

EXPOSURE DRAFT

(Prepared by Parliamentary Counsel's Office)

Workers Compensation Amendment Bill 2005 (No 2)

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(Prepared by Parliamentary Counsel's Office)

Workers Compensation Amendment Bill 2005 (No 2)

A Bill for

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

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

1 Name of Act

This Act is the *Workers Compensation Amendment Act 2005 (No 2)*.

2 Commencement

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

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

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

- (2) If this Act does not commence before 1 July 2006, this Act automatically commences on that day.
- (3) The Legislation Act, section 79 (Automatic commencement of postponed law) does not apply to this Act.

3 Legislation amended

This Act amends the *Workers Compensation Act 1951*.

Note 1 This Act also amends the following legislation (see sch 2):

- *Occupational Health and Safety Act 1989*
- *Supreme Court Rules 1937*
- *Taxation Administration Act 1999*
- *Workers Compensation Regulation 2002*.

Note 2 This Act also repeals the *Workers Compensation Supplementation Fund Act 1980* (see s 85).

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4 New section 30*in part 4.1, insert***30 DI fund manager required to pay weekly compensation**

- (1) To remove any doubt, the DI fund manager is liable to indemnify an employer in relation to weekly compensation payable in relation to an injured worker's injury if—
- (a) there is no compulsory insurance policy in force that applies to the worker in relation to the injury; or
 - (b) the compulsory insurance policy in force that applies to the worker in relation to the injury was issued by an insurer that—
 - (i) cannot provide the indemnity required to be provided under the policy; or
 - (ii) has been wound up; or
 - (c) the employer is a self insurer and the employer is unable to pay the injured worker's weekly compensation; or
 - (d) the manager receives a copy of the injury notice for the worker in relation to the injury under section 94A (Uninsured employer to give DI fund manager injury notice etc) or section 94C (Injured workers of uninsured employers may give DI fund manager injury notice); or
 - (e) the manager is otherwise satisfied that it is reasonably likely that there is no compulsory insurance policy in force that applies to the worker in relation to the injury.

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- (2) However, the DI fund manager need not indemnify an employer in relation to weekly compensation payable in relation to an injured worker's injury if—
- (a) the injury happened before the commencement of the *Workers Compensation Amendment Act 2005 (No 2)*; and
 - (b) either—
 - (i) the nominal insurer had been given an injury notice for the injury or was otherwise aware that there was no compulsory insurance policy that applied to the worker in relation to the injury; or
 - (ii) the compulsory insurance policy that applies to the worker in relation to the injury was issued by an insurer that immediately before the commencement of the *Workers Compensation Amendment Act 2005 (No 2)*—
 - (A) could not provide the indemnity required to be provided under the policy; or
 - (B) had been wound up.
- (3) Subsection (2) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.
- (4) Subsections (2) and (3) and this subsection expire 1 year after the day this section commences.

Note A provision of an Act expires at the end of the day fixed for its expiry (see Legislation Act, s 85 (3); **repeal** in s 85 includes expiry—see s 82).

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5 New section 36G

in part 4.3, insert

36G Definitions for part

In this part:

initial incapacity date, for a worker in relation to an injury that causes incapacity or death, means—

- (a) the date the worker first becomes fully or partially incapacitated for work because of the injury;
- (b) if the worker is dead and the death was not preceded by a period of incapacity for work—the date of the worker’s death.

weekly compensation, for a worker, means compensation to which the worker is entitled under section 39 (Totally incapacitated workers), section 40 (Partially incapacitated workers up to 26 weeks after initial incapacity date) or section 41 (Partially incapacitated workers after 26 weeks after initial incapacity date).

6 Section 38

substitute

38 When do weekly compensation payments begin etc?

- (1) If the worker is or may be entitled to compensation for a compensable injury—
 - (a) the payment of weekly compensation must begin when the worker gives notice of the injury to the employer; and

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- (b) the worker is or may be entitled to weekly compensation from the date of the injury.

Note An employer is liable to pay compensation if the employer's worker suffers personal injury arising out of, or in the course of, the worker's employment (see s 31 (1)).

- (2) However, if the worker does not make a claim for compensation within 7 days after the date of the injury—

- (a) payment of weekly compensation ends; and

- (b) the worker is not entitled to weekly compensation for the injury for the period—

- (i) beginning on the day 7 days after the date of the injury; and

- (ii) ending on the day before the day the worker makes a claim for the injury.

- (3) Subsection (2) does not apply in relation to the worker if—

- (a) the worker cannot make a claim within the 7 days because of the injury; and

- (b) the worker makes the claim within 7 days after the day the worker is first able to make the claim.

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7 Totally incapacitated workers Section 39 (2)

substitute

- (2) The worker is entitled to receive weekly compensation equal to the worker's average pre-incapacity weekly earnings for any period on or after the initial incapacity date that the worker is totally incapacitated because of the injury, but only for up to a total of 26 weeks of total incapacity.

