

2001

THE LEGISLATIVE ASSEMBLY
FOR THE AUSTRALIAN CAPITAL TERRITORY

(As presented)

(Minister for Urban Services)

Workers Compensation Amendment Bill 2001

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2001

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(As presented)

(Minister for Urban Services)

Workers Compensation Amendment Bill 2001

A Bill for

An Act to amend the *Workers' Compensation Act 1951*, to amend other Acts and for other purposes

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

1

2 **1 Name of Act**

3 This Act is the *Workers Compensation Amendment Act 2001*.

4 **2 Commencement**

5 (1) This Act (other than schedule 2) commences on 1 July 2002.

6 *Note* The naming and commencement provisions automatically commence on
7 the notification day (see *Legislation Act 2001*, s 75).

8 (2) Schedule 2 (Minor amendments) commences on the day this Act is
9 notified in the Gazette.

10 **3 Acts amended**

11 (1) This Act (other than sections 29 and 30) amends the *Workers'*
12 *Compensation Act 1951*.

13 *Note* The *Workers' Compensation Act 1951* is amended in the body of this
14 Act and in sch 1 and sch 2.

15 (2) Section 29 amends the *Limitation Act 1985*.

16 (3) Section 30 amends the *Magistrates Court (Civil Jurisdiction) Act*
17 *1982*.

18 **4 Section 1**

19 *substitute*

20 **1 Name of Act**

21 This Act is the *Workers Compensation Act 1951*.

22 **Part 1A Interpretation**

23 **1A Dictionary**

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

25 *Note 1* The dictionary at the end of this Act defines certain words and
26 expressions used in this Act, and includes references (*signpost*

definitions) to other words and expressions defined elsewhere in this Act or in other legislation.

For example, the signpost definition '*injury*—see section 2A (Meaning of *injury*).' means that injury 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 *Interpretation Act 1967*, s 11F and s 11G).

2 Notes

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

Note See *Interpretation Act 1967*, s 12 (1), (4) and (5) for the legal status of notes.

(2) In this section:

note includes material enclosed in brackets in section headings.

Note For comparison, a number of sections of this Act contain bracketed notes in their headings drawing attention to equivalent or comparable (though not necessarily identical) provisions of other Acts. Abbreviations in the notes include the following:

- ACT WCA: *Workers' Compensation Act 1951*, as in force immediately before the commencement of the *Workers Compensation Amendment Act 2001*.
- CW WRR: *Workplace Relations Regulations* (Cwlth).
- NSW WIMWCA: *Workplace Injury Management and Workers Compensation Act 1998* (NSW).
- NSW WCA: *Workers' Compensation Act 1987* (NSW).

(3) Subsection (2), this subsection, and the material enclosed in brackets in section headings, expire 2 years after this section commences.

2A Meaning of *injury* (ACT WCA s 6 (1) and (1A))

(1) For this Act:

1 ***injury*** means a physical or mental injury (including stress), and
2 includes aggravation, acceleration or recurrence of a pre-existing
3 injury.

4 (2) For this section:

5 ***mental injury (including stress)*** does not include a mental injury
6 (including stress) completely or mostly caused by reasonable action
7 taken, or proposed to be taken, by or on behalf of an employer in
8 relation to the transfer, demotion, promotion, performance appraisal,
9 discipline, retrenchment or dismissal of a worker or the provision of
10 an employment benefit to a worker.

11 **3 Meaning of *employer* (ACT WCA s 6 (1))**

12 For this Act:

13 ***employer*** includes—

- 14 (a) an entity; and
- 15 (b) the legal personal representative of a dead employer; and
- 16 (c) if the services of the worker are temporarily lent or let on hire
17 to someone else (the ***temporary employer***) by the person (the
18 ***original employer***) with whom the worker has entered into a
19 contract of service or apprenticeship—the original employer is,
20 for this Act, taken to continue to be the employer of the worker
21 while the worker is working for the temporary employer.

22 **3A Meaning of *totally incapacitated***

23 For this Act, the injured worker is ***totally incapacitated*** for work
24 if—

- 25 (a) there is no suitable paid employment reasonably available to
26 the worker that the worker can do because of a functional
27 impairment caused by the injury; or
- 28 (b) the worker is taken, or declared, to be totally incapacitated
29 under section 7C (Deemed total incapacity).

1 **4 Meaning of *partially incapacitated***

2 For this Act, the injured worker is *partially incapacitated* for work
3 if, because of a functional impairment caused by the injury, the
4 worker—

5 (a) cannot do all the work the worker could do before the injury;
6 and

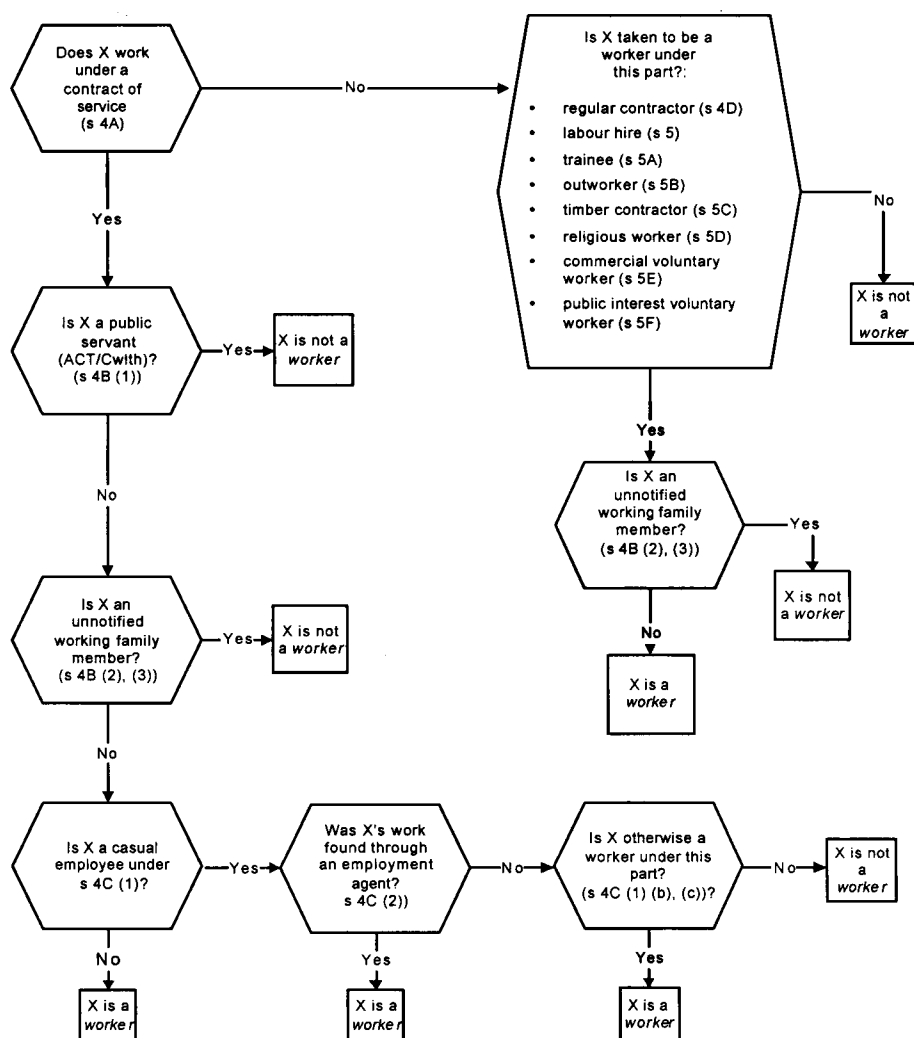
7 (b) is not totally incapacitated.

1 Part 1B Meaning of worker

2 Notes about part 1B

3 Note 1 Working out who is a worker

4 The following chart is a guide for working out if a person (X) is a
5 **worker** for this Act.



Note 2 Payment for work

Most people who are **workers** under this part are employed or engaged under a contract with someone else. At common law, a contract cannot exist unless there is a valuable exchange between the people on both sides of the contract, by which—

- the employee (or contractor) provides his or her labour to the employer (or principal); and
- the employer (or principal), in exchange, provides payment to the employee (or contractor), including non-monetary rewards (eg payment in kind).

The exceptions under this part are those who are taken to be **workers** under s 5A (Trainees), s 5D (Religious workers), s 5E (Commercial voluntary workers) and s 5F (Public interest voluntary workers). Trainees and religious workers may or may not be paid for their labour. Voluntary workers (under s 5E and s 5F) are those that are paid only for expenses (if that).

Note 3 Subcontracting and labour hire (effect of s 14)

The Act applies in a special way to subcontracting arrangements, by which—

- a **worker** is engaged to work for a person who is the **employer** of the worker (under this part); and
- the employer has engaged the worker to fulfil a contract the employer has with someone else (in this note, a **principal**) to do work for the principal's trade or business.

Under s 14, the principal is liable to pay compensation to the worker if the worker is injured. The principal may, however, recover the compensation paid from the employer.

These situations may be complicated by the involvement of labour hirers, who may in some circumstances be taken to be the employer of workers engaged to do work for a principal (see s 5). Here are 3 illustrations of different subcontracting arrangements:

Arrangement 1 No labour hirer

A bricklayer's labourer (the **worker**) is employed by a bricklayer (the **employer**) to assist the bricklayer to fulfil a contract between the bricklayer and a builder (the **principal**).

The bricklayer is the labourer's employer.

Section 4

Arrangement 2 Labour hirer as employer

A cleaner (the **worker**) is engaged by a labour hirer (the **employer**) to fulfil a contract between the labour hirer and the owner of a retail store (the **principal**) for the cleaning of the store. The labour hirer is taken (under s 5) to be the employer of the cleaner, because the cleaner has no contractual relationship with the owner of the store.

The labour hirer is the cleaner's employer.

Arrangement 3 Labour hirer as employment agent

A keyboard operator (the **worker**) is employed by an information technology consultant (the **employer**) to fulfil a contract between the consultant and a government department (the **principal**). The consultant recruits the operator through a labour hirer acting as an employment agent.

The consultant is the operator's employer.

Under all of these arrangements, the worker may claim compensation from either the employer or the principal (see s 14 (2) and (4)). If the principal pays compensation to the worker, the principal may claim repayment from the employer (see s 14 (3)). But in the 3rd arrangement (*Labour hirer as employment agent*), the worker may not claim compensation from the labour hirer, and the principal may not seek repayment of compensation from the labour hirer.

4A Who is a worker? (ACT WCA s 6 (1) (def of **worker), (7), s 6B)**

(1) For this Act (subject to this part):

worker means an individual who has entered into or works under a contract of service with an employer, whether the contract is express or implied, oral or written.

