



Australian Capital Territory

# Public Sector Workers Compensation Fund Act 2018

A2018-47

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Australian Capital Territory

# Public Sector Workers Compensation Fund Act 2018

**A2018-47**

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An Act to provide for the management of funds dedicated to meeting the workers compensation liabilities of the Territory, and for other purposes

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

## Part 1 Preliminary

### 1 Name of Act

This Act is the *Public Sector Workers Compensation Fund Act 2018*.

### 2 Commencement

- (1) This Act commences on a day fixed by the Minister by written notice.

*Note 1* The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

*Note 2* A single day or time may be fixed, or different days or times may be fixed, for the commencement of different provisions (see [Legislation Act](#), s 77 (1)).

- (2) If this Act has not commenced within 12 months beginning on its notification day, it automatically commences on the first day after that period.

- (3) The [Legislation Act](#), section 79 (Automatic commencement of postponed law) does not apply to this Act.

### 3 Dictionary

The dictionary at the end of this Act is part of this Act.

*Note 1* The dictionary at the end of this Act defines certain terms used in this Act, and includes references (*signpost definitions*) to other terms defined elsewhere in this Act.

For example, the signpost definition ‘*PSWC fund*—see section 7.’ means that the term ‘PSWC fund’ is defined in that section.

*Note 2* A definition in the dictionary (including a signpost definition) applies to the entire Act unless the definition, or another provision of the Act, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

#### 4 Notes

A note included in this Act is explanatory and is not part of this Act.

*Note* See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

#### 5 Offences against Act—application of Criminal Code etc

Other legislation applies in relation to offences against this Act.

*Note 1* *Criminal Code*

The [Criminal Code](#), ch 2 applies to all offences against this Act (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

*Note 2* *Penalty units*

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

#### 6 Object of Act

The main object of this Act is to establish financial and prudential governance in relation to the Territory's obligations as a self-insured licensee under the [SRC Act](#).

## Part 2 Public Sector Workers Compensation Fund

### 7 Public Sector Workers Compensation Fund— establishment

The Public Sector Workers Compensation Fund (the *PSWC fund*) is established.

### 8 PSWC fund directorate

The Treasurer must, under the *Financial Management Act 1996*, dictionary, definition of *directorate*, paragraph (b), establish and keep a directorate for the PSWC fund (the *PSWC fund directorate*).

### 9 PSWC fund banking accounts

- (1) The director-general must open and keep 1 or more banking accounts (a *PSWC fund banking account*) solely for the management of the PSWC fund.
- (2) A PSWC fund banking account is a directorate banking account of the PSWC fund directorate.

### 10 Payment of public sector workers compensation appropriations

An amount appropriated by a public sector workers compensation appropriation must be paid into a PSWC fund banking account.



**11 Appropriation of certain amounts for PSWC fund**

The following amounts, whether received or receivable before or after the commencement of this Act, are appropriated for the purposes of the PSWC fund and must be paid into a PSWC fund banking account:

- (a) an amount received from the Commonwealth or Comcare in relation to a licence granted to the Territory under the [SRC Act](#), section 103;
- (b) an amount held by the Australian Capital Territory Insurance Authority in relation to workers compensation liabilities under the [SRC Act](#);
- (c) premium amounts;
- (d) the interest earned on money held in the account;
- (e) money required to be paid into the fund under this Act or any other Act;
- (f) all other money received by the PSWC commissioner for payment into the PSWC fund.

**12 Payments from PSWC fund banking accounts**

The following amounts only are to be paid out of a PSWC fund banking account:

- (a) all payments required to be made by the Territory under the [SRC Act](#);
- (b) the reasonable costs and expenses incurred by the Territory or the claims manager in the management of a workers compensation claim against the Territory under the [SRC Act](#);
- (c) the reasonable costs of remuneration, allowances, office accommodation and similar costs of the PSWC commissioner in exercising the commissioner's functions under this Act;

- (d) reasonable costs related to meetings of the advisory committee;
- (e) in accordance with the guidelines—any refund of premium amounts paid into the fund.

**13 Closure of PSWC fund banking accounts**

If a PSWC fund banking account is closed, the balance of money in the account must be paid into another PSWC fund banking account.

**14 Investment of amounts in PSWC fund banking accounts**

- (1) An amount in a PSWC fund banking account that is not immediately needed for a purpose mentioned in section 12 may be invested—
  - (a) on deposit with an authorised deposit-taking institution; or
  - (b) in Territory, State or Commonwealth securities; or
  - (c) in any investment prescribed by a PSWC fund investment guideline under section 17.

*Note* The Treasurer may also invest an amount in a PSWC fund banking account in an investment mentioned in the *Financial Management Act 1996*, s 38.

