



AUSTRALIAN CAPITAL TERRITORY

# Workers' Compensation (Amendment) Act 1994

No. 68 of 1994

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## **An Act to amend the *Workers' Compensation Act 1951***

*[Notified in ACT Gazette S229: 1 November 1994]*

The Legislative Assembly for the Australian Capital Territory enacts as follows:

### **Short title**

1. This Act may be cited as the *Workers' Compensation (Amendment) Act 1994*.

### **Commencement**

2. (1) Section 1 and this section commence on the day on which this Act is notified in the *Gazette*.

(2) The remaining provisions commence on a day, or respective days, fixed by the Minister by notice in the *Gazette*.

(3) If a provision referred to in subsection (2) has not commenced before the end of the period of 6 months commencing on the day on which this Act is notified in the *Gazette*, that provision, by force of this subsection, commences on the first day after the end of that period.

### **Principal Act**

3. In this Act, "Principal Act" means the *Workers' Compensation Act 1951*.<sup>1</sup>

**Interpretation**

4. Section 6 of the Principal Act is amended by inserting in subsection (1) the following definitions:

- “ ‘approved form’ means a form approved in writing by the Minister;  
‘employer’s insurer’, in relation to an employer, means the insurer with whom the employer has entered into a prescribed insurance policy;”.

**Insertion**

5. After Part II of the Principal Act the following Part is inserted:

**“PART IIA—OCCUPATIONAL REHABILITATION****Interpretation**

“15A. In this Part—

‘occupational rehabilitation’, in relation to an injured worker, means—

- (a) the assessment of the needs of the worker for the purposes of paragraph (b); and
- (b) the provision of appropriate, adequate and timely services for the worker aimed at maintaining the worker in suitable employment or returning him or her to suitable employment.

‘protocol’ means a protocol approved under section 15F.

**Appropriate, adequate and timely**

“15B. For the purposes of paragraph (b) of the definition of ‘occupational rehabilitation’ in section 15A, services shall be taken to be appropriate, adequate and timely if they are in accordance with any relevant protocol.

**Occupational rehabilitation**

“15C. (1) Where a worker claims compensation for an injury, the employer shall provide the worker with occupational rehabilitation at the employer’s expense unless the employer is of the opinion, based on reasonable grounds, that the worker is not entitled to compensation.

Penalty: \$5,000.

“(2) The provision of occupational rehabilitation to a worker shall not be taken to be an admission of liability in relation to the worker’s claim for compensation.

### **Occupational rehabilitation policy**

“15D. (1) An employer shall, in accordance with subsection (4) and any relevant protocol—

- (a) develop an occupational rehabilitation policy for his or her employees; and
- (b) from time to time, review that policy.

“(2) An employer shall comply with paragraph (1) (a) as soon as practicable and, in any event, within 3 months after the commencement of this section.

Penalty: \$1,000.

“(3) As soon as practicable after developing or reviewing an occupational rehabilitation policy an employer shall display a copy of the policy in a conspicuous place so that it may be conveniently read by each worker employed by the employer.

Penalty: \$500.

“(4) For the purpose of developing or reviewing an occupational rehabilitation policy under subsection (1), the employer shall consult—

- (a) any health and safety committee established in respect of the employer's employees; or
- (b) if no such committee exists in respect of the employer's employees—those employees or any relevant union.

“(5) In subsection (4)—

‘health and safety committee’ means a health and safety committee established under regulations under the *Occupational Health and Safety Act 1989*;

‘relevant union’, in relation to an employee of an employer, means a registered union of which the employee is a member, being an employee who is qualified to be such a member by virtue of the work that the employee performs as an employee of the employer.

### **Rehabilitation coordinator**

“15E. (1) An employer shall—

- (a) appoint a person to be a rehabilitation coordinator for his or her employees; and
- (b) ensure, as far as practicable, that there is always an appointed rehabilitation coordinator for his or her employees.

“(2) An employer shall display a notice containing the name of any person appointed as rehabilitation coordinator and stating that he or she is the rehabilitation coordinator in a conspicuous place so that it may be conveniently read by each worker employed by the employer.

Penalty for contravention of subsection (2): \$500.

### **Approval of protocol**

“15F. (1) The Minister may, after consultation with representatives of employers, unions and insurers, by instrument, approve a protocol or an amendment of a protocol relating to occupational rehabilitation.

“(2) A protocol may make provision in respect of the following matters:

- (a) the requirements for an occupational rehabilitation policy;
- (b) when occupational rehabilitation is appropriate, adequate and timely;
- (c) the settlement of disputes;
- (d) the fulfilment of parties' responsibilities under this Part;
- (e) any other matter that is necessary or convenient to be so dealt with for the carrying out of or giving effect to this Part.

### **Disallowance**

“15G. An instrument under section 15F is a disallowable instrument for the purposes of section 10 of the *Subordinate Laws Act 1989*.