(2) A reference in this Act to a **worker after the date of an injury includes a reference to a former worker.**

(3) The Minister may, in writing, determine categories of workers for the following provisions:

- section 18 (b) (i) (Information for insurers before renewal)
- section 18AA (b) (i) (Information for insurers after end of policy)

- 1 • section 18AB (1) (a) (Information for insurers about reporting
- 2 period)
- 3 • section 23F (1) (b) (i) (Provision of information to inspectors).

4 (4) A determination is a notifiable instrument.

5 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

6 **4B Who is not a worker?** (ACT WCA s 6 (1) (def of **worker**),
7 (2))

8 (1) For this Act (despite anything else in this part), **worker** does not
9 include—

10 (a) a public servant; or

11 (b) an employee within the meaning of the *Safety, Rehabilitation*
12 *and Compensation Act 1988* (Cwlth).

13 (2) For this Act (despite anything else in this part), **worker** does not
14 include an individual who would, apart from this section, be a
15 worker employed by an employer, if the individual is a member of
16 the employer's family and lives in the employer's home.

17 (3) However, subsection (2) does not apply to an individual if the
18 employer tells the insurer who insures the employer against liability
19 under this Act the name, nature of employment and estimated wages
20 of the individual—

21 (a) when the employment begins; and

22 (b) whenever the insurance is renewed.

23 **4C Casuals not employed for trade or business** (ACT WCA s
24 6 (1) (def of **worker**, par (a)) and (3C))

25 (1) For this Act, **worker** does not include an individual (the *casual*
26 *employee*) employed by someone (the *principal*) on a casual basis to
27 perform work for the principal other than work that is for (or
28 incidental to) the principal's trade or business unless the casual
29 employee is taken to be a worker under any of the following
30 provisions:

- 1 (a) subsection (2) (which deals with casual employment found
2 through employment agencies);
3 (b) section 4D (Regular contractors and casuals);
4 (c) section 5D (Religious workers).

- 5 (2) If the casual employee's employment was found for the employee
6 by a person who carries on the business of an employment agent, for
7 this Act the casual employee is taken to be a *worker* employed by
8 the employment agent.

9 **Examples of casual employees who are not workers**

- 10 1 A gardener irregularly employed by the occupier of residential premises to
11 work in the garden of the premises (unless engaged through an employment
12 agent—see example 4).
13 2 A babysitter irregularly employed by the parents of young children (unless
14 engaged through an employment agent—see example 4).

15 **Examples of casual employees who are workers**

- 16 3 A gardener irregularly employed by the owner of a business to work on the
17 grounds of the premises where the employer's business is carried on. The
18 gardener is taken to be a *worker* employed to perform work incidental to the
19 principal's business (see s (1)).
20 4 A babysitter irregularly employed by the parents of young children who is
21 engaged through an employment agency. The babysitter is taken to be a
22 *worker* employed by the agency rather than the parents (see s (1) (a) and
23 s (2)).
24 5 A babysitter regularly and systematically employed (for example, once a
25 week over a 6 month period) by the parents of young children. The
26 babysitter is taken to be a *worker* employed by the parents under s 4D
27 (Regular contractors and casuals)—see s (1) (b).

28 **4D Regular contractors and casuals (CW WRR r 30BA (3))**

- 29 (1) This section applies to the engagement of an individual by a person
30 (the *principal*) if—

- 31 (a) the individual has been engaged by the principal—
32 (i) under a contract for services to work for the principal
33 (whether or not on a casual basis); or

(ii) on a casual basis under a contract of service to perform work for the principal other than work that is for (or incidental to) the principal's trade or business (unless section 4C (2) applies, which deals with casual employment found through employment agencies); and

(b) the individual personally does part or all of the work; and

(c) if the principal is a corporation—the individual is not an executive officer of the corporation.

Note for par (a) (ii) Section 4C (2) provides that if a casual worker employed other than for the employer's trade or business is engaged through an employment agent, the casual worker is a **worker** employed by the agent.

(2) For this Act, the individual is taken to be a **worker** employed by the principal if—

(a) the engagement, under the contract or similar contracts, has been on a regular and systematic basis; or

(b) the individual has (or, apart from any injury, would have had) a reasonable expectation of the engagement continuing on a regular and systematic basis (under the contract or similar contracts), even if the engagement has not been on a regular or systematic basis.

(3) To work out whether an engagement has been on a regular and systematic basis, or whether there is (or would have been) a reasonable expectation of an engagement continuing on that basis, relevant matters include (but are not limited to) the following:

(a) the terms of all relevant contracts;

(b) the working relationship between the principal and the individual and all associated circumstances;

(c) the period of the engagement, or the periods of the engagement if it has not been continuous;

(d) the frequency of work under the contract or similar contracts;

(e) the number of hours worked under the contract or similar contracts;

- 1 (f) the type of work;
2 (g) normal arrangements for someone engaged to perform that
3 type of work.

4 **Examples of individuals who are workers**

5 1 Payment by commission

6 A sales representative engaged under a 3 month contract for payment by
7 commission that forms part of a regular and systematic pattern of similar contracts
8 to work for a real estate agency, canvasser or retailer, even if there is no express
9 or implied guarantee of continuing work.

10 2 IT consultant—engagement under indefinite retainer

11 An information technology consultant engaged on a retainer under which it is
12 agreed that the consultant will be regularly and systematically available, on call
13 by the principal, to offer advice or attend at short notice, even if the consultant
14 was only recently engaged.

15 3 Owner-driver of a truck—regular engagement

16 An owner-driver of a truck engaged by a local ACT carrier for an overnight trip
17 (leaving regularly on the same day each week), even if any (or all) of the
18 following apply:

- 19
 - there is occasionally no work for the driver;
 - 20 • the driver also works (or is free to work) for other carriers;
 - 21 • the driver was only recently engaged by the carrier.

22 4 Taxidriver (non-owner)—regular engagement

23 A taxidriver engaged by the owner of the taxi under a contract (or contracts) for
24 services for a certain number of shifts each week on a regular basis even if any (or
25 all) of the following apply:

- 26
 - the driver works (or is free to work) different shifts from week to
27 week;
 - 28 • the driver also works (or is free to work) for other taxi owners;
 - 29 • the driver was only recently engaged by the taxi owner.

30 5 Building contractor—exclusive engagement

31 A bricklayer engaged under contracts for services by a particular builder for some
32 years, who has worked for almost no-one else over that time, even if there is no
33 express or implied guarantee of continuing work.

34 6 Regular casual worker

35 A gardener engaged by a householder (under contracts of service or for services)
36 on a regular and systematic basis over a number of years to work in the grounds

of the house. The gardener's engagement may be found to be 'regular and systematic' even if any (or all) of the following apply:

- there is no express or implied guarantee of continuing work;
- the gardener also works (or is free to work) for other households;
- there have been occasional periods during which the gardener has not worked for the householder.

Examples of individuals who are not workers

7 Payment by commission—no guarantee of future work

A sales representative engaged under a 3 month contract for services with a real estate agency, canvasser or retailer, and who is paid by commission, if—

- the contract does not form part of a regular and systematic pattern of similar contracts; and
- there is no express or implied guarantee that any further similar contract will be offered, whether in a document or by inference from the working relationship between the principal and the individual.

8 IT consultant—occasional engagement

An information technology consultant who is occasionally engaged by a small business for a week or more at a time under a contract for services, but not on a regular basis.

9 Owner-driver of a truck—irregular engagement

An owner-driver of a truck engaged under contracts for services with a furniture retailer whenever available, who has made deliveries every day of the week at times (for example, just before Christmas), but at other times may go for months without working for the retailer.

10 Taxidriver (non-owner)—irregular engagement

A taxi driver engaged by the owner of the taxi occasionally, but not regularly or systematically, under contracts for services to fill in for absent drivers.

11 Building contractor—irregular engagement

A bricklayer engaged under contracts for services by a particular builder several times a year, but who is not regularly engaged by the builder.

12 Irregular casual worker

A tree surgeon engaged by a householder on an irregular basis (under contracts of service or for services) to prune the trees around a house. The engagement may be found not to be 'regular and systematic' even if the tree surgeon has been occasionally engaged by the householder for many years. (However, if the tree surgeon is engaged through an employment agent, the tree surgeon is a **worker** employed by the agent (see s 4C (2).)

1 **5 Labour hire arrangements**

2 For this Act, an individual is taken to be a *worker* employed by a
3 person (the *labour hirer*) if—

- 4 (a) the individual has been engaged by the labour hirer under a
5 contract for services to work for someone other than the labour
6 hirer; and
- 7 (b) there is no contract to perform the work between the individual
8 and the person for whom the work is to be performed; and
- 9 (c) the individual personally does part or all of the work; and
- 10 (d) if the labour hirer is a corporation—the individual is not an
11 executive officer of the corporation.

12 *Note 1* This section does not make an employment agent the employer of those
13 for whom the agency finds work if the workers are engaged directly by
14 the person for whom the work is to be performed. It makes the labour
15 hirer the employer only if there is no contractual relationship between
16 the worker and the person for whom the work is to be performed (see
17 par (b)).

18 *Note 2* Under s 14 (Subcontracting), the person for whom the work is to be
19 performed may be liable as ‘principal’ to pay compensation to the
20 worker, as well as the labour hirer under this section. The ‘principal’
21 may then recover compensation from the labour hirer (see s 14 (3)).
22 See also note 3 at the beginning of this part.

23 **5A Trainees**

24 (1) For this Act, an individual is taken to be a *worker* employed by a
25 person (the *principal*) if—

- 26 (a) the individual is engaged under an arrangement (whether or not
27 under contract) by which training or on-the-job experience is
28 provided to the individual; and
- 29 (b) the training or experience is in relation to work that is for (or
30 incidental to) the principal’s trade or business; and
- 31 (c) the individual performs work that is for (or incidental to) the
32 principal’s trade or business while so engaged; and

1 (d) if the principal is a corporation—the individual is not an
2 executive officer of the corporation.

3 (2) An individual may be taken to be a worker under subsection (1)
4 even if the individual receives no payment for the engagement.

5 **5B Outworkers (ACT WCA s 6 (3))**

6 (1) This section applies to an individual (the *outworker*) who is
7 engaged by a person (the *principal*) under a contract for services to
8 treat or manufacture articles or materials, or to perform other
9 services—

10 (a) in the outworker's own home; or

11 (b) on other premises not under the control or management of the
12 principal.

13 (2) To remove doubt, the outworker is taken to be a *worker* employed
14 by the principal if—

15 (a) the outworker is taken to be a worker employed by the
16 principal under section 4D (Regular contractors and casuals);
17 or

18 (b) the outworker is taken to be a worker employed by the
19 principal under section 5 (Labour hire arrangements).

20 **Example of an outworker**

21 A keyboard operator engaged under a contract for services by an information
22 technology firm to undertake data conversion for the firm (or for another firm) in
23 the operator's home.

