

NORTHERN TERRITORY OF AUSTRALIA

RETURN TO WORK LEGISLATION AMENDMENT ACT 2020

Act No. 21 of 2020

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NORTHERN TERRITORY OF AUSTRALIA

Act No. 21 of 2020

An Act to amend the *Return to Work Act 1986* and *Return to Work Regulations 1986*

[Assented to 1 July 2020]
[Introduced 19 February 2020]

The Legislative Assembly of the Northern Territory enacts as follows:

Part 1 Preliminary matters

1 Short title

This Act may be cited as the *Return to Work Legislation Amendment Act 2020*.

2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

Part 2 Amendment of Return to Work Act 1986

3 Act amended

This Part amends the *Return to Work Act 1986*.

4 Section 3 amended (Interpretation)

- (1) Section 3(1), definitions ***statement of fitness for work*** and ***worker omit***

(2) Section 3(1)

insert

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

catastrophic injury, see section 78A(6).

labour hire arrangement, see section 4A.

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

worker, see section 3B.

(3) Section 3(2) to (10)

omit

5 Section 3B inserted

After section 3A

insert

3B Meaning of worker

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

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

Note for subsection (3)

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

- (4) A prescribed member of the immediate family of an employer, who lives with the employer, is a worker if the member's name, nature of employment and estimated wages are disclosed to the employer's insurer:
- (a) when the employment of that member is commenced or, if the relevant insurance or indemnity is effected after the employment is commenced, at that time; and
 - (b) each subsequent time the policy is renewed.
- (5) Subject to subsection (6), a person who is a director (however described) of a body corporate is not a worker.
- (6) A director of a body corporate is a worker if:
- (a) an amount is withheld, under the PAYG provisions, from any remuneration (however described) paid to the director by the body corporate; and
 - (b) the director's name and estimated remuneration, as well as the nature of the director's employment, are disclosed to the body corporate's insurer when:
 - (i) the director is appointed or, if the relevant insurance or indemnity is effected after the director is appointed, at that time; and
 - (ii) each subsequent time the policy is renewed.
- (7) Subject to subsections (8) and (9), an individual who is engaged in voluntary work and who receives in relation to that work, if anything, nothing more than reasonable travelling, accommodation or other out-of-pocket expenses, is not a worker.

- (8) An individual who, without remuneration or reward, voluntarily engages in any of the following is taken to be a worker employed by the Territory:
- (a) assisting in emergency services, training exercises or other activities with the consent of, or under the authority and supervision of, or in cooperation with, any of the following (as defined in section 8 of the *Emergency Management Act 2013*):
 - (i) the Territory, Regional or Local Controller;
 - (ii) the Territory, Regional or Local Recovery Coordinator;
 - (iii) the Director;
 - (b) fighting a fire, training exercises or other activities with the consent of, or under the authority and supervision of, or in cooperation with, a volunteer bushfire brigade established under the *Bushfires Management Act 2016*;
 - (c) fighting fires or dealing with other emergencies, or training exercises or other activities, as a volunteer member as defined in the *Fire and Emergency Act 1996*.
- (9) Also, an individual who, without remuneration or reward, voluntarily engages in work or training of a kind by reference or in relation to which a person or class of persons is prescribed as mentioned in subsection (17), is taken to be a worker employed under a contract of employment by the person or organisation prescribed.
- (10) Subject to subsection (11), an individual who is employed or engaged by a householder is not a worker.
- (11) An individual is a worker of a household if the individual earns more than, or is paid at a rate that would exceed, the prescribed amount.
- (12) A person performing work under a community court order is taken to be a worker employed by the Territory when the person is performing work under the order.
- (13) If the person was employed as a worker during normal working hours immediately before the time the person performed work under the order, the person's normal weekly earnings in that employment are taken to be the person's normal weekly earnings when performing work under the order.
- (14) Despite anything in this Act but subject to subsection (15), a person is taken not to be a worker while the person is, under a contract:
- (a) participating as a contestant in a sporting or athletic activity; or

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

Note for subsection (16)