### **Publication**

“15H. (1) The Minister shall cause to be published in a newspaper published and circulating in the Territory, as soon as practicable after making an instrument under section 15F, notice of that approval—

- (a) specifying a place or places at which copies of the protocol to which the approval relates may be purchased; and
- (b) specifying a place or places at which a copy of the protocol may, at any reasonable time, be inspected.

“(2) The Minister shall ensure that—

- (a) copies of the protocol to which an approval under section 15F relates are made available for purchase at each place specified for that purpose in the relevant notice under subsection (1); and
- (b) a copy of that protocol is, at any reasonable time, available for inspection at each place specified for that purpose in the relevant notice under subsection (1).”.

### **Insertion**

6. After Part VI of the Principal Act the following Part is inserted:

#### **“PART VIA—WEEKLY COMPENSATION PAYMENTS**

##### **Notice to employer’s insurer**

“26A. Where a worker makes a claim for weekly compensation payments, the employer (not being an exempt employer) shall, within 7 days after the day on which the worker lodges the claim with the employer, lodge the claim with the employer’s insurer.

Penalty: \$1,000.

##### **Commencement**

“26B. (1) Where a worker makes a claim for weekly compensation payments the employer shall, within the prescribed period, in accordance with the direction of the employer’s insurer (if any)—

- (a) commence making weekly compensation payments in accordance with Schedule 1; or
- (b) reject the claim by written notice to the worker.

Penalty: \$5,000.

“(2) In subsection (1)—

‘prescribed period’ means—

- (a) in relation to a claim lodged by a worker with an exempt employer—the period ending at the expiration of 28 days after the day on which the worker lodges the claim with the employer; or
- (b) in relation to a claim lodged with any other employer—the period ending 21 days after the day on which the employer lodges the claim with the employer’s insurer.

##### **Termination**

“26C. (1) An employer may, within 12 months after the day on which a worker lodges a claim for weekly compensation payments with the employer, terminate those payments by notice to the worker in accordance with subsection (2) if, in the opinion of the employer’s insurer or, in the case of an exempt employer, the employer, based on reasonable grounds, the worker is no longer entitled to receive the payments.

“(2) A notice under subsection (1) shall—

- (a) be in writing in the approved form; and
- (b) specify the following:
  - (i) the day on which the termination is to take effect, being a day not less than 8 weeks after the day on which the notice is given to the worker;
  - (ii) the grounds for the insurer's or employer's opinion that the worker is not entitled to continue receiving the weekly payments;
  - (iii) the options available to the worker to have the decision to terminate payments reviewed.

### **Review of termination**

“26D. (1) Where an employer gives notice of termination of weekly compensation payments under section 26C, the worker to whom the notice is given may apply to the Court to have the weekly payments continue or recommence.

“(2) On receipt of an application from a worker under subsection (1), if the Court is satisfied that the worker is entitled to receive the payments that are the subject of the application, the Court shall order that the payments continue or recommence.

“(3) Where the Court orders that weekly compensation payments recommence, it may order that the employer make an additional payment to the worker of such amount as the Court considers appropriate, being an amount not exceeding the amount that the worker could have received by way of weekly compensation for the period during which those payments were not made.

“(4) On application by any party, or of its own motion, the Court may make such interim orders in relation to an application under subsection (1) as it considers appropriate pending its final decision.

### **Court-approved termination**

“26E. (1) An employer may apply to the Court for authority to terminate weekly compensation payments paid to a worker under this Act.

“(2) An employer shall give the affected worker notice in the approved form of the employer's intention to apply to the Court for authority to terminate weekly compensation payments to the worker.

“(3) Where the Court is satisfied that the affected worker is not entitled to receive weekly compensation payments, it shall make an order authorising the employer to terminate the payments to the worker after a specified day.

“(4) The day specified under subsection (3) shall be after the expiration of 8 weeks from the day on which the employer gave the worker notice under subsection (2).

#### **Notice to nominal insurer**

“26F. An employer who gives notice of the termination of weekly compensation payments to a worker under section 26C or subsection 26E (2) shall, as soon as is practicable, give a copy of the notice to the nominal insurer.

Penalty: \$500.”.

#### **Regulations**

7. Section 28 of the Principal Act is amended by inserting after paragraph (c) the following paragraph:

“(ca) the form of medical certificates required for the purposes of this Act, the regulations or the Rules;”.

#### **Schedule 1**

8. Schedule 1 of the Principal Act is amended by adding at the end of clause 12 “or ended in accordance with section 26C or 26E of this Act”.

#### **Transitional**

9. For the period of 12 months after the date of commencement of this section—

- (a) Part VIA of the Principal Act as amended by this Act; and
- (b) clause 12 of Schedule 1 to the Principal Act as amended by this Act;

do not apply in relation to any worker who, at the commencement of this section, is in receipt of weekly compensation payments.

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#### **NOTE**

1. Reprinted as at 31 January 1994.

*[Presentation speech made in Assembly on 25 August 1994]*

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