24 **5C Timber contractors (ACT WCA s 6 (3A), (3B))**

25 (1) This section applies to an individual (the *timber contractor*) who is
26 engaged by a person (the *principal*) under a contract for services to
27 do any of the following work:

28 (a) logging (including, for example, felling, crosscutting, snigging,
29 loading, carting, bundling and debarking);

30 (b) felling or cutting trees for firewood;

Section 4

- 1 (c) delivering timber or firewood;
- 2 (d) clearing timber, cutting scrub, preparing land for tree planting,
- 3 planting trees, pruning trees or coppice cleaning.
- 4 (2) The timber contractor is taken to be a *worker* employed by the
- 5 principal if—
- 6 (a) the work is for (or incidental to) the principal's trade or
- 7 business; and
- 8 (b) the timber contractor personally does part or all of the work;
- 9 and
- 10 (c) if the principal is a corporation—the timber contractor is not an
- 11 executive officer of the corporation.
- 12 (3) This section applies whether the work is to be performed by the
- 13 timber contractor—
- 14 (a) for the principal; or
- 15 (b) for someone (other than the principal) with whom the timber
- 16 contractor has no contract to perform the work.

17 **5D Religious workers (ACT WCA s 6A)**

- 18 (1) The Minister may make a declaration, in writing, for this section in
- 19 accordance with a request by—
- 20 (a) a religious organisation; or
- 21 (b) a person acting on behalf of a religious organisation.
- 22 (2) For this Act—
- 23 (a) an individual included in a class of individuals declared by the
- 24 Minister is taken to be a *worker* employed by the person stated
- 25 in the declaration to be the employer of individuals in that
- 26 class; and
- 27 (b) the individual's employment is taken to be as stated in the
- 28 declaration for individuals in the class.

1 (3) A declaration is a notifiable instrument.

2 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

3 **5E Commercial voluntary workers**

4 (1) This section applies if individuals (*commercial volunteers*) are
5 engaged under an arrangement by which the commercial
6 volunteers—

7 (a) perform work that is for (or incidental to) the trade or business
8 of someone else (the *principal*); and

9 (b) receive no payment for the work (apart from any payment for
10 expenses).

11 (2) A commercial volunteer is taken to be a *worker* employed by the
12 principal, unless the principal is exempt from the application of this
13 subsection in relation to the volunteer under a certificate given
14 under subsection (3).

15 (3) On application by the principal, the Minister may give the principal
16 a certificate (a *volunteer exemption certificate*) exempting the
17 principal from the application of subsection (2) in relation to the
18 commercial volunteers mentioned in the certificate if the Minister
19 considers it appropriate, having regard to the interests of the
20 principal and the commercial volunteers mentioned.

21 (4) A volunteer exemption certificate must state—

22 (a) which commercial volunteers (or class of commercial
23 volunteers) it applies to; and

24 (b) the work it applies to; and

25 (c) the period, or the event, it applies to.

26 (5) A volunteer exemption certificate is a notifiable instrument.

27 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

1 **5F Public interest voluntary workers**

2 (1) The Minister may make a declaration for this section in relation to
3 work (*public interest voluntary work*) undertaken by volunteers for
4 a stated entity that the Minister considers necessary or desirable in
5 the public interest.

6 (2) For this Act, an individual is taken to be a *worker* employed by the
7 entity stated in the declaration, or a person (the *principal*) named in
8 the declaration on behalf of the entity, if the individual—

9 (a) performs public interest voluntary work for the entity or the
10 principal; and

11 (b) receives no payment for the work (apart from any payment for
12 expenses).

13 (3) A declaration under this section is a disallowable instrument.

14 *Note* A disallowable instrument must be notified and presented to the
15 Legislative Assembly, under the *Legislation Act 2001*.

16 **5 Section 7**

17 *substitute*

18 **6C Compensation for personal injury (ACT WCA s 7 (1))**

19 (1) An employer is liable to pay compensation under this Act if a
20 worker of the employer suffers personal injury arising out of, or in
21 the course of, the worker's employment.

22 (2) However, if the injury is caused by a disease, the injury is taken to
23 have arisen out of, or in the course of, the worker's employment
24 only if the employment substantially contributes to the injury.

25 (3) Also, this section is subject to the following sections:

26 (a) section 6D (When is compensation under Act generally not
27 payable?);

28 (c) section 7A (Compensation limited to Territory workers)

1 (4) Also, the regulations may prescribe injuries that are not
2 compensable, and the circumstances in which they are not
3 compensable, under this Act.

4 (5) The regulations may prescribe—

5 (a) the level of compensation for injuries and how compensation
6 may be claimed; and

7 (b) the circumstances in which the entitlement to compensation
8 may be suspended.

9 **6D When is compensation under Act generally not payable?**
10 **(ACT WCA s 7 (3) and (4))**

11 (1) This section applies if, apart from this section, compensation in
12 relation to an injury to a worker is payable under this Act.

13 (2) Compensation is not payable if the injury to, or death of, the worker
14 is caused by an intentionally self-inflicted injury.

15 (3) Compensation is not payable if it is proved that the injury to the
16 worker is attributable to the worker's serious and wilful misconduct,
17 unless the injury results in death or serious and permanent
18 disablement.

19 (4) For subsection (3), the personal injury received by the worker is
20 attributable to the serious and wilful misconduct of the worker if—

21 (a) at the time of the injury, the worker was under the influence of
22 alcohol or another drug, unless the alcohol or other drug did
23 not contribute to the injury or was not consumed or taken
24 voluntarily; or

25 (b) the injury was otherwise attributable to the serious and wilful
26 misconduct of the worker.

27 (5) For this section:

28 *drug*—see the *Road Transport (Alcohol and Drugs) Act 1977*,
29 dictionary.

1 **7 Amounts of compensation under Act cumulative (ACT**
2 **WCA s 7 (5))**

3 An amount of compensation payable under a provision of this Act in
4 relation to an injury is, unless otherwise expressly stated, in addition
5 to any amount of compensation paid or payable under any other
6 provision of this Act.

7 **6 Compensation limited to Territory workers**
8 **Section 7A (3)**

9 *substitute*

10 (3) A worker is taken to be a worker of a particular Territory or State
11 (the *home jurisdiction*) if the worker carries out the work of the
12 worker's employer outside the home jurisdiction (whether within or
13 outside Australia) only if—

14 (a) the worker usually carries out the work of the worker's
15 employer in the home jurisdiction; and

16 (b) the worker carries out the work elsewhere because of an
17 arrangement (that is part of the worker's employment) for the
18 worker to carry out the work of the employment outside the
19 home jurisdiction for a period that may reasonably be thought
20 likely to be less than 6 continuous months in any 12 month
21 period.

22 **7 Section 8**

23 *substitute*

24 **8 Journey claims (NSW WCA s 10)**

25 (1) A personal injury received by a worker on an employment-related
26 journey is, for this Act, an injury arising out of, or in the course of,
27 the worker's employment.

28 *Note* Compensation may be payable for an injury arising out of, or in the
29 course of, employment under s 6C (Compensation for personal injury).

30 (2) The following are *employment-related journeys* for the worker:

- 1 (a) a journey between the worker's home and workplace;
- 2 (b) a journey between the worker's home and an educational
- 3 institution that the worker is attending for an employment-
- 4 related purpose;
- 5 (c) a journey between the worker's home or workplace and
- 6 another place if the purpose of the journey is to obtain 1 or
- 7 more of the following in relation to a previous injury for which
- 8 the worker is entitled to compensation under this Act:
 - 9 (i) a medical certificate;
 - 10 (ii) medical advice, attention or treatment;
 - 11 (iii) compensation.
- 12 (3) However, subsection (1) applies to an injury received during or after
- 13 a non employment-related interruption of, or deviation from, an
- 14 otherwise employment-related journey only if the risk of injury was
- 15 not materially increased because of the interruption or deviation.
- 16 (4) For this section—
 - 17 (a) an employment-related journey to the worker's home is taken
 - 18 to end at the boundary of the premises where the worker's
 - 19 home is located; and
 - 20 (b) an employment-related journey from the worker's home is
 - 21 taken to begin at the boundary of the premises where the
 - 22 worker's home is located.
- 23 (5) For this section:
24 *home*, for a worker, means the place where the worker usually lives.
25 *workplace*, for a worker, means the worker's place of employment.

1 **8 Compensation for death or incapacity through disease**
2 **Section 9 (1) (b)**

3 *before*
4 contributing
5 *insert*
6 substantial

7 **9 Compensation for disease**
8 **Section 9B (1) and (2)**

9 *before*
10 contributing
11 *insert*
12 substantial

13 **10 Section 9B (3) and (4)**

14 *before*
15 contributed
16 *insert*
17 substantially

18 **11 Sections 10 to 10F**

19 *omit*

20 **12 Sections 11 to 13**

21 *substitute*

22 **11 Action by employer in relation to claims (NSW WIMWCA**
23 **s 69)**

24 (1) If an employer receives a claim for compensation or another
25 document in relation to a claim, the employer must, within 7 days

- 1 after receiving the claim or document, forward it to the insurer that
- 2 the employer believes is liable to indemnify the employer for the
- 3 claim (the *liable insurer*).
- 4 Maximum penalty: 50 penalty units.
- 5 (2) If the employer receives a written request from the liable insurer for
- 6 further stated information in relation to the claim or document, the
- 7 employer must, within 7 days after receiving the request, either—
- 8 (a) give the insurer the requested information; or
- 9 (b) if the information is not in the employer's possession and is not
- 10 reasonably obtainable by the employer—tell the insurer that in
- 11 writing.
- 12 Maximum penalty: 50 penalty units.
- 13 (3) If an employer has received an amount of compensation under this
- 14 Act from an insurer, the employer must immediately pay the amount
- 15 to the person entitled to the compensation.
- 16 Maximum penalty: 50 penalty units.
- 17 (4) This section does not apply to an employer who is a self-insurer.
- 18 (5) A person does not commit an offence by failing to comply with this
- 19 section if there was a reasonable excuse for the failure.
- 20 **12 Register of injuries (NSW WIMWCA s 63)**
- 21 (1) This section applies to a mine, quarry, factory, workshop, office or
- 22 shop (the *workplace*).
- 23 (2) A register of injuries (the *register*) is to be kept at the workplace in a
- 24 place that is readily accessible to workers at the workplace.
- 25 (3) The manager of the mine or quarry, or the occupier of the factory,
- 26 workshop, office or shop, must ensure the register is kept in
- 27 accordance with subsection (2).
- 28 Maximum penalty: 50 penalty units.

- 1 (4) A person must not, without lawful authority or excuse, change,
2 damage, deface, remove or otherwise interfere with the register.
3 Maximum penalty: 20 penalty units.
- 4 (5) A worker employed at the workplace, or a person acting on the
5 worker's behalf, may enter in the register details of an injury
6 received by the worker.
- 7 (6) If details of the injury are entered in the register as soon as possible
8 after the injury happens, the entry is taken to be notice of the injury
9 given to the employer by the injured worker for this Act.

10 **13 Contracting out**

- 11 (1) A provision of an agreement or other document is void if it purports
12 to exclude, or limit in any way—
13 (a) a right given to a worker under this Act; or
14 (b) a liability imposed on an employer under this Act.
- 15 (2) However, this section does not apply to an agreement by a worker to
16 waive an existing right to compensation for a compensable injury as
17 prescribed under the regulations.

18 **13 Section 15**

19 *substitute*

20 **15 Medical referees (ACT WCA s 15)**

- 21 (1) The Minister may appoint 1 or more doctors to be medical referees
22 for this Act.
- 23 (2) The Minister may appoint a doctor to be a medical referee only if
24 satisfied that the doctor has the experience and expertise to
25 adequately perform the duties of a medical referee.
- 26 (3) A medical referee must not act as medical referee in relation to an
27 injury if the medical referee's services have been used as a doctor in
28 relation to the injury by, or on behalf of, the employer, worker or
29 insurer.

- 1 (4) A person appointed to be a medical referee is to be paid the fees
2 decided by the Minister for the exercise of the person's functions as
3 a medical referee.

4 **14 Part 2A**

5 *substitute*

6 **Part 2A Vocational retraining**

7 **15A Meaning of *approved retraining provider* etc**

- 8 (1) In this part:

9 *approved retraining provider* means a person approved by the
10 Minister to provide vocational retraining for this Act.

- 11 (2) The regulations may make provision about the approval of
12 retraining providers by the Minister, including—

13 (a) the factors to be taken into account in deciding whether to
14 approve retraining providers; and

15 (b) the conditions that may be imposed on approvals; and

16 (c) how approvals may be renewed, suspended and revoked.

17 **15B Meaning of *vocational retraining* (ACT WCA s 15A, 15B)**

- 18 (1) In this part:

19 *vocational retraining*, for the injured worker, means—

20 (a) the assessment of the needs of the worker for paragraph (b);
21 and

22 (b) the provision of appropriate, adequate and timely services for
23 the worker aimed at maintaining the worker in suitable
24 employment or returning the worker to suitable employment.

- 25 (2) For the definition of *vocational retraining*, services are taken to be
26 appropriate, adequate and timely if they are in accordance with a
27 relevant protocol.

1 **15C Meaning of *protocol* for pt 2A (ACT WCA s 15A)**

2 (1) In this part:

3 *protocol* means a protocol about vocational retraining approved
4 under the regulations.

5 (2) The regulations may allow the Minister to approve a protocol about
6 vocational retraining.

7 **15D Vocational retraining (ACT WCA s 15C)**

8 (1) If the worker has a compensable injury, the employer must provide
9 the worker with vocational retraining in accordance with this Act.

10 Maximum penalty: 50 penalty units.

11 (2) The provision of vocational retraining to the worker is not taken to
12 be an admission of liability for the worker's claim for compensation.

13 (3) This section does not apply to a non-business employer.

14 (4) The regulations may exempt employers from subsection (1), either
15 completely or in prescribed circumstances.

16 **15E False representation of approval**

17 A person must not pretend to be an approved retraining provider.

18 Maximum penalty: 30 penalty units.

19 **15 Sections 16 to 17D**

20 *substitute*

21 **16 Meaning of *compulsory insurance policy***

22 (1) For this Act:

23 *compulsory insurance policy*, for the employer, means an insurance
24 policy—

- 1 (a) for an unlimited amount for any liability of the employer under
2 this Act, or independently of this Act, for an injury to, or the
3 death of, each Territory worker employed by the employer; and

- 4 (b) that complies with this Act.

5 *Note* If a form is approved under s 29 (Approved forms) for a compulsory
6 insurance policy, the form must be used.

- 7 (2) Subject to section 16C (2) (Compulsory insurance—employers) and
8 section 17E (Cover notes), a cover note may be a compulsory
9 insurance policy.

10 **16A Approved insurers**

- 11 (1) The Minister may, in accordance with the regulations, approve an
12 insurer for this Act.

- 13 (2) The regulations may prescribe the following:

- 14 (a) the criteria for approving insurers;
15 (b) the conditions that may be imposed on the approval of insurers;
16 (c) the records to be kept by approved insurers, who the records
17 are to be provided to and how they are to be provided;
18 (d) how insurance premium calculations by approved insurers may
19 be reviewed;
20 (e) how approved insurers' performance may be monitored and
21 reviewed;
22 (f) what and when approved insurers must report to the Minister;
23 (g) how and why the approval of an insurer may be revoked or
24 suspended.

25 **16B Effect of revocation or suspension of approval**

- 26 (1) If the approval of the insurer for this Act is revoked or suspended,
27 section 16C (1) (which requires an employer to have a compulsory
28 insurance policy) applies in relation to an insurance policy (a *pre-*
29 *revocation policy*) issued by the insurer when the insurer was

- 1 approved, or the approval was not suspended, as if the insurer were
2 still approved or the approval not suspended.
- 3 (2) The revocation or suspension of the approval of an insurer does
4 not—
- 5 (a) annul a pre-revocation policy; or
- 6 (b) affect the liability of the insurer under a pre-revocation policy;
7 or
- 8 (c) affect the liability of the insurer under section 18H (Funds for
9 payments by nominal insurer).
- 10 (3) However, the regulations may prescribe circumstances in which
11 (and when) a pre-revocation policy issued by an insurer whose
12 approval has been revoked stops being a compulsory insurance
13 policy.
- 14 **16C Compulsory insurance—employers (ACT WCA s 17B (1),**
15 **(1A))**
- 16 (1) An employer, other than a self-insurer, must maintain a compulsory
17 insurance policy with an approved insurer.
- 18 Maximum penalty:
- 19 (a) for a non-business employer—50 penalty units; or
- 20 (b) for a 1st offence—50 penalty units; or
- 21 (c) for a 2nd or subsequent offence—
- 22 (i) if the person charged is an individual—250 penalty units,
23 2 years imprisonment or both; or
- 24 (ii) if the person charged is a corporation—1 000 penalty
25 units.
- 26 (2) A cover note may be a compulsory insurance policy only if it is in
27 force for not longer than 30 days and—

- 1 (a) the employer maintained a compulsory insurance policy (other
2 than a cover note) immediately before maintaining the cover
3 note; or
- 4 (b) the employer was not an employer immediately before
5 beginning to maintain the cover note; or
- 6 (c) the employer was a self-insurer immediately before beginning
7 to maintain the cover note.
- 8 (3) If 2 or more employers could become liable to pay compensation for
9 the same worker, any of the employers may comply with subsection
10 (1) in relation to the worker with a joint insurance policy for their
11 joint liability.

12 **16D Liability of executive officers (ACT WCA s 17B (2A, 2B))**

- 13 (1) If a corporation commits an offence against section 16C, each
14 executive officer of the corporation also commits the offence.
15 Maximum penalty:
16 (a) for a 1st offence—50 penalty units; or
17 (b) for a 2nd or subsequent offence—250 penalty units, 2 years
18 imprisonment or both.
- 19 (2) It is a defence to a prosecution under subsection (1) if the executive
20 officer establishes that the officer actively endeavoured to ensure
21 that the corporation complied with section 16C.

22 **17 Effect of failure to maintain compulsory insurance on**
23 **other insurance etc for this Act (ACT WCA s 17B (6))**

- 24 (1) This section applies if—
25 (a) an employer, other than a self-insurer, fails to maintain a
26 compulsory insurance policy; but
27 (b) the employer maintains an insurance policy (the *other policy*)
28 for a liability under this Act.
- 29 (2) The failure to maintain a compulsory insurance policy does not—

- 1 (a) annul the other policy; or
- 2 (b) affect the liability of the insurer under the other policy; or
- 3 (c) affect the liability of the insurer under section 18H (Funds for
- 4 payment by nominal insurer).

5 **17A Nominal insurer entitled to triple premiums**
6 (ACT WCA s 17B (5))

7 If an employer, other than a self-insurer or non-business employer,
8 fails to maintain a compulsory insurance policy, the nominal insurer
9 may recover as a debt from the employer an amount equal to triple
10 the amount of the premiums that would have been payable to an
11 approved insurer if the employer had maintained a compulsory
12 insurance policy.

13 **17B Evidence of maintenance of compulsory insurance policy**
14 (ACT WCA s 17B (4))

15 A statement in an information against an employer that there was no
16 compulsory insurance policy issued by an approved insurer in
17 favour of the employer in force on a stated date, or during a stated
18 period, is evidence of the matter.

19 **17C Self-insurers (ACT WCA s 17C (1))**

- 20 (1) The Minister may, by written notice given to an employer, exempt
- 21 the employer from complying with section 16C (1) (Compulsory
- 22 insurance—employers) for a stated period.
- 23 (2) The regulations may make provision for or in relation to the
- 24 following:
 - 25 (a) how an employer may apply for an exemption;
 - 26 (b) the criteria to be considered by the Minister when deciding
 - 27 whether to exempt an employer;
 - 28 (c) conditions on exemptions;

- 1 (d) renewals of exemptions;
- 2 (e) revocation and suspension of exemptions.

3 **17D Compulsory insurance—insurers**

- 4 (1) An approved insurer must not refuse to issue a compulsory
- 5 insurance policy required by an employer for section 16C (1)
- 6 (Compulsory insurance—employers).

7 Maximum penalty: 100 penalty units.

- 8 (2) An approved insurer must not issue an insurance policy required by
- 9 an employer for section 16C (1) that is not a compulsory insurance
- 10 policy.

11 Maximum penalty: 100 penalty units.

- 12 (3) It is not an offence under subsection (1) for an insurer to refuse to
- 13 issue a compulsory insurance policy if—

- 14 (a) the employer has not paid for the policy; or
- 15 (b) the employer has not given the insurer information reasonably
- 16 requested by the insurer in relation to the policy.

17 **17DA Cancellation**

18 An approved insurer may cancel a compulsory insurance policy only

19 in accordance with a protocol about cancellation.

20 Maximum penalty: 50 penalty units.

21 **16 Cover notes**

22 **Section 17E (1) and (2)**

23 *substitute*

- 24 (1) An insurer must not issue a cover note that is a compulsory
- 25 insurance policy for longer than 30 days.

26 Maximum penalty: 10 penalty units.

1 **17 Section 18**

2 *substitute*

3 **18 Information for insurers before renewal**

4 An employer (other than a non-business employer) applying to an
5 insurer for the issue renewal of a compulsory insurance policy must
6 give the insurer, in relation to the period (the *relevant period*)
7 relevant to working out the premium payable for the issue renewal
8 of the policy—

9 (a) a certificate from a registered auditor stating the total wages
10 paid in the relevant period by the employer to Territory
11 workers employed by the employer; and

12 (b) a statutory declaration setting out—

13 (i) the determined categories of Territory workers employed
14 by the employer in the period; and

15 (ii) the total wages paid to each category in the period; and

16 (iii) the number of paid and unpaid workers working for the
17 employer in the period; and

18 (iv) the approximate amount of time each paid and unpaid
19 worker worked for the employer in the period.

20 Maximum penalty:

21 (a) for a 1st offence—50 penalty units;

22 (b) for a 2nd or subsequent offence—

23 (i) if the person charged is an individual—2 years
24 imprisonment, 250 penalty units or both;

25 (ii) if the person charged is a corporation—1 000 penalty
26 units.

27 *Note* A person who knowingly provides a statutory declaration that contains
28 false information is guilty of an offence under this Act (see s 18AE).

1 18AA Information for insurers after end of policy

2 If an employer (other than a non-business employer) has a
3 compulsory insurance policy, the employer must, within 30 days
4 after the end of the policy, give the insurer—

- 5 (a) a certificate from a registered auditor stating the total wages
6 paid by the employer to Territory workers in the period
7 covered by the policy (the *policy period*); and
- 8 (b) a statutory declaration setting out—
- 9 (i) the determined categories of Territory workers employed
10 by the employer in the policy period; and
- 11 (ii) the total wages paid to each category in the policy period;
12 and
- 13 (iii) the number of paid and unpaid workers working for the
14 employer in the policy period; and
- 15 (iv) the approximate amount of time each paid and unpaid
16 worker worked for the employer in the policy period.

17 Maximum penalty: 50 penalty units.

18 *Note* A person who knowingly provides a statutory declaration that contains
19 false information is guilty of an offence under this Act (see s 18AE).

20 18AB Information for insurers about reporting period

21 (1) If an employer (other than a non-business employer) has a
22 compulsory insurance policy, the employer must, within 14 days
23 after each reporting period, give the insurer a statutory declaration
24 setting out—

- 25 (a) the determined categories of Territory workers employed by
26 the employer in the reporting period; and
- 27 (b) the total wages paid to each category in the reporting period;
28 and
- 29 (c) the number of paid and unpaid workers working for the
30 employer in the reporting period; and

(d) the approximate amount of time each paid and unpaid worker worked for the employer in the reporting period.

Maximum penalty: 50 penalty units.

Note A person who knowingly provides a statutory declaration that contains false information is guilty of an offence under this Act (see s 18AE).

(2) In this section:

reporting period, in relation to the employer's compulsory insurance policy, means—

(a) the period (the *first period*) of 6 months beginning on the first day of the policy; and

(b) each successive period (the *successive period*) of 6 months following the first period; and

(c) if the policy ends, or is cancelled, on a day other than the last day of the first period or a successive period—the period following the later of the first period or last successive period and ending on last day of the policy.

18AC Information for insurers after cancellation

If an insurer cancels the compulsory insurance policy of an employer (other than a non-business employer), the employer must, within 14 days after the day the policy is cancelled, give the insurer a certificate from a registered auditor stating the total wages paid by the employer to Territory workers in the period from the start of the policy until the cancellation of the policy.

Maximum penalty: 50 penalty units.

1 **18AD Offence by registered auditor**

2 A registered auditor must not knowingly supply false, misleading or
3 incomplete information in a certificate provided for section 18AA
4 (Information for insurers after end of policy), 18AB (Information
5 for insurers about reporting period) or 18AC (Information for
6 insurers after cancellation).

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

9 **18AE Offence in relation to statutory declaration**

10 (1) This section applies to a person who provides a statutory declaration
11 under section 18 (Information for insurers before renewal), section
12 18AA (Information for insurers after end of policy) and section
13 18AB (Information for insurers about reporting period).

14 (2) The person must not knowingly provide false information in the
15 statutory declaration.

16 Maximum penalty:

17 (a) for a 1st offence—

18 (i) if the person charged is an individual—250 penalty units,
19 2 years imprisonment or both; or

20 (ii) if the person charged is a corporation—1 000 penalty
21 units; or

22 (b) for a 2nd or subsequent offence—

23 (i) if the person charged is an individual—1 000 penalty
24 units, 10 years imprisonment or both; or

25 (ii) if the person charged is a corporation—10 000 penalty
26 units.

27 *Note* Under the *Crimes Act 1900*, pt 8, it is an offence to aid, abet or incite
28 another person to commit an offence, to conspire with the person to
29 commit an offence, to receive or assist the person knowing they have
30 committed an offence or to attempt to commit an offence. Part 8
31 applies to the offence under this section.

1 **18AF Offence to employ etc after 2nd offence**

2 (1) This section applies to a person who has been convicted of a 2nd or
3 subsequent offence under the following sections:

- 4 • section 16C (Compulsory insurance—employers)
5 • section 16D (Liability of executive officers)
6 • section 18 (Information for insurers before renewal)
7 • section 18AA (Information for insurers after end of policy)
8 • section 18AB (Information for insurers about reporting period)
9 • section 18AC (Information for insurers after cancellation).

10 (2) The person must not employ a Territory worker, or be an executive
11 officer of a corporation that employs a Territory worker, for a period
12 of 5 years from the day the person is, or is last, convicted of an
13 offence mentioned in subsection (1).

14 Maximum penalty: 5 years imprisonment.

15 **18 Section 18F**

16 *substitute*

17 **18F Intervention by nominal insurer**

18 (1) This section applies to a person (the *alleged employer*)—

- 19 (a) against whom a claim (the *claim*) for compensation has been
20 made; and
21 (b) who is not a self-insurer; and
22 (c) who is not a party to a compulsory insurance policy that
23 applies to the claim.

24 (2) The alleged employer must, not later than 48 hours after the claim is
25 made, give the nominal insurer a copy of the claim.

26 Maximum penalty: 10 penalty units.

- 1 (3) The alleged employer must not make an agreement or admission in
2 relation to the claim unless the nominal insurer consents.
3 Maximum penalty: 20 penalty units.
- 4 (4) The nominal insurer is entitled to intervene in any arbitration
5 proceeding on the claim as a party.
- 6 (5) The nominal insurer has the same right of objection to arbitration by
7 a committee as the employer has under the regulations.

8 **18FA Nominal insurer may act**

9 The nominal insurer may treat a claim for compensation as having
10 been made against the nominal insurer under section 18C (Claims
11 for payment by nominal insurer) if the nominal insurer—

- 12 (a) receives a copy of the claim under section 18F; or
- 13 (b) is otherwise satisfied that it is reasonably likely that there is no
14 compulsory insurance policy in force that applies to the claim.

15 **19 Section 18G**

16 *substitute*

17 **18G Effects of payment by nominal insurer**

- 18 (1) If the nominal insurer pays an amount under this Act in relation to a
19 liability of an employer—
 - 20 (a) the payment operates, to the extent of the payment, to
21 discharge the liability of the employer; and
 - 22 (b) an amount equal to 3 times the amount of the payment is a debt
23 payable by the employer to the nominal insurer, and may be
24 sued for and recovered in a court of competent jurisdiction; and
 - 25 (c) the nominal insurer has the right of subrogation in relation to
26 any right that the employer has against anyone in relation to
27 the occurrence that caused the liability of the employer.

- 1 (2) Subsection (1) (b) does not apply in relation to a non-business
2 employer.

3 **20 New section 21AA**

4 *after section 21, insert*

5 **21AA Regulations to allow Minister to authorise people**

6 The regulations may—

- 7 (a) allow the Minister to authorise people with accounting or
8 auditing skills to examine records of wage estimates, evidence
9 supporting wage estimates and records of wages paid; and
10 (b) prescribe the circumstances in which the people authorised
11 may enter premises to examine the records.

12 **21 Sections 23D and 23E**

13 *substitute*

14 **23D Inspectors**

- 15 (1) The chief executive may appoint, in writing, 1 or more inspectors
16 for this Act or a provision of this Act.

17 *Note* **Chief executive** means the chief executive of the administrative unit
18 responsible for this section (see *Interpretation Act 1967*, s 24A (2) (a)).

- 19 (2) A person must not be authorised under subsection (1) unless—

- 20 (a) the person is an Australian citizen or a permanent resident of
21 Australia; and
22 (b) the chief executive has certified in writing that, after
23 appropriate inquiry, the chief executive is satisfied that the
24 person is a suitable person to be authorised, having regard in
25 particular to—
26 (i) whether the person has any criminal convictions; and
27 (ii) the person's employment record; and

- 1 (c) the person has satisfactorily completed adequate training to
 2 exercise the powers of an inspector proposed to be given to the
 3 person.

4 **23E Identity cards**

- 5 (1) The chief executive must issue an inspector with an identity card
 6 that states the person is an inspector for this Act, or stated provisions
 7 of this Act, and shows—
 8 (a) a recent photograph of the person; and
 9 (b) the name of the person; and
 10 (c) the date of issue of the card; and
 11 (d) a date of expiry for the card; and
 12 (e) anything else prescribed under the regulations.
 13 (2) A person who ceases to be an inspector must return his or her
 14 identity card to the chief executive as soon as practicable, but no
 15 later than 7 days after ceasing to be an inspector.
 16 Maximum penalty (subsection (2)): 1 penalty unit.

17 **22 New section 23J**

18 *insert*

19 **23J Obstruction**

- 20 A person must not, without reasonable excuse, obstruct or hinder an
 21 inspector in the exercise of the inspector's functions under this Act.
 22 Maximum penalty: 50 penalty units, imprisonment for 6 months or
 23 both.

1 **23 New Part 6C**

2 *insert*

3 **Part 6C Notice and appeals**

4 **26RA Notice of reviewable decisions to be given to affected**
5 **people**

6 (1) In this part:

7 *reviewable decision* means a decision made by the Minister that is
8 prescribed under the regulations.

9 (2) If the Minister makes a reviewable decision, the Minister must give
10 written notice of the decision to each person affected by the
11 decision.

12 (3) The notice must be in accordance with the requirements of the code
13 of practice in force under of the *Administrative Appeals Tribunal*
14 *Act 1989*, section 25B (1).

15 **26RB Review by administrative appeals tribunal of reviewable**
16 **decisions**

17 A person may apply in writing to the administrative appeals tribunal
18 for review of a reviewable decision within 28 days after receiving
19 notice of the decision.

20 **24 Sections 26S to 27B**

21 *substitute*

22 **26RC Confidentiality**

23 A person must not, other than for this Act or as required by law,
24 make a record of or divulge or communicate to anyone else
25 information or a document that the person acquired under this Act.