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

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

6 Section 4 amended (Out of or in course of employment)

- (1) Section 4(1)
omit
he or she:
insert
the worker:
- (2) Section 4(1)(b), (c) and (e)
omit
- (3) Section 4(1)(f)
omit, insert
- (f) is in attendance at a place for any of the following purposes, in connection with an injury for which the worker is entitled to receive compensation:
- (i) obtaining a medical certificate of capacity;
 - (ii) receiving medical, surgical or hospital advice, attention or treatment;
 - (iii) submitting to a medical examination required under this Act;
 - (iv) receiving a payment of compensation.
- (4) After section 4(1)
insert
- (1A) In addition, an injury to a worker is taken to arise ***out of or in the course of his or her employment*** if the injury occurs while the worker:
- (a) is travelling by the shortest convenient route between the worker's place of residence and a workplace; or
 - (b) is travelling by the shortest convenient route between the worker's place of residence or a workplace and a place mentioned in subsection (1)(d) or (f); or
 - (c) being a worker who is employed by more than one employer and has attended on a working day at a workplace for one

employer, is travelling by the shortest convenient route between that place and the worker's place of employment for another employer.

(1B) If subsection (1A)(c) is applicable, the injury is taken to have occurred while the worker was employed by the employer to whose workplace the worker was travelling.

(5) Section 4(2)

omit

Subsection (1)

insert

Subsection (1A)

(6) Section 4(2)

omit

his or her

insert

the worker's

(7) Section 4(2)

omit

school or place referred to in subsection (1)(e)(ii)

insert

place mentioned in subsection (1)(d) or (f)

(8) Section 4(2A)

omit

Notwithstanding subsection (1), an injury to a worker shall be

insert

Despite subsection (1A), an injury to a worker is

(9) Section 4(2A)

omit

an accident

insert

a motor accident

(10) Section 4(2A)

omit

he or she:

insert

the worker:

(11) Section 4(2A)(a)

omit

his or her

insert

the worker's

(12) Section 4(2A)(b)

omit, insert

(b) is travelling between the worker's place of residence and a workplace, unless:

(i) the workplace is not the worker's normal or usual workplace and the travel is at the request of the worker's employer; or

(ii) the worker's employer has required the worker to work outside the worker's normal hours of work; or

(c) is travelling between the worker's place of residence or a workplace and a place mentioned in subsection (1)(d) or (f); or

- (d) having attended on a working day at a workplace for one employer, is travelling between that place and the worker's place of employment for another employer, unless:
 - (i) the workplace to which the worker is travelling is not the worker's normal or usual workplace and the travel is at the request of the worker's employer; or
 - (ii) the employer to whose workplace the worker is travelling has required the worker to work outside the worker's normal hours of work.

7 Sections 4A and 4B inserted

After section 4

insert

4A Labour hire arrangement

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

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

4B Provider of labour hire services

- (1) A person is a provider of labour hire services (the **provider**) if, in the course of conducting a business, the person supplies to another person (the **client**) an individual to perform work or services in and as part of a business or commercial undertaking of the client.
- (2) Without limiting subsection (1), a person is a provider of labour hire services:
 - (a) if a contract is entered into between the individual (the **worker**) and the provider, or between the provider and the client; and
 - (b) whether the worker is supplied by the provider to a client directly or indirectly through one or more agents or intermediaries; and

- (c) whether the work or services performed by the worker is under the control of the provider, the client or another person.

8 Section 61 amended (Settling of journey claims)

- (1) Section 61(1)

omit

an accident

insert

a motor accident

- (2) Section 61(5), definition **accident**

omit

- (3) Section 61(5)

insert

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

9 Section 65 amended (Long-term incapacity)

- (1) Section 65(1D)(c)(i) and (iii)

omit

within

insert

less than

- (2) Section 65(3)

omit, insert

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

(3) Section 65(11)

omit

section 49

insert

section 49A

10 Section 73 amended (Compensation for medical, surgical and rehabilitation treatment, family counselling and other costs)

Section 73(4)

omit

all words from "costs incurred" to "are"

insert

costs incurred, or proposed to be incurred, by a worker mentioned in subsection (1) or (2) are, or would be,

11 Part 5, Division 3, Subdivision E inserted

After section 73, in Division 3

insert

Subdivision E Recovery of overpayments

74 Recovery from worker

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

-
- (4) This section applies in relation to a worker who is, or was, a public sector employee, despite anything to the contrary in the *Financial Management Act 1995*.