- (2) Transfers between the territory banking account and PSWC fund banking accounts to facilitate investment may be made without appropriation.
- (3) Interest received by the Territory for the investment of amounts from a PSWC fund banking account must be paid into a PSWC fund banking account.
- (4) However, if an investment of an amount from a PSWC fund banking account is made or managed by a directorate, the directorate may deduct, from the interest received by the Territory for the investment, a fee charged by the directorate for making or managing the investment.

- (5) A fee charged by a directorate under subsection (4) must not be more than the costs and expenses incurred by the directorate in making or managing the investment.
- (6) Interest that must be paid into a PSWC fund banking account under subsection (3) may be paid into the account directly or through the territory banking account.

**15 Interest on amounts appropriated for PSWC fund**

- (1) A public sector workers compensation appropriation, whether made before or after the commencement of this Act, is taken to be an appropriation of—
  - (a) the amount stated in the appropriation; and
  - (b) any interest received on the investment of the amount, or any part of it, under this Act.
- (2) Interest received by the Territory on an investment under this Act of an amount from a public sector workers compensation appropriation must be applied for the purposes for which the amount invested was appropriated.
- (3) However, if an investment of an amount from a public sector workers compensation appropriation is made or managed by a directorate, the directorate may deduct, from the interest received by the Territory for the investment, a fee charged by the directorate for making or managing the investment.
- (4) A fee charged by a directorate under subsection (3) must not be more than the costs and expenses incurred by the directorate in making or managing the investment.

**16 Determination of amounts to be contributed to PSWC fund**

- (1) Before the beginning of each financial year, or any other period determined by the PSWC commissioner (the *contribution period*), the PSWC commissioner must determine, in writing, the amount needed to be paid by the Territory into the PSWC fund in the contribution period (the *premium amount*)—
  - (a) to fully fund the present and likely future liabilities of the Territory under the [SRC Act](#) in relation to a particular injury, loss or damage suffered by, or in relation to the death of, some or all of its employees under the [SRC Act](#) during the contribution period; and
  - (b) to meet the payments needed to be made from the PSWC fund (other than under the [SRC Act](#)) during the contribution period; and
  - (c) to provide for any other matters the PSWC commissioner should, in all the circumstances, prudently make provision for in relation to liabilities of the Territory under the [SRC Act](#).
- (2) The premium amount must be an amount that the PSWC commissioner reasonably believes will result in the acceptable funding ratio for the PSWC fund consistent with the guidelines.
- (3) In determining the premium amount, the PSWC commissioner must take into account actuarial advice for the contribution period.

**17 PSWC fund management guidelines**

- (1) The Treasurer may make guidelines in relation to the PSWC fund including provision about—
  - (a) investment under section 14; and
  - (b) the acceptable funding ratio for the fund and the period of time in which the fund must return to an acceptable funding ratio if the fund is in deficit.

- (2) The Minister may make guidelines in relation to the PSWC fund including provision about—
- (a) how the PSWC commissioner must determine the premium amount; and
  - (b) how premium amounts must be paid to the fund; and
  - (c) reporting requirements; and
  - (d) financial and governance requirements that must be met by any contracted claims manager.
- (3) A guideline is a notifiable instrument.

*Note* A notifiable instrument must be notified under the [Legislation Act](#).

## Part 3 Administration

### 18 Appointment of PSWC commissioner

- (1) The Minister must appoint a public servant as Public Sector Workers Compensation Commissioner (the *PSWC commissioner*).

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

- (2) The PSWC commissioner must be appointed for not longer than 3 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

### 19 Functions of PSWC commissioner

The PSWC commissioner has the following functions:

- (a) managing the PSWC fund;
- (b) advising the Minister about the administration, efficiency and effectiveness of the PSWC fund;
- (c) in relation to a licence granted to the Territory under the [SRC Act](#), section 103—
  - (i) managing the Territory's liability under the [SRC Act](#); and
  - (ii) managing claims under the [SRC Act](#);
- (d) any other function given to the PSWC commissioner under this Act or another territory law.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

## 20 Delegation by PSWC commissioner

- (1) The PSWC commissioner may delegate the PSWC commissioner's functions under section 19 to an authorised person.

*Note* For the making of delegations and the exercise of delegated functions, see the [Legislation Act](#), pt 19.4.

- (2) A delegate may subdelegate to an authorised person a function delegated under subsection (1) if the subdelegation is authorised, in writing, by the PSWC commissioner.

- (3) In this section:

*authorised person* means—

- (a) a public employee; or
- (b) a person prescribed by regulation.

*Note* *Public employee*—see the [Legislation Act](#), dictionary, pt 1.

## 21 Arrangements for staff

The PSWC commissioner may arrange with the head of service to use the services of a public servant or Territory facilities.