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

1 **26S Time for beginning prosecutions**

- 2 (1) A prosecution for an offence against 1 of the following sections may
 3 be begun within 5 years after the commission of the offence:
- 4 • section 16C (Compulsory insurance—employers)
 - 5 • section 18 (Information for insurers before renewal)
 - 6 • section 18AA (Information for insurers after end of policy)
 - 7 • section 18AB (Information for insurers about reporting period)
 - 8 • section 18AC (Information for insurers after cancellation).
- 9 (2) A prosecution for an offence against any other provision of this Act
 10 may be begun within 1 year after the commission of the offence.
- 11 (3) However, a prosecution for an offence against this Act committed
 12 before the commencement of the *Workers Compensation*
 13 *Amendment Act 2001*, section 24 may be begun within 2 years after
 14 the commission of the offence.
- 15 (4) Subsection (3) and this subsection expire 2 years after the
 16 commencement of this section.

17 **26T False claims etc (NSW WIMWCA s 67)**

- 18 (1) A person must not make a statement knowing that it is false or
 19 misleading in a material particular—
- 20 (a) in a notice given by the person under this Act; or
 - 21 (b) in a claim for compensation made by the person; or
 - 22 (c) in a medical certificate or other document that relates to a
 23 claim for compensation; or
 - 24 (d) when giving information to someone about a claim for
 25 compensation (whether the information is given by the person
 26 who made the claim or not).
- 27 Maximum penalty: 50 penalty units, imprisonment for 6 months or
 28 both.
- 29 (2) This section does not apply to statements—

- 1 (a) made in documents filed, or information given, in a court
2 proceeding; or
3 (b) made in a document or information if the person who made the
4 statement did not know that the document or information was
5 to be given in relation to a claim for compensation.
6 (3) This section applies to a statement even if it has been verified by
7 statutory declaration.

8 **26U Acts and omissions of representatives**

- 9 (1) In this section:

10 *representative* means—

- 11 (a) for a corporation—an executive officer, employee or agent of
12 the corporation; or
13 (b) for an individual—an employee or agent of the individual.

14 *state of mind*, of a person, includes—

- 15 (a) the person's knowledge, intention, opinion, belief or purpose;
16 and
17 (b) the person's reasons for the intention, opinion, belief or
18 purpose.

- 19 (2) This section applies to a prosecution for a defined offence.

20 *Note* Defined offence is defined in the dict.

- 21 (3) If it is relevant to prove a person's state of mind about an act or
22 omission, it is enough to show—

- 23 (a) the act was done or omission made by a representative of the
24 person within the scope of the representative's actual or
25 apparent authority; and
26 (b) the representative had the state of mind.

- 27 (4) An act done or omitted to be done on behalf of a person by a
28 representative of the person within the scope of the representative's
29 actual or apparent authority is taken to have been done or omitted to

be done also by the person, unless the person establishes that reasonable precautions were taken and appropriate diligence was exercised to avoid the act or omission.

- (5) An individual who is convicted of an offence cannot be punished by imprisonment for the offence if the individual would not have been convicted of the offence without subsection (3) or (4).

27 Criminal liability of officers of corporation

- (1) If a corporation commits an offence against this Act (other than against section 16C (Compulsory insurance—employers)), an executive officer of the corporation—

- (a) commits the offence; and
- (b) is liable, on conviction, to a penalty not exceeding the maximum penalty that may be imposed for the commission of the offence by an individual.

Note Section 16D deals with the liability of executive officers if a corporation commits an offence against section 16C.

- (2) It is a defence to a prosecution for an offence against subsection (1) that—

- (a) the defendant exercised due diligence to prevent the corporation from doing the act or making the omission alleged to constitute the offence or an element of the offence committed by the corporation; or
- (b) an officer or employee of the corporation in the defendant's position could not reasonably have been expected to know of the contravention; or
- (c) the corporation would not have been found guilty of the offence because it could have established a defence available to it for the offence.

- (3) An executive officer may, under subsection (1), be prosecuted for and convicted of an offence whether or not the corporation has been prosecuted for or convicted of the offence.

1 **27A Advisory committee**

2 (1) The Minister may, in writing establish an advisory committee that
3 the Minister is satisfied represents the interests of stakeholders to
4 help the Minister with the development of regulations for this Act.

5 (2) For this section:

6 *stakeholder* means someone with a real interest in the operation of
7 this Act.

8 **27B Rules of court**

9 The Executive may make rules in relation to procedure for this Act.

10 **27C Directions about procedure**

11 (1) If the procedure for taking a step in a proceeding is not prescribed
12 under this Act, the Chief Magistrate may, in writing, give directions
13 about the procedure to be followed for the step.

14 (2) A direction is a notifiable instrument.

15 *Note* A notifiable instrument must be notified under the *Legislation Act 2001*.

16 (3) If the procedure for taking a step in a proceeding is not prescribed
17 under this Act (including under a direction mentioned under
18 subsection (1)), the Magistrates Court may give directions about the
19 procedure to be followed in relation to the step.

20 **27CA References to Workers' Compensation Act**

21 In any Act, statutory instrument or document, a reference to the
22 *Workers' Compensation Act 1951* is a reference to this Act.

23 **25 Regulation-making power**
24 **Section 30 (2) and (3)**

25 *substitute*

26 (2) The regulations may make provision in relation to the following:

27 (a) the management of worker injuries;

- 1 (b) the management of claims for compensation;
- 2 (c) the diseases and losses that may be compensated, the level of
- 3 compensation and how compensation can be claimed;
- 4 (d) the procedure for the medical examination of injured workers;
- 5 (e) the functions of medical referees appointed under this Act;
- 6 (f) what compulsory insurance policies must, and must not,
- 7 include;
- 8 (g) how the performance of brokers and agents in relation to
- 9 workers compensation in the Territory may be monitored;
- 10 (h) the maximum fees and expenses that may be required for
- 11 matters dealt with under this Act in relation to the following:
 - 12 (i) medical examinations or medical treatment;
 - 13 (ii) legal services;
 - 14 (iii) retraining services;
 - 15 (iv) investigative services;
- 16 (i) fees and expenses that may not, or may not for a period, be
- 17 claimed from a worker for a service provided in relation to a
- 18 compensable injury;
- 19 (j) the benefits payable to injured workers;
- 20 (k) the accreditation of people to act as injury managers;
- 21 (l) arbitration of matters and questions arising under this Act;
- 22 (m) protocols that may be approved by the Minister for this Act
- 23 and how they may be approved;
- 24 (n) the approval of brokers for this Act, including—
 - 25 (i) the factors to be taken into account in deciding whether
 - 26 to approve brokers; and
 - 27 (ii) the conditions that may be imposed on approvals; and

- 1 (iii) how approvals may be renewed, suspended and revoked.
- 2 (3) The regulations may prescribe the conditions or diseases that are
- 3 taken to be not employment-related and the circumstances in which
- 4 they are to be not so taken.
- 5 (4) The regulations may provide that an amount under the regulations
- 6 may be linked to a figure issued by the Australian Bureau of
- 7 Statistics and, if they do, the amount will vary in accordance with
- 8 variations in that figure as provided by the regulations.
- 9 (5) The regulations may prescribe an amount to be a figure or rate
- 10 issued by the Commonwealth Commissioner of Taxation, or the
- 11 Australian Industrial Relations Commission, for a stated purpose
- 12 and, if they do, the amount is the figure or rate as issued from time
- 13 to time.
- 14 **Example**
- 15 The rate per kilometre at which a worker can claim the cost of transport to and
- 16 from medical appointments might be linked to the rate at which a taxpayer can
- 17 claim the cost of transport that is work-related.
- 18 (6) The regulations may also prescribe offences for contraventions of
- 19 the regulations and prescribe maximum penalties of not more than
- 20 10 penalty units for offences against the regulations.

21 **26 Part 8**

22 *substitute*

23 **Part 8 Transitional**

24 **32 Definitions for pt 8**

25 For this part:

26 *the amendment Act* means the *Workers Compensation Amendment*

27 *Act 2001*.

28 *the current Act* means the *Workers Compensation Act 1951*, as in

29 force after the commencement of the amendment Act.

1 *the previous Act* means the *Workers' Compensation Act 1951*, as in
2 force immediately before the commencement of the amendment
3 Act.

4 **33 What injuries does this Act apply to?**

5 (1) The current Act applies only to injuries that happen on or after the
6 commencement of the amendment Act.

7 (2) However, if the worker first became aware that the worker received
8 an injury after the commencement of the amendment Act, the injury
9 is, for this part, taken to have happened when the worker became
10 aware of the injury.

11 (3) Also, if an injury (the *original injury*) that happened before the
12 commencement of the amendment Act is aggravated after the
13 commencement, the current Act applies to the aggravation as if the
14 original injury were an injury within the meaning of the current Act.

15 **34 What happens to injuries before the commencement of
16 the amendment Act?**

17 The previous Act continues to apply to injuries that happened before
18 the commencement of the amendment Act.

19 **35 Determined categories of workers**

20 (1) This section applies if, immediately before the commencement of
21 the amendment Act, a determination by the Minister under the
22 previous Act, section 6B (Determined categories of workers) was in
23 force.

24 (2) The determination is taken to be a determination under the current
25 Act, section 4A (3) (Who is a *worker*?).

26 **36 Approved insurers**

27 (1) An insurer (the *previously approved insurer*) that was an approved
28 insurer under the previous Act immediately before the
29 commencement of the amendment Act is taken to be an approved
30 insurer under the current Act.

1 (2) However, the approval of the previously approved insurer under the
2 current Act ends 6 months after the commencement of the
3 amendment Act, because of the operation of this section.

4 (3) Subsection (2) applies to the approval irrespective of the terms of
5 the approval under the previous Act.

6 **37 Exempt employers**

7 (1) A person who was an exempt employer immediately before the
8 commencement of the amendment Act is taken to have been
9 exempted under the current Act, section 17C (Self-insurers).

10 (2) However, the exemption of the person under section 17C ends 6
11 months after the commencement of the amendment Act.

12 (3) Subsection (2) applies to the exemption irrespective of the terms of
13 the exemption under the previous Act.

14 **38 Modification of pt 8's operation**

15 The regulations may modify the operation of this part to make
16 provision with respect to any matter that is not already, or is not (in
17 the Executive's opinion) adequately, dealt with in this Part.

18 **39 Expiry of pt 8**

19 This part expires 1 year after it commences.

20 *Note* Transitional provisions are usually of transitional effect. They are kept
21 with the original provisions for a limited time to ensure people are
22 aware of them. However, the expiry of transitional provisions does not
23 end their effect (see *Legislation Act 2001*, s 88).