12 Section 74A inserted

Before section 75, in Division 4

insert

74A Definition

In this Division:

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

13 Section 75A amended (Employer to assist injured worker to find suitable employment)

After section 75A(6)

insert

- (6A) To avoid doubt, the giving of a proposal for a return to work plan under subsection (1)(c) is not providing a program of a type mentioned in section 75B(1A).

Note for subsection (6A)

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

14 Section 78 amended (Other rehabilitation)

Section 78(4)

omit, insert

- (4) Without limiting subsection (2)(c), in relation to reasonable and necessary household services, the reasonable costs of childcare, including overnight childcare, are included for a period when the worker is unable to access child care or child minding support from family members and the worker is:
- (a) hospitalised due to the compensable injury; or
 - (b) undergoing surgery directly related to the compensable injury.

15 Section 78A amended (Settlement by agreement)**(1) Section 78A(1)**

omit, insert

(1) As an alternative to being paid an amount, or all amounts, payable under this Act in respect of an injury, a claimant may enter into an agreement of one of the following types:

- (a) an agreement with the employer for payment of a lump sum;
- (b) an agreement with the employer for a structured settlement.

(1A) However, an agreement purportedly entered into in accordance with subsection (1) is void if the agreement provides for an amount as settlement of all amounts payable for any of the following in relation to a person who has suffered a catastrophic injury:

- (a) medical treatment;
- (b) pharmaceutical treatment;
- (c) dental treatment;
- (d) ambulance transportation;
- (e) respite care;
- (f) attendant care services;
- (g) domestic assistance;
- (h) aids and appliances intended to assist a person to live a normal lifestyle, or to help prevent further injury or worsening of a health condition;
- (i) prosthetics, including limbs, eyes and teeth;
- (j) educational and vocational training;
- (k) home, transport and workplace modification;
- (l) a service or treatment prescribed by regulation.

(2) Section 78A(2)

omit

such an agreement

insert

an agreement mentioned in subsection (1)

- (3) Section 78A(3), after "Division,"

insert

or an agreement that is substantially in accordance with this Division and that is reached before a court,

- (4) Section 78A(4)

omit, insert

- (4) Before an agreement under subsection (1) is entered into, the following conditions must be met:

(a) the employer must invite the claimant to obtain independent legal advice from a legal practitioner of the claimant's choice;

(b) the employer must invite the claimant to obtain expert financial advice from a person of the claimant's choice who is qualified to give expert financial advice;

(c) the claimant must confirm in writing to the employer that:

(i) the claimant has received the advice mentioned in paragraph (a); and

(ii) the claimant either has received the advice mentioned in paragraph (b) or does not elect to receive that advice.

- (4A) Whether or not an agreement is entered into, the employer must pay the reasonable costs of:

(a) the legal practitioner who gave the legal advice; and

(b) if the claimant elects to obtain expert financial advice – the person who gave that advice.

- (4B) Any agreement entered into is not enforceable until subsection (4A) is satisfied.

- (5) Section 78A(5)

omit

under subsection (1)

insert

mentioned in subsection (1), including an agreement in relation to a claim where liability is disputed by the employer,

(6) After section 78A(5)

insert

(5A) If liability is disputed as mentioned in subsection (5), any payment under an agreement mentioned in subsection (1) made by the employer:

- (a) is made on a "without prejudice" basis; and
- (b) is not taken to be an admission by the employer that the claimant has any entitlement to compensation in relation to an injury suffered by the claimant and to which the agreement relates; and
- (c) is not evidence that the employer is liable to make any, or any further, payments under this Act as compensation to the claimant.