*Note* The head of service may delegate powers in relation to the management of public servants to a public servant or another person (see [Public Sector Management Act 1994](#), s 18).

## 22 Power to engage consultants and contractors including claims manager

- (1) The PSWC commissioner may engage the consultants and contractors that may be necessary or convenient to exercise the PSWC commissioner's functions.
- (2) Without limiting subsection (1), the PSWC commissioner may engage an entity (a *claims manager*) to manage injuries in relation to which claims may be, or have been, made against the Territory under the [SRC Act](#).

- (3) However, the PSWC commissioner must not engage an entity under subsection (2) unless satisfied that the entity has the experience and expertise necessary to exercise the functions of a claims manager.
- (4) The conditions of a consultant's or contractor's engagement are the conditions agreed between the PSWC commissioner and the consultant or contractor.
- (5) To remove any doubt, this section does not give the PSWC commissioner the power to enter into a contract of employment.

### **23 Claims manager's functions**

- (1) This section applies if the PSWC commissioner engages a claims manager.
- (2) In managing claims, including individual claims, a claims manager may do the following in accordance with any guideline:
  - (a) investigate claims;
  - (b) assess the Territory's liability in relation to claims under the [SRC Act](#), including initial liability and ongoing liability;
  - (c) calculate benefits and authorise payments under the [SRC Act](#);
  - (d) pay an amount in relation to a provisional liability medical cost;
  - (e) pay an amount in relation to a claim;
  - (f) manage claims data;
  - (g) manage disputes in relation to claims made against the Territory under the [SRC Act](#);
  - (h) anything prescribed by regulation.



- (3) A claims manager may also exercise any other function given to the claims manager under this Act or any other territory law.

*Note 1* A reference to an Act includes a reference to the statutory instruments made or in force under the Act, including any regulation (see [Legislation Act](#), s 104).

*Note 2* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

## **24 PSWC Fund Advisory Committee—establishment**

The PSWC Fund Advisory Committee (the *advisory committee*) is established.

## **25 Functions of advisory committee**

- (1) The advisory committee has the following functions:
- (a) to keep informed of the operations of the PSWC fund to provide the advice mentioned in paragraph (c);
  - (b) to assist in meeting the Territory’s liabilities under the [SRC Act](#) by providing advice about claims management in relation to injured employees of the Territory;
  - (c) if the Minister or the PSWC commissioner asks for advice in relation to the PSWC fund—to provide the advice requested.
- (2) To remove any doubt, it is not a function of the advisory committee to provide advice about the investment of amounts in a PSWC fund banking account.
- (3) The advisory committee may exercise any other function given to it under this Act or any other territory law.

*Note* A provision of a law that gives an entity (including a person) a function also gives the entity powers necessary and convenient to exercise the function (see [Legislation Act](#), s 196 and dict, pt 1, def *entity*).

## 26 Membership of advisory committee

- (1) The advisory committee consists of—
- (a) the PSWC commissioner; and
  - (b) 3 members appointed by the Minister to represent the interests of workers; and
  - (c) 2 members appointed by the Minister to represent the interests of public sector bodies and territory instrumentalities.

*Note 1* For the making of appointments (including acting appointments), see the [Legislation Act](#), pt 19.3.

*Note 2* In particular, an appointment may be made by naming a person or nominating the occupant of a position (see [Legislation Act](#), s 207).

*Note 3* Certain Ministerial appointments require consultation with an Assembly committee and are disallowable (see [Legislation Act](#), div 19.3.3).

- (2) An appointment under subsection (1) must not be for longer than 3 years.

*Note* A person may be reappointed to a position if the person is eligible to be appointed to the position (see [Legislation Act](#), s 208 and dict, pt 1, def *appoint*).

## 27 Quorum for advisory committee meetings

Business may be carried on at an advisory committee meeting only if the members present include—

- (a) the PSWC commissioner; and
- (b) 1 member mentioned in section 26 (1) (b); and
- (c) 1 member mentioned in section 26 (1) (c); and
- (d) at least 1 other member mentioned in section 26 (1) (b) or (c).

**28 Use and disclosure of protected information**

- (1) An information holder commits an offence if—
- (a) the information holder uses information; and
  - (b) the information is protected information about someone else; and
  - (c) the information holder is reckless about whether the information is protected information about someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (2) An information holder commits an offence if—
- (a) the information holder does something that discloses information; and
  - (b) the information is protected information about someone else; and
  - (c) the information holder is reckless about whether—
    - (i) the information is protected information about someone else; and
    - (ii) doing the thing would result in the information being disclosed to someone else.

Maximum penalty: 50 penalty units, imprisonment for 6 months or both.