27 Schedules 1 to 4

substitute

Dictionary

(see s 1A)

approved insurer means an insurer approved by the Minister under section 16A (Approved insurers).

approved retraining provider, for part 2A (Vocational retraining)—see section 15A (Meaning of *approved retraining provider* etc).

compensation means an amount payable under this Act in relation to an injury to, or the death of, a person.

compulsory insurance policy—see section 16 (Meaning of *compulsory insurance policy*).

dependant, of a dead worker, means an individual—

(a) who was totally or partly dependent on the worker's earnings on the day of the worker's death or who would, apart from the worker's incapacity because of the injury, have been so dependent; and

(b) who was—

(i) a member of the worker's family; or

(ii) a person to whom the worker acted in place of a parent or who acted in place of a parent for the worker.

determined categories, of Territory workers, means the categories of workers determined by the Minister under section 4A (3) (Who is a *worker*?).

employer—see section 3 (Meaning of *employer*).

executive officer, of a corporation, means a person, by whatever name called and whether or not the person is a director of the corporation, who is concerned with, or takes part in, the corporation's management.

- 1 ***injury***—see section 2A (Meaning of ***injury***).
- 2 ***medical referee*** means a medical referee appointed under
- 3 section 15.
- 4 ***medical treatment*** means—
- 5 (a) an examination, test or analysis, conducted by or under the
- 6 direction, or at the request, of a doctor to diagnose an injury; or
- 7 (b) medical or surgical treatment by a doctor; or
- 8 (c) dental treatment by a dentist or a dental prosthetist; or
- 9 (d) chiropractic treatment by a chiropractor; or
- 10 (e) treatment by a psychologist; or
- 11 (f) therapeutic treatment by a masseur, osteopath, physiotherapist,
- 12 remedial kinesiologist or speech therapist; or
- 13 (g) therapeutic treatment given on referral by a doctor or dentist;
- 14 or
- 15 (h) the taking of x-rays; or
- 16 (i) the provision, repair or replacement of contact lenses, crutches,
- 17 prostheses, spectacles or other artificial aids; or
- 18 (j) a consultation, examination, therapeutic treatment or other
- 19 service reasonably rendered in relation to a treatment
- 20 mentioned in paragraph (c), (d), (f), (g), (h) or (i); or
- 21 (k) treatment and maintenance as a patient at a hospital; or
- 22 (l) the provision of nursing attendance, medicines, medical and
- 23 surgical supplies and curative apparatus in a hospital or
- 24 otherwise.
- 25 ***non-business employer*** means an employer who employs the
- 26 worker other than for work that is for (or incidental to) the
- 27 employer's trade or business.
- 28 ***partially incapacitated***—see section 4 (Meaning of ***partially***
- 29 ***incapacitated***).

payment includes a non-monetary payment.

protocol—

- (a) for part 2A (Vocational retraining)—see section 15C (Meaning of *protocol* for pt 2A); or
- (b) means a protocol, approved in accordance with the regulations, prescribing how certain activities under this Act should be performed.

registered auditor means an auditor registered under the Corporations Law.

reviewable decision, for part 6C (Notice and appeals)—see section 26RA (Notice of reviewable decisions to be given to affected people).

self-insurer means an employer who is exempted under section 17C (Self-insurers).

Territory worker means a worker of the Territory under section 7A (Compensation limited to Territory workers).

totally incapacitated—see section 3A (Meaning of *totally incapacitated*).

vocational retraining, for part 2A (Vocational retraining)—see section 15B (Meaning of *vocational retraining*).

worker—see part 1B (Meaning of worker).

28 Workers Compensation Act—renumbering

renumber provisions when Act next republished under Legislation Act 2001

1 **29 Limitation Act 1985, new section 16A**

2 *insert*

3 **16A Claims for common law compensation for workers**
4 **compensation**

5 (1) This section applies to a cause of action, other than a cause of action
6 that is a claim for compensation under the *Workers Compensation*
7 *Act 1951*, if—

8 (a) the cause of action relates to an injury that is a compensable
9 injury under the *Workers Compensation Act 1951*; and

10 (b) a claim could be, or could have been, made in relation to the
11 cause of action under the *Workers Compensation Act 1951* if
12 notice of the injury had been given as required under that Act.

13 (2) The action is not maintainable if brought 3 or more years after the
14 day the injury happened.

15 **30 Magistrates Court (Civil Jurisdiction) Act 1982, section**
16 **497**

17 *omit*

Schedule 1 Consequential amendments

(see s 3)

[1.1] Section 6 (1) (definitions of *approved insurer*, *base figure*, *compensation*, *court*, *dependant*, *determined categories of workers*, *employer*, *employer's insurer*, *exempt employer*, *Index number*, *injury*, *medical treatment*, *outworker*, *overtime*, *prescribed insurance policy*)

omit

[1.2] Section 6 (1) (definition of *professional sporting activity*)

omit

but does not include an activity referred to in subsection (4B), (4C) or (4D);

[1.3] Section 6 (1) (definition of *registered auditor*)

omit

[1.4] Section 6 (1) (definitions of *worker*, *worker of this Territory*)

omit

[1.5] Section 6 (1) (definitions, as amended by this schedule)

relocate the definitions to the dictionary

[1.6] Remainder of section 6

omit

[1.7] Sections 6A and 6B

omit

1 **[1.8] Section 7A (1)**

2 *substitute*

3 (1) An employer is liable to pay compensation only in relation to a
4 worker of the Territory.

5 **[1.9] Section 7A (4) (c)**

6 *omit*

7 respect of

8 *substitute*

9 relation to

10 **[1.10] Section 7A (5)**

11 *omit*

12 **[1.11] Section 7B**

13 *substitute*

14 **7B Injury outside Australia**

15 Compensation is payable in relation to an injury to a Territory
16 worker suffered while the worker is outside Australia only if
17 compensation would be payable in relation to the injury if the
18 worker suffered the injury in Australia.

19 **[1.12] Section 9AA**

20 *omit*

21 **[1.13] Section 14, new note**

22 *insert*

23 *Note* See note 3 (Subcontracting and labour hire (effect of s 14)) at the
24 beginning of part 1B for illustrations of how this section operates under
25 various subcontracting arrangements. If a worker is taken to be
26 employed by a labour hirer (under s 5), the labour hirer is a contractor
27 for this section (see the 2nd illustration in that note). However, if a
28 worker is recruited through a labour hirer acting as an employment
29 agent (and the agent is not taken to be the worker's employer under s 5

1 or any other provision in pt 1B), the labour hirer is not a contractor for
2 this section (see the 3rd illustration in that note).

3 **[1.14] Section 18A (1)**

4 *substitute*

5 (1AA) This section applies to the following:

- 6 (a) an approved insurer;
- 7 (b) a self-insurer;
- 8 (c) if an approved insurer or employer is a corporation—an officer
9 of the corporation on behalf of the corporation.
- 10 (1) The Minister may, by written notice given to a person to whom this
11 section applies, require the person to give to the Minister, within the
12 reasonable time stated in the notice—
- 13 (a) details of the number of injuries for which compensation has
14 been paid during the period stated in the notice and the total
15 compensation paid during that period; and
- 16 (b) any other details relating to the operation of this Act stated in
17 the notice.

18 **[1.15] Section 18E (2)**

19 *omit*

20 schedule 4

21 *substitute*

22 the regulations

23 **[1.16] Section 18EA (7) (b)**

24 *omit*

25 (other than an Act)

1 **[1.17] Section 18H (2) and (3)**

2 *omit*

3 exempt employers

4 *substitute*

5 self-insurers

6 **[1.18] Section 18H (4)**

7 *substitute*

8 (4) In making an apportionment under subsection (3), the nominal
9 insurer must have regard as far as practicable to—

10 (a) the premium incomes received by each approved insurer in
11 relation to compulsory insurance policies in the financial year
12 before the occurrence; and

13 (b) the premium that would have been payable by each self-insurer
14 if the self-insurer had obtained a compulsory insurance policy
15 for that financial year (or the part of that financial year for
16 which the self-insurer was a self-insurer).

17 **[1.19] Section 18H (5)**

18 *omit*

19 exempt employer

20 *substitute*

21 self-insurer

22 **[1.20] Section 18H (5)**

23 *omit*

24 or employer

25 *substitute*

26 or self-insurer

[1.21] Section 18H (6)*omit*

exempt employer

substitute

self-insurer

[1.22] Section 18H (7)*omit*

exempt employers

substitute

self-insurers

[1.23] Section 20*substitute***20 Premiums—maximum rates**

An insurer must not charge, or accept, a premium for a compulsory insurance policy that is greater than the premium worked out in accordance with the maximum rate of premium prescribed under the regulations.

Maximum penalty: 50 penalty units.

[1.24] Section 20AA*omit*

prescribed

substitute

compulsory

[1.25] Section 20A*omit*

1 **[1.26] Section 21**

2 *substitute*

3 **21 Workers' rights to information (ACT WCA s 21)**

4 (1) If a Territory worker who is or has been employed by an employer
5 asks the employer for the name and address of the person who was
6 the employer's approved insurer on a stated date, the employer
7 must—

8 (a) if the employer was not a self-insurer on that date—tell the
9 worker the name and address of the approved insurer, or each
10 approved insurer, who issued a compulsory insurance policy to
11 the employer that was current on that date; or

12 (b) if the employer was a self-insurer on that date—tell the worker
13 that fact.

14 Maximum penalty: 20 penalty units.

15 (2) An employer must keep displayed, in accordance with subsection
16 (3), a notice containing a summary of the requirements of this Act
17 for making compensation claims, in the form approved by the
18 Minister under section 29 (Approved forms) for the notice, and
19 stating—

20 (a) that claim forms for compensation are available from the
21 employer on request and free of charge; and

22 (b) if the employer is a party to a compulsory insurance policy—
23 the approved insurer's name and address; and

24 (c) if the employer is a self-insurer—that the employer is exempt
25 from the requirement to obtain insurance under this Act.

26 Maximum penalty: 10 penalty units.

27 (3) The employer must display the notice in a conspicuous place so that
28 it can be conveniently read by each Territory worker employed by
29 the employer.

- 1 (4) An employer must ensure that claim forms approved by the Minister
2 under section 29 (Approved forms) are available during business
3 hours to each Territory worker who is or has been employed by the
4 worker on request and free of charge.

5 Maximum penalty: 10 penalty units.

6 **[1.27] Section 21A, definition of *compensation***

7 *omit*

8 **[1.28] Sections 21B, 22, 23 and 23A**

9 *omit*

10 in respect of

11 *substitute*

12 in relation to

13 **[1.29] Section 23A (4) (b)**

14 *substitute*

- 15 (b) any amount paid under this Act, because of the worker's death,
16 for the benefit of a child who was a dependant of the worker.