(5B) If, during the cooling-off period, the claimant withdraws from an agreement entered into with the employer:

- (a) any payment (the **repayment amount**) made by the employer in accordance with the agreement is repayable by the claimant to the employer; and
- (b) the repayment amount is a debt due and payable by the claimant on demand by the employer within the time (not less than 14 days) specified in the demand.

(5C) If the claimant fails to repay to the employer all or any of the repayment amount within the time specified, the employer may:

- (a) set-off the unpaid amount against any further entitlement to compensation that the claimant may establish against the employer after the claimant withdraws from the agreement; or
- (b) initiate legal proceedings to recover the amount remaining unpaid.

(7) Section 78A(6)

insert

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

16 Section 78B amended (Lump sum agreement for particular period)

Section 78B(1)

omit

all amounts

insert

an amount, or all amounts,

17 Section 103FA amended (Legal representation or legal advice)

Section 103FA(5)(a)

omit

(not

insert

(the total of which is not

18 Section 164 amended (Annual estimates, determinations etc.)

Section 164(1)(d)

omit, insert

(d) may recommend a total amount to be contributed to the Fund under section 164A by approved insurers and self-insurers during that financial year, as determined in accordance with the Regulations; and

19 Section 164A amended (Contributions by approved insurers and self-insurers)

Section 164A(1) and (2)

omit, insert

- (1) If the Minister approves a recommendation of the Nominal Insurer made under section 164(1)(d), each approved insurer and self-insurer must contribute to the Fund an amount determined by the Nominal Insurer in accordance with the Regulations.

20 Section 167 amended (Claims for payment against Nominal Insurer when employer dead, wound up, etc.)

- (1) Section 167, before "Subject"

insert

- (1)

- (2) Section 167, at the end

insert

- (2) A person may also make a claim for compensation against the Nominal Insurer if:
 - (a) the person claims to be entitled to compensation from an employer; and
 - (b) the liability of the employer to pay the compensation is not covered in full by one or more policies of insurance or indemnity in accordance with this Act.

21 Part 15 inserted

After section 209

insert

Part 15 Transitional matters for Return to Work Legislation Amendment Act 2020**210 Definitions**

In this Part:

amending Act means the *Return to Work Legislation Amendment Act 2020*.

commencement means the commencement of section 5 of the amending Act.

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

211 Worker

- (1) Section 3B, as inserted by the amending Act, applies only in relation to a person who suffers a post-commencement injury.
- (2) A person who was not a worker under the Act as in force immediately before the commencement continues not to be a worker after the commencement in relation to an injury suffered before the commencement as if the amending Act had not commenced.

212 Out of or in course of employment

- (1) Section 4, as amended by the amending Act, applies only in relation to a post-commencement injury.
- (2) Section 4, as in force immediately before the commencement, continues to apply in relation to an injury suffered by a worker before the commencement as if the amending Act had not commenced.

213 Labour hire arrangement

- (1) Sections 4A and 4B, as inserted by the amending Act, apply in relation to an individual who suffers a post-commencement injury, whether the contract or arrangement was entered into before, on or after the commencement.
- (2) However, the Act as in force immediately before the commencement continues to apply after the commencement in relation to an individual who suffered an injury before the commencement.

214 Long-term incapacity

- (1) Section 65, as amended by the amending Act, applies only in relation to a worker who suffers a post-commencement injury.
- (2) Section 65, as in force immediately before the commencement, continues to apply in relation to a worker who suffered an injury before the commencement as if the amending Act had not commenced.

215 Dispute relating to costs

- (1) Section 73(4), as amended by the amending Act, applies only in relation to costs incurred, or proposed to be incurred, after the commencement.
- (2) Section 73(4), as in force immediately before the commencement, continues to apply in relation to costs incurred before the commencement as if the amending Act had not commenced.

216 Overpayment of benefits

Section 74, as inserted by the amending Act, applies only in relation to an overpayment of benefits that occurs after the commencement.

217 Rehabilitation costs

Section 78(4), as inserted by the amending Act, applies only in relation to costs incurred after the commencement.

218 Settlement by agreement

- (1) Section 78A, as amended by the amending Act, applies only in relation to an agreement entered into after the commencement.
- (2) Section 78A, as in force immediately before the commencement, continues to apply in relation to an agreement entered into before the commencement as if the amending Act had not commenced.

22 Act further amended

Schedule 1 has effect.

Part 3 Amendment of Return to Work Regulations 1986**23 Regulations amended**

This Part amends the *Return to Work Regulations 1986*.

24 Regulation 3 amended (Definitions)

Regulation 3

insert

first-responder, for Schedule 2, means a person with specialised training (such as a paramedic, police officer, firefighter or other emergency personnel), who attends the site of an incident and provides assistance in situations:

- (a) involving actual or potential injury to persons or damage to property; and
- (b) which may also include risk to the first-responder; and
- (c) where time may be of the essence to save lives or property.

25 Regulation 3A amended (Definition of *worker*)

(1) Regulation 3A(1)

omit

paragraph (b) of the definition of **worker** in section 3(1)

insert

section 3B(17)(a)

(2) Regulation 3A(1)

omit

within the meaning of that definition

insert

for the Act

(3) Regulation 3A(2)

omit

paragraph (g) of the definition of **worker** in section 3

insert

section 3B(17)(b)

- (4) Regulation 3A(2)
omit
within the meaning of that definition
insert
for the Act

26 Regulation 4 amended (Prescribed member of family)

- Regulation 4
omit
section 3(2)
insert
section 3B(3) and (4)

27 Regulation 4A replaced

- Regulation 4A
repeal, insert

4A Worker of household

For section 3B(11) of the Act, the prescribed amount is 20% of the annual equivalent of average weekly earnings.

28 Regulation 5 amended (Prescribed amount)

- Regulation 5
omit
section 3(10)
insert
section 3B(15)

29 Regulation 5B amended (Prescribed diseases and qualifying periods: firefighters)

Regulation 5B, table, after entry for "Multiple myeloma"

insert

Asbestos related diseases	15 years
Primary site liver cancer	15 years
Primary site lung cancer	15 years
Primary site skin cancer	15 years

30 Regulation 11A inserted

After regulation 11

insert

11A Catastrophic injury

For section 78A(6) of the Act, an injury mentioned in Schedule 2A is prescribed as a catastrophic injury.

31 Regulations 17B and 17C inserted

After regulation 17A

insert

17B Contributions to Nominal Insurer's Fund

- (1) The Nominal Insurer may recommend a total amount to be contributed to the Nominal Insurer's Fund under section 164A of the Act by approved insurers and self-insurers during the financial year.
- (2) In determining the total amount mentioned in subregulation (1), the Nominal Insurer is to have regard to the amount standing to the credit of the Fund at the beginning of that year including:
 - (a) amounts set aside in earlier years as provision to meet expenditure in later years; and
 - (b) the amount estimated to be received into the Fund during the year other than from approved insurers and self-insurers under section 164A of the Act.

17C Amount of contributions

- (1) For section 164A of the Act, the contribution amount for each approved insurer and self-insurer is equal to a percentage determined by the Nominal Insurer in accordance with subregulation (2), as approved by the Minister under section 164(1)(e) of the Act, of:
- (a) for 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 126AA(1) of the Act; and
 - (b) for a self-insurer – the premium that would have been payable by the self-insurer if the self-insurer had obtained, in respect of that year, or the part of that year during which the self-insurer was a self-insurer, an adequate policy of insurance or indemnity.
- (2) The percentage determined by the Nominal Insurer for subregulation (1) is to be:
- (a) sufficient, in the opinion of the Nominal Insurer, to provide the total amount to be contributed to the Fund by approved insurers and self-insurers during the financial year as determined in accordance with section 164(1)(d) of the Act; and
 - (b) uniform for all approved insurers and self-insurers.

32 Regulation 18 amended (Service on nominal insurer)

Regulation 18, heading

omit

nominal insurer

insert

Nominal Insurer

33 Schedule 2 amended (Prescribed diseases and kinds of employment)

Schedule 2, after item 9

insert

MENTAL HEALTH DISEASE

- | | | |
|-----|--------------------------------|--|
| 9A. | Post-traumatic stress disorder | All work as a first responder, including as a volunteer, but not including a person trained as a first responder who has not attended in person at an emergency situation or incident. |
|-----|--------------------------------|--|

34 Schedule 3 replaced

Schedule 3

omit, insert

Schedule 2A Catastrophic injury

regulation 11A

Division 1 Preliminary

1 Definition

In this Schedule:

FIM(TM) instrument means the *Guide for the Uniform Data Set for Medical Rehabilitation, 1996*.

Division 2 Prescribed injuries

2 Spinal cord injury

- (1) The eligibility criteria for a permanent spinal cord injury resulting in a permanent neurological deficit suffered by a person are:
 - (a) the permanent neurological deficit is classified as grade A, B, C or D on the ASIA impairment scale, as assessed under the ISNCSCI; and
 - (b) the injury has resulted in a residual significant impact on the function of the autonomic nervous system, evidenced by a score of 0 for an item relating to bladder, bowel or sexual function, as assessed under the ISAFSCI.

(2) In this clause:

ASIA impairment scale means the scale, known as the American Spinal Injury Association Impairment Scale, used for measuring impairment resulting from a spinal cord injury and published by the American Spinal Injury Association.

ISAFSCI means the document called "International standards to document remaining autonomic function after spinal cord injury", published by the American Spinal Injury Association.

ISNCSCI means the document called "International Standards for Neurological Classification of Spinal Cord Injury", published by the American Spinal Injury Association.

3 Traumatic brain injury

(1) The eligibility criteria for a traumatic brain injury resulting in a permanent impairment suffered by a person are:

(a) any or all of the following apply:

- (i) the injury results in post-traumatic amnesia lasting 7 days or more as evidenced by an assessment using an approved scale;
- (ii) the person is or was in a coma, other than an induced coma, as determined in accordance with the Glasgow coma scale, for 1 hour or more as a result of the injury;
- (iii) brain imaging shows a significant brain abnormality as a result of the injury; and

(b) the person's functional ability as a result of the injury is assessed as 5 or less for a motor or cognitive item using the FIM(TM) instrument.

(2) In this clause:

approved scale, for assessing post-traumatic amnesia, means:

- (a) the clinical tool, known as the Westmead Post-traumatic Amnesia Scale, used to assess the period a person suffers post-traumatic amnesia; or
- (b) a clinically accepted scale similar to the Westmead Post-Traumatic Amnesia Scale approved by the Agency for this definition.

Glasgow coma scale means the scale, known as the Glasgow coma scale, used for assessing the level of consciousness of a person following a traumatic brain injury, using eye, verbal and motor responses.

4 Amputation of a leg through or above the femur

- (1) The eligibility criterion for the amputation of a leg through or above the femur is that the amputation involves the loss of 65% or more of the length of the femur.
- (2) For subclause (1), the percentage of the length of the femur lost must be worked out by:
 - (a) comparing the length of the femur before and after the amputation using X-rays taken before and after the amputation; or
 - (b) if X-rays of the femur are not available – comparing the length of the femur of the amputated leg with the length of the contralateral femur.
- (3) To avoid doubt, the eligibility criterion in subclause (1) may be satisfied even if the person suffers from a personal injury that is the amputation of more than one limb or parts of different limbs.

5 Amputation of more than one limb or parts of different limbs

- (1) The eligibility criteria for the amputation of more than one limb or parts of different limbs are:
 - (a) the amputations involve the loss of 50% or more of the length of each of the person's tibias; or
 - (b) both of the person's upper limbs are amputated at or above the first metacarpophalangeal joint of the thumb and index finger of each hand; or
 - (c) the amputations involve:
 - (i) the loss of 50% or more of the length of one of the person's tibias; and
 - (ii) one of the person's upper limbs being amputated at or above the first metacarpophalangeal joint of the thumb and index finger of the same hand.

- (2) For subclause (1), the percentage of the length of the tibia lost must be worked out by:
- (a) comparing the length of the tibia before and after the amputation using X-rays taken before and after the amputation; or
 - (b) if X-rays of the tibia are not available – comparing the length of the tibia of the amputated leg with the length of the contralateral tibia; or
 - (c) if the length of the contralateral tibia cannot be determined – using the estimated knee height based on overall height before the amputation.

6 Full thickness burn to all or part of the body

The eligibility criteria for a full thickness burn to all or part of the body are:

- (a) the full thickness burn is to:
 - (i) more than 40% of the total body surface area; or
 - (ii) both hands; or
 - (iii) the face; or
 - (iv) the genital area; and
- (b) the person's functional ability as a result of the injury is assessed as 5 or less for a motor or cognitive item using the FIM(TM) instrument.

7 Inhalation burn resulting in permanent respiratory impairment

The eligibility criterion for an inhalation burn resulting in a permanent respiratory impairment is if the injured person's functional ability as a result of the injury is assessed as 5 or less for a motor or cognitive item using the FIM(TM) instrument.

8 Permanent blindness caused by trauma

- (1) The eligibility criterion for permanent blindness caused by trauma is that the injured person has a visual defect, or a combination of visual defects, that result in visual loss that is, or is equivalent to:
- (a) visual acuity of less than 6/60 in both eyes, assessed using the Snellen scale after correction by suitable lenses; or

- (b) the constriction of the person's field of vision to 10 degrees or less of the arc around central fixation in the person's better eye, regardless of corrected visual acuity (equivalent to 1/100 white test object).

- (2) In this clause:

Snellen scale means the scale for measuring visual acuity using rows of letters printed in decreasing sizes.

Schedule 3 Prescribed provisions for compulsory insurance

regulation 15A

The *Return to Work Act 1986* (the **Act**) requires that every employer obtain a Policy of Insurance or Indemnity from an insurer approved by the Work Health Authority (the **Authority**). The cover must be for the full amount of the employer's liability under the Act and not less than \$2 000 000 in respect of the employer's liability independently of the Act for an injury to one of the employer's workers.

The (the **Insurer**) is an insurer approved by the Authority.

The Insured (the **Employer**) described in the Schedule to this Policy is carrying on business in the Northern Territory. The Employer has made a written proposal and declaration to the Insurer. That proposal and declaration contain the particulars and statements which the Employer and Insurer agree are the basis of this Policy and form part of this Policy.

This Policy covers only the business or occupation described in the Schedule unless details of another business or occupation have been supplied to the Insurer and the Insurer has confirmed its acceptance of the extension of the Policy by endorsing the Schedule accordingly.

The premium that the Employer must pay the Insurer and the policy period are set out in the Schedule. The premium is subject to adjustment as set out in the Conditions below.

If the Employer is liable during the policy period to pay compensation to or in respect of one of the Employer's workers (or a person who is deemed by the Act to be one of the Employer's workers) for an injury to the worker in his or her employ, the Insurer will indemnify the Employer for:

- (a) the full amount of the Employer's liability under the Act; and
- (b) the full amount of the Employer's liability independently of the Act up to \$2 000 000; and
- (c) any costs and expenses incurred with the Insurer's written consent in connection with the defence of legal proceedings in which that liability is alleged.

The Employer's right to indemnity is subject to:

- (a) the provisions of the Act and its subordinate Rules and Regulations, all of which are deemed to form part of the Policy; and
- (b) the fulfilment by the Employer of the Conditions set out below.

Conditions

1 Notices

Every notice or communication to be given or made under this Policy must be delivered in writing at the office of the Insurer from which the Policy was issued.

2 Claims

The Employer must give notice to the Insurer of any injury to which the policy relates as soon as the Employer (or the Employer's representative) receives information about the happening of an injury or about any incapacity arising from an injury. The Employer must also immediately send to the Insurer every written notice of claim, conferences or proceedings and all information about any verbal notice of claim, conferences or proceedings.