- (3) Subsections (1) and (2) do not apply if the information holder uses or discloses protected information about someone else (the *protected person*)—
- (a) under this Act or another law applying in the ACT; or
  - (b) in relation to the exercise of a function, as an information holder, under this Act or another law applying in the ACT; or

- (c) in a court proceeding; or
- (d) with the protected person's consent.

*Note* The defendant has an evidential burden in relation to the matters mentioned in s (3) (see [Criminal Code](#), s 58).

- (4) An information holder need not disclose protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another law applying in the ACT.
- (5) In this section:

***court*** includes a tribunal, authority or person having power to require the production of documents or the answering of questions.

***disclose*** includes—

- (a) communicate; or
- (b) publish.

***information*** means information, whether true or not, in any form and includes an opinion and advice.

***information holder*** means—

- (a) a person who is or has been—
  - (i) the PSWC commissioner; or
  - (ii) the claims manager; or
  - (iii) a member of the advisory committee; or
- (b) anyone else who exercises or has exercised a function under this Act.

***produce*** includes allow access to.

*protected information* means information about a person that is disclosed to, or obtained by, an information holder because of the exercise of a function under this Act by the information holder or someone else.

*use*, in relation to information, includes make a record of the information.

## **29 Protection from liability**

- (1) The Commissioner is not civilly liable for conduct engaged in honestly and without recklessness—
  - (a) in the exercise of a function under this Act; or
  - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (2) Any civil liability that would, apart from this section, attach to the Commissioner attaches instead to the Territory.

- (3) In this section:

*conduct* means an act or omission to do an act.

## **30 Transitional—engagement of claims manager**

- (1) This section applies if—
  - (a) before the commencement day, the Territory engages an entity to manage injuries in relation to which claims may be, or have been, made against the Territory under the [SRC Act](#); and
  - (b) immediately before the commencement day, the engagement is in effect.

- (2) On the commencement day—
  - (a) the entity is taken to be a claims manager; and
  - (b) the PSWC commissioner has the functions in relation to the claims manager as if the commissioner had engaged the claims manager under section 22.
- (3) This section expires 12 months after the commencement day.
- (4) In this section:  
*commencement day* means the day section 22 commences.

## **Part 4**                      **Consequential amendments**

### **31**           **Legislation amended—sch 1**

This Act amends the legislation mentioned in schedule 1.

## Schedule 1 Financial Management Act 1996—Consequential amendments

(see s 29)

### [1.1] New section 37 (2) (aa)

*before section 37 (2) (a), insert*

- (aa) the *Public Sector Workers Compensation Fund Act 2018*, section 14 (2) (which is about transfers between the territory banking account and the PSWC fund banking accounts to facilitate investment of public sector workers compensation funds); and

### [1.2] Section 38 (9)

*after*

superannuation banking account

*insert*

or a PSWC fund banking account

### [1.3] Dictionary, new definition of *PSWC fund banking account*

*insert*

***PSWC fund banking account***—see the *Public Sector Workers Compensation Fund Act 2018*, section 9.



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## Dictionary

(see s 3)

*Note 1* The [Legislation Act](#) contains definitions and other provisions relevant to this Act.

*Note 2* For example, the [Legislation Act](#), dict, pt 1 defines the following terms:

- ACT
- authorised deposit-taking institution
- Commonwealth
- director-general (see s 163)
- entity
- financial year
- head of service
- in relation to
- public employee
- public sector body
- public servant
- State
- territory instrumentality
- territory law
- the Territory
- Treasurer.

***advisory committee***—see section 24.

***Australian Capital Territory Insurance Authority*** means the Australian Capital Territory Insurance Authority established under the [Insurance Authority Act 2005](#), section 7.

***claims manager***—see section 22 (2).

***Comcare*** means the body corporate established under the [SRC Act](#), section 68.

***employee***—see the [SRC Act](#), section 5.

***guidelines*** means guidelines made under section 17.

*premium amount*—see section 16.

*PSWC commissioner*—see section 18.

*PSWC fund*—see section 7.

*PSWC fund banking account*—see section 9.

*PSWC fund directorate* means the directorate established under section 8.

*public sector workers compensation appropriation* means an appropriation to the PSWC fund directorate declared by the Act by which it is made to be for public sector workers compensation.

*SRC Act* means the *Safety, Rehabilitation and Compensation Act 1988* (Cwlth).

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## Endnotes

**1 Presentation speech**

Presentation speech made in the Legislative Assembly on 25 October 2018.

**2 Notification**

Notified under the [Legislation Act](#) on 4 December 2018.

**3 Republications of amended laws**

For the latest republication of amended laws, see [www.legislation.act.gov.au](http://www.legislation.act.gov.au).

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I certify that the above is a true copy of the Public Sector Workers Compensation Fund Bill 2018, which was passed by the Legislative Assembly on 27 November 2018.

Clerk of the Legislative Assembly

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