1998, s 35
s 126	amd No. 17, 1996, s 6, No. 18, 1998, s 39; No. 59, 1998, s 31
s 126A	ins No. 78, 1993, s 22 amd No. 18, 1998, s 27
s 127	amd No. 61, 1991, s 27 sub No. 18, 1998, s 28
s 129	amd No. 18, 1998, s 39
s 130	amd No. 11, 1991, s 16; No. 18, 1998, ss 29 and 39; No. 59, 1998, s 35
ss 131 – 132	amd No. 18, 1998, s 39
ss 135 – 138	amd No. 18, 1998, s 39
s 138A	ins No. 11, 1991, s 17
s 139	amd No. 18, 1998, s 39
pt VII	
div 4 hdg	amd No. 18, 1998, s 30
s 140	amd No. 18, 1998, ss 31 and 39
s 141	amd No. 18, 1998, ss 32 and 39
ss 142 – 144	amd No. 18, 1998, s 39
s 145	amd No. 59, 1991, s 13; No. 18, 1998, s 33
ss 147 – 149	amd No. 18, 1998, s 39
s 150	amd No. 18, 1998, s 34
s 151	amd No. 18, 1998, s 35
s 152	amd No. 18, 1998, ss 36 and 39
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
s 162	amd No. 10, 2001, s 3
s 164	amd No. 18, 1998, s 39; No. 59, 1998, s 35 sub No. 10, 2001, s 4
s 164A	ins No. 10, 2001, s 4
s 164B	ins No. 10, 2001, s 4 amd No. 23, 2002, s 3
s 165	amd No. 10, 2001, s 5
s 166	amd No. 27, 1999, s 15
s 167	amd No. 9, 1987, s 2 sub No. 61, 1991, s 28 amd No. 78, 1993, s 23
s 168	sub No. 61, 1991, s 28 amd No. 18, 1998, s 37
s 169	sub No. 61, 1991, s 28
s 170	sub No. 61, 1991, s 28 amd No. 59, 1998, s 32
s 171	sub No. 61, 1991, s 28 amd No. 59, 1998, s 35; No. 41, 2000, s 4; No. 17, 2001, s 21

## ENDNOTES

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ss 172 – 173	sub No. 61, 1991, s 28 amd No. 18, 1998, s 39
s 174	rep No. 61, 1991, s 28
s 175	amd No. 18, 1998, s 39; No. 59, 1998, s 35
s 176	amd No. 18, 1998, s 39
s 178	amd No. 59, 1998, s 35
ss 181 – 184	amd No. 18, 1998, s 39
s 186A	ins No. 11, 1991, s 18 amd No. 59, 1998, s 33
s 187	amd No. 11, 1991, s 19; No. 61, 1991, s 29; No. 78, 1993, s 24; No. 17, 1995, s 16; No. 27, 1997, s 13; No. 18, 1998, s 39; No. 59, 1998, s 34
s 187A	ins No. 61, 1991, s 30 amd No. 18, 1998, s 39
s 187B	ins No. 61, 1991, s 30
pt IX hdg	amd No. 63, 2004, s 12
s 189	amd No. 61, 1991, s 31; No. 18, 1998, s 39
ss 192 – 193	amd No. 18, 1998, s 39
pt X hdg	ins No. 63, 2004, s 13
s 194	rep No. 61, 1991, s 32 ins No. 63, 2004, s 13
ss 195 – 196	ins No. 63, 2004, s 13
sch 2	amd No. 11, 1991, s 20; No. 61, 1991, s 33; No. 18, 1998, s 39