3 Employer not to make admissions

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

4 Defence of proceedings

The Insurer is entitled to use the name of the Employer in respect of anything indemnified under this Policy, including the bringing, defending, enforcing or settling of legal proceedings for the benefit of the Insurer. The Employer must give all information and

assistance, and forward all documents, to enable the Insurer to settle or resist a claim as the Insurer thinks fit.

5 Subrogation

The Insurer is entitled to use the name of the Employer in proceedings to enforce, for the benefit of the Insurer, an order for costs or other remedy. The Insurer is entitled to be subrogated to all rights that the Employer may have against any persons who may be responsible in relation to a claim for an injury covered by the Policy. The Employer must execute all necessary documents for the purpose of vesting such rights in the Insurer.

6 Precautions

The Employer must take all reasonable precautions to prevent injuries.

7 Injury

If a worker is injured in connection with ways, works, machinery or plant, then so far as practicable, no alteration or repair may be made without the consent of the Insurer until the Insurer has had an opportunity of examining them.

8 Inspection

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

9 Premium

Premiums will be regulated by the amount of wages, salaries and all other forms of remuneration paid or allowed to workers during each policy period.

10 Wages books must be kept

The name and earnings of every worker employed by the Employer must be entered regularly in a proper wages book so that a record exists of the Employer's workers.

11 Adjustment of premium

The Employer must at all times allow a person authorised by the Insurer to inspect the wages book. Within 28 days after the end of a policy period, the Employer must also supply the Insurer with a correct account of all wages, salaries and other forms of

remuneration paid or allowed during that policy period. If the total amount differs from the amount on which premium has been paid, the difference in premium will be met by either further payment to the Insurer or a refund by the Insurer, subject to the Insurer's retention of the minimum premium as stated in the proposal.

12 Assignment

No assignment of interest under this Policy will bind the Insurer unless the written consent of the Insurer is endorsed on the Policy.

13 Cancellation of Policy

The Insurer may, at the request of the Employer, cancel the Policy by giving written notice to the Employer if the Insurer is satisfied that the Employer does not require this Policy for any of the following circumstances:

- (a) the Employer is no longer employing a worker as defined by the Act;
- (b) there are no Territory workers required to be covered by the Act;
- (c) the employer has another Policy with an Approved Insurer covering the same liability.

The notice of cancellation must be posted to the Employer and cancellation will be effective from the date of the request of the cancellation or the date specified for cancellation (if that date is a later date) or the date from which another Policy with an Approved Insurer is incepted; whichever occurs first.

In any other circumstance cancellation will not be effective unless prior consent of the Authority is obtained.

Despite the cancellation of the Policy, the Employer must give the Insurer a statement of wages showing the amount paid up to the time of cancellation. The premium for the period of insurance prior to the cancellation will be adjusted on a pro rata basis in the manner set out in condition 11 of this Policy.

14 No waiver of conditions

A condition or provision of this Policy cannot be waived or altered except with the prior consent of the Insurer as endorsed on the Policy. Notice to an agent, or knowledge of an agent or any other person, will not be taken to effect a waiver or alteration of a condition in this policy.

35 Regulations further amended

Schedule 2 has effect.

Part 4 Repeal of Act

36 Repeal of Act

This Act is repealed on the day after it commences.

Schedule 1 Act further amended

section 22

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
sections 49(1), definition medical, surgical and rehabilitation treatment, paragraph (b) and 69(2)(aa) and (b)(i) and (3)	statement of fitness for work	medical certificate of capacity
section 69(2)(b)(ii)	statement	certificate
sections 75A(1)(a) and (6)(a) and 82(1)(b), (2), (3) and (6)	statement of fitness for work	medical certificate of capacity

Schedule 2 Regulations further amended

section 35

Provision	Amendment	
	<i>omit</i>	<i>insert</i>
regulation 12, heading	Statement of fitness for work	Medical certificate of capacity
regulation 12(1)	statement of fitness for work statement	medical certificate of capacity certificate
regulation 12(2)	statement of fitness for work	medical certificate of capacity