17 **[1.30] Section 23F**

18 *substitute*

19 **23F Provision of information to inspectors**

- 20 (1) An inspector may, by written notice given to an employer, require
21 the employer to give to the inspector, within 28 days after the day
22 the notice is given to the employer—

23 (a) a certificate from a registered auditor stating the total wages
24 paid, in the period stated in the notice, by the employer to
25 Territory workers employed by the employer; and

26 (b) a statutory declaration setting out—

Schedule 1 Consequential amendments

Amendment [1.31]

- 1 (i) the determined categories of Territory workers employed
2 by the employer in the period; and
3 (ii) the total wages paid to each category in the period.
- 4 (2) An inspector may, by written notice given to an employer, require
5 the employer, in the time and way stated in the notice—
6 (a) to produce for inspection any compulsory insurance policy to
7 which the employer is a party; and
8 (b) to provide the related information (if any) that the inspector
9 requires in the notice.
- 10 (3) A registered auditor must not knowingly supply false, misleading or
11 incomplete information in a certificate given to an inspector under
12 subsection (1).
13 Maximum penalty: 50 penalty units, imprisonment for 6 months or
14 both.
- 15 (4) An employer must not, without reasonable excuse, fail to comply
16 with a notice given to the employer under subsection (1) or (2).
17 Maximum penalty: 50 penalty units.
- 18 (5) In this section:
19 *employer* includes a person whom an inspector believes, on
20 reasonable grounds, is or has been an employer.

21 **[1.31] Section 24**

22 *omit*

23 Schedule 4

24 *substitute*

25 the regulations

26 **[1.32] Section 25**

27 *omit*

[1.33] Part 6A

omit

[1.34] Section 26G, definition of *on-the-spot fine*

substitute

on-the-spot fine, in relation to a prescribed offence, means the fine prescribed under the regulations for the offence.

[1.35] Section 27D (1) and (2)

omit

exempt employers

substitute

self-insurers

[1.36] Section 27D (3)

substitute

(3) In making an apportionment under subsection (2) for a financial year, the Minister must have regard as far as practicable to—

(a) the premium incomes received by each approved insurer in relation to compulsory insurance policies in the financial year;
and

(b) the premium that would have been payable by each self-insurer if the self-insurer had obtained a compulsory insurance policy for the financial year (or the part of the financial year for which the self-insurer was a self-insurer).

[1.37] Section 27D (4)

omit

exempt employer

substitute

self-insurer

Schedule 1 Consequential amendments

Amendment [1.38]

1 **[1.38] Section 27D (4)**

2 *omit*

3 or employer

4 *substitute*

5 or self-insurer

6 **[1.39] Section 27D (5)**

7 *omit*

8 exempt employer

9 *substitute*

10 self-insurer

Schedule 2 Minor amendments

(see s 3)

[2.1] Section 6 (1) (definitions of dental prosthetist, dentist and medical practitioner)

omit

[2.2] Section 6 (1) (definition of *spouse*)

omit

bona fide

substitute

genuine

[2.3] Section 7A (3)

omit

pursuant to

substitute

under

[2.4] Section 7C

substitute

7C When is a worker to be taken to be totally incapacitated?

(1) For this Act, a worker is taken to be totally incapacitated for work if—

(a) a doctor certifies that the worker is partially incapacitated for work; and

(b) the partial incapacity prevents the worker from performing the duties the worker performed before becoming incapacitated; and

Schedule 2 Minor amendments

Amendment [2.5]

- 1 (c) the employer cannot provide appropriate alternative
2 employment; and
3 (d) the worker cannot find appropriate alternative employment.
- 4 (2) For subsection (1), the worker is taken to be totally incapacitated
5 from the time when the worker became partially incapacitated until
6 1 of the following happens:
- 7 (a) the worker becomes totally incapacitated;
8 (b) the employer provides the worker with appropriate alternative
9 employment;
10 (c) the worker finds appropriate alternative employment.

11 **[2.5] Section 14 (4)**

12 *substitute*

- 13 (4) This section does not prevent a worker recovering compensation
14 from the contractor instead of the principal.

15 **[2.6] Section 17B (1), penalty**

16 *substitute*

17 Maximum penalty:

- 18 (a) for a 1st offence—50 penalty units; or
19 (b) for a 2nd or subsequent offence—
20 (i) if the person charged is an individual—250 penalty units,
21 2 years imprisonment or both; or
22 (ii) if the person charged is a corporation—1 000 penalty
23 units.

24 **[2.7] Section 17B (2), penalty**

25 *substitute*

26 Maximum penalty:

- 27 (a) for a 1st offence—50 penalty units; or

- 1 (b) for a 2nd or subsequent offence—
2 (i) if the person charged is an individual—250 penalty units,
3 2 years imprisonment or both; or
4 (ii) if the person charged is a corporation—1 000 penalty
5 units.

6 **[2.8] Section 18 (1), penalty**

7 *substitute*

8 Maximum penalty:

- 9 (a) for a 1st offence—50 penalty units; or
10 (b) for a 2nd or subsequent offence—
11 (i) if the person charged is an individual—250 penalty units,
12 2 years imprisonment or both; or
13 (ii) if the person charged is a corporation—1 000 penalty
14 units.

15 **[2.9] Section 18 (4), penalty**

16 *substitute*

17 Maximum penalty:

- 18 (a) for a 1st offence—
19 (i) if the person charged is an individual—250 penalty units,
20 2 years imprisonment or both; or
21 (ii) if the person charged is a corporation—1 000 penalty
22 units;
23 (b) for a 2nd or subsequent offence—
24 (i) if the person charged is an individual—1 000 penalty
25 units, 10 years imprisonment or both; or
26 (ii) if the person charged is a corporation—10 000 penalty
27 units.

1 **[2.10] Section 18A (1)**

2 *omit*

3 furnish

4 *substitute*

5 give

6 **[2.11] Section 18A (1B) and (1C)**

7 *omit*

8 furnishing

9 *substitute*

10 giving

11 **[2.12] Section 18A (1C)**

12 *omit*

13 furnished

14 *substitute*

15 gave

16 **[2.13] Section 18A (2)**

17 *substitute*

18 (2) A person must not—

19 (a) fail to comply with a notice given to the person under
20 subsection (1); or

21 (b) give details in response to a notice given to the person under
22 subsection (1) that are false or misleading in a material
23 particular.

24 Maximum penalty (subsection (2)): 50 penalty units.

[2.14] Section 18D (1) (a)*omit*

thereafter

substitute

afterwards

[2.15] Section 18E*substitute***18E Reopening of agreements and awards**

(1) This section applies if a claim is made against the nominal insurer under section 18C (1).

(2) The nominal insurer may apply to the Magistrates Court for an order directing that the agreement or award under which the compensation is payable be reopened on the ground that there is reason to believe that the employer has not honestly endeavoured to protect the employer's own interests, and taken all reasonable steps to protect the employer's own interests, in relation to the agreement, the appointment of a committee or the arbitration.

(3) On the application, the Magistrates Court may order that the agreement or award be reopened.

18EAA Deciding or re-deciding claim

(1) If the Magistrates Court makes an order under section 18E, the court must decide or re-decide the claim for compensation by arbitration.

(2) The nominal insurer must be a party to the arbitration.

(3) In an award made by the Magistrates Court under this section, the court may set aside a previous agreement or award.

(4) If an award of compensation is made against the employer by the Magistrates Court, the nominal insurer must pay to the person entitled the amounts payable under the award.

Schedule 2 Minor amendments

Amendment [2.16]

- 1 (5) An agreement by a person to accept, in settlement of a claim against
2 the nominal insurer, an amount less than the amount payable
3 according to the relevant agreement or award has no effect unless
4 approved by the Magistrates Court.

5 **[2.16] Section 18EA (3) (b)**

- 6 *omit*
7 court
8 *substitute*
9 Supreme Court

10 **[2.17] Section 18EA (4)**

- 11 *omit*
12 A court
13 *substitute*
14 The Supreme Court

15 **[2.18] Section 18EA (8)**

- 16 *substitute*
17 (8) If—
18 (a) an agreement is set aside under subsection (2); and
19 (b) an action by a party to the agreement (the *plaintiff*) to recover
20 damages in relation to a liability to which the agreement
21 related is begun in a Territory court;
22 the plaintiff must, within 7 days after the day when the action was
23 begun, give the nominal insurer written notice of the action.
24 Maximum penalty: 5 penalty units.

25 **[2.19] Section 18J (1)**

- 26 *omit*
27 powers and
-

1 **[2.20] Section 18J (1) (c)**

2 *omit*

3 those powers and

4 *substitute*

5 the nominal defendant's

6 **[2.21] Section 18J (2)**

7 *substitute*

8 (2) An employer must comply with a requirement of the nominal
9 insurer under subsection (1).

10 Maximum penalty (subsection (2)): 50 penalty units.

11 **[2.22] Section 21A, heading**

12 *substitute*

13 **21A Definitions for pt 4**

14 **[2.23] Section 21A (1)**

15 *omit*

16 (1)

17 **[2.24] Section 21A (2) and (3)**

18 *substitute*

19 **21AB References to person who recovers damage etc**

20 (1) If damages are recovered by a person on someone else's behalf, a
21 reference in this part to a person who recovers damages is a
22 reference to the person on whose behalf damages are recovered.

23 (2) If compensation is paid or payable to a person for the benefit of
24 someone else, a reference in the part to a person to whom
25 compensation is paid or payable, as the case may be, is a reference
26 to the person for whose benefit the compensation is paid or payable.

1 **[2.25] Section 23C**

2 *substitute*

3 **23C Definitions for pt 5**

4 In this part:

5 *connected*—a thing is connected with an offence if—

- 6 (a) the offence has been committed in relation to it; or
7 (b) it will provide evidence of the commission of the offence; or
8 (c) it was used, or it is intended to be used, to commit the offence.

9 *occupier*, of premises, means a person believed by an inspector, on
10 reasonable grounds, to be the occupier of, or in charge of, the
11 premises.

12 *offence* includes an offence that there are reasonable grounds for
13 believing has been, or will be, committed.

14 *premises* includes—

- 15 (a) a structure, building, aircraft, vehicle or vessel; and
16 (b) a place (whether enclosed or built on or not); and
17 (c) a part of premises (including premises mentioned in paragraph
18 (a) or (b)).

19 **[2.26] Section 23G (5)**

20 *substitute*

21 (5) A person must not, without reasonable excuse, contravene a
22 requirement under this section.

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

[2.27] Section 25A (1)

1 *omit*

2 legal practitioner

3 *substitute*

4 lawyer

[2.28] Section 26 (1) and (2) (b)

6 *omit*

7 the court

8 *substitute*

9 the Magistrates Court

[2.29] Section 26Q (3)

11 *omit*

12 *in loco parentis*

13 *substitute*

14 in place of a parent

Endnotes**Workers' Compensation Act 1951**

- 1 Republished as in force on 31 December 1998. See also Acts 1999 Nos 66, 82 and 85; 2000 Nos 74 and 80.

Penalty units

- 2 The *Interpretation Act 1967*, s 33AA deals with the meaning of offence penalties that are expressed in penalty units.