Examples of compensation for 26 weeks of incapacity

- 1 Christian is injured at work and is totally incapacitated for 26 weeks. Christian returns to work 26 weeks and 1 day after the initial incapacity date. Christian is entitled to compensation equal to his average pre-incapacity weekly earnings for the 26 weeks.
- 2 Glenda is injured at work and is totally incapacitated for 10 weeks. After unsuccessfully attempting a return to work for 2 days, Glenda is totally incapacitated for another 16 weeks. Glenda is entitled to compensation equal to her average pre-incapacity weekly earnings for the first 10 weeks and second 16 weeks.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

8 Section 39 (3), new examples

insert

Examples for par (c)

- 1 Jim is injured at work and totally incapacitated for 14 weeks. After unsuccessfully attempting a return to work for 3 days, Jim is totally incapacitated for another 18 weeks. Jim is entitled under subsection (2) to compensation equal to his average pre-incapacity weekly earnings for the 14 weeks and the next 12 weeks of his total incapacity (making a total of 26 weeks not including the 3 days return to work). He is then entitled to be paid 65% of his pre-incapacity weekly earnings (or the statutory floor, if

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more at the time of payment) for the remaining period (6 weeks) he is totally incapacitated.

- 2 Melanie is injured at work and totally incapacitated for 8 weeks. After unsuccessfully attempting a return to work for 2 days, Melanie is totally incapacitated for another 9 weeks. Melanie then makes another attempt at returning to work but only succeeds to work for 3 days before she is totally incapacitated again for a further 12 weeks. Melanie is entitled under subsection (2) to compensation equal to her average pre-incapacity weekly earnings for the first 8 weeks, the next 9 weeks and the next 9 weeks (making a total of 26 weeks not including the 2-day and 3-day periods she returned to work). She is then entitled to be paid 65% of her pre-incapacity weekly earnings (or the statutory floor, if more at the time of payment) for the remaining period (3 weeks) she is totally incapacitated.

9 Section 39 (5)

substitute

- (5) In this section:

pre-incapacity floor, for a worker, means the statutory floor that applied immediately before the worker's initial incapacity date for the work in relation to the injury.

10 Section 40 heading

substitute

40 Partially incapacitated workers up to 26 weeks after initial incapacity date

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11 Section 40 (2)

before

incapacity date

insert

initial

12 Section 40 (3), new examples

insert

Examples

- 1 Damon injures himself at work in his full-time job. Damon's injury causes him to become partially incapacitated, preventing him from fulfilling his normal duties over normal hours of work for 8 weeks. As a result of his injury, Damon is partially incapacitated for the 8 weeks and works 50% of his pre-incapacity hours. Damon's employer is required to pay Damon his wage for the time he has worked (in this case, 50% of Damon's pre-incapacity hours). Damon is also entitled to weekly compensation equal to the amount he has lost in wages for the 8 weeks he worked reduced hours.
- 2 Joan injures herself at work in her full-time job. Joan's injury causes her to become partially incapacitated, preventing her from fulfilling her normal duties over normal work hours for 10 weeks. In the 10 weeks, Joan works for 50% of her pre-incapacity hours. Joan returns to full-time duties for 2 weeks but suffers a relapse, becoming partially incapacitated again and staying that way for a further 7 weeks. Joan's employer is required to pay Joan her wage for the time she has worked during the first 10-week and second 7-week periods of partial incapacity. Joan is also entitled to weekly compensation equal to the lost wages for the 17 weeks of reduced work hours.

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13 Section 41 heading

substitute

41 Partially incapacitated workers after 26 weeks after initial incapacity date

14 Section 41 (1) (b)

before

incapacity date

insert

initial

15 Section 41 (3), new examples

insert

Examples

- 1 Bronwyn injures herself at work in her full-time job. Bronwyn's injury causes her to become partially incapacitated, preventing her from fulfilling her normal duties over normal work hours for 28 weeks. In those 28 weeks, Bronwyn works, on average, 50% of her pre-incapacity weekly hours. Bronwyn returns to normal duties for 4 weeks but suffers from a relapse, becoming partially incapacitated again and staying that way for a further 7 weeks. Bronwyn's employer is required to pay Bronwyn her wage for the time she has worked during the 35 weeks of partial incapacity. Bronwyn is also entitled to the following weekly compensation:
 - (a) weekly compensation equal to the amount she has lost in wages for the first 26 weeks of reduced hours work;
 - (b) weekly compensation for the remaining 9 weeks of working on reduced hours equal to the difference between the weekly amount Bronwyn is being paid for working and the statutory ceiling (because Bronwyn is earning more than 150% of AWE at the time the compensation is being paid).

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- 2 Nicholas works full time in a job that pays him an amount equivalent to the statutory floor. Nicholas injures himself at work and is totally incapacitated for 6 weeks and partially incapacitated for 26 weeks. Nicholas is advised he could work on light duties for 3 weeks of the partial incapacity period, however suitable employment is not provided in this time. Nicholas' condition improves to the point where he returns to work on a part-time basis, working 20% of his average pre-incapacity hours for 10 weeks. Nicholas' condition further improves to the point where he works on average 60% of his pre-incapacity weekly hours for the last 13 weeks of partial incapacity. Nicholas' entitlements are as follows:
- (a) his wage (paid to Nicolas by his employer) for the time he has worked during the 35 weeks of partial incapacity in the following way—
 - (i) for the first 3 weeks when Nicolas suffers from partial incapacity but is capable of undertaking suitable work and is not provided with it—nothing;
 - (ii) 20% of his normal pre-incapacity earnings for the next 10 weeks of partial incapacity;
 - (iii) 60% of his normal pre-incapacity earnings for the last 13 weeks of partial incapacity;
 - (b) weekly compensation in the following way—
 - (i) for the initial 6 weeks he is totally incapacitated—compensation equal to his average pre-incapacity weekly earnings;
 - (ii) for the first 3 weeks of partial incapacity when he is capable of undertaking suitable work but is not provided with it—100% of his normal pre-incapacity earnings;
 - (iii) for the next 17 weeks of partial incapacity—the difference between the average weekly amount that Nicolas is paid for working and his pre-incapacity earnings;
 - (iv) for the remaining 6 weeks—the difference between the statutory floor (because Nicolas is paid at the same rate as the statutory floor) and the amount that Nicolas is paid for working.

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16 Section 42

omit everything before paragraph (a), substitute

42 Stopping of payments for partial incapacity

A worker stops being entitled to payments under section 40 (Partially incapacitated workers up to 26 weeks after initial incapacity date) or section 41 (Partially incapacitated workers after 26 weeks after initial incapacity date) at the earliest of the following times:

**17 Effect on payment period of loss of entitlement to weekly compensation
Section 43 (1)**

substitute

- (1) This section applies if a worker would be entitled to weekly compensation under section 39 (Totally incapacitated workers), section 40 (Partially incapacitated workers up to 26 weeks after initial incapacity date) or section 41 (Partially incapacitated workers after 26 weeks after initial incapacity date) but the payment of the compensation has been stopped under section 83 (No compensation while imprisoned) or section 113 (Compliance by workers).

**18 Effect of living outside Australia if compensation still payable
Section 45 (4)**

omit

**19 Definitions for ch 5
Section 86, definition of *insurer***

omit

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20 New section 86A*insert***86A Meaning of *insurer* for ch 5**

- (1) In this chapter:

insurer means—

- (a) an approved insurer; or
- (b) a self-insurer; or
- (c) for an injured worker's injury if the insurer that issued a compulsory insurance policy that covers the worker in relation to the injury cannot provide the indemnity required to be provided under the policy—the DI fund; or
- (d) for an injured worker's injury if there is no compulsory insurance policy that covers the worker in relation to the injury and the worker's employer is not a self-insurer—the DI fund.

Note The DI fund manager must act as if the DI fund were the insurer in other situations (see s 112 (3)).

- (2) However, in applying this chapter to the DI fund as insurer—

- (a) a requirement that the insurer do or not do something is taken to be a requirement that the DI fund manager do or not do the thing; and
- (b) the manager is not required to comply with section 88 (Insurer to establish etc injury management program) or section 89 (Insurer to give effect to injury management program); and

Note Also, s 128 (1) (b) does not apply to the DI fund (see s 128 (2)).

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- (c) although otherwise required to comply with this chapter, the manager is not liable to be prosecuted for an offence against this chapter.

**21 Insurer to establish etc injury management program
Section 88 (1), new note**

insert

Note The DI fund manager is not required to comply with this section (see s 86A (2) (b)).

**22 Insurer to give effect to injury management program
Section 89 (1), new note**

insert

Note The DI fund manager is not required to comply with this section (see s 86A (2) (b)).

**23 Insurer's obligation of prompt payment
Section 90 (1)**

substitute

- (1) An insurer commits an offence if—
- (a) the insurer is given written notice requiring payment for the provision of a service; and
 - (b) the insurer is required under this Act to pay for the service; and

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- (c) the insurer does not pay the person who provided the service (the *service provider*) for the service within 30 days after the day the insurer is given notice.

Maximum penalty: 10 penalty units.

24 New sections 94A to 94C

insert

94A Uninsured employer to give DI fund manager injury notice etc

- (1) An employer (other than a self-insurer) commits an offence if—
 - (a) the employer is given an injury notice for an injured worker; and
 - (b) the employer does not have a compulsory insurance policy that applies to the worker in relation to the injury; and
 - (c) the employer does not, within 48 hours after receiving the injury notice—
 - (i) give the DI fund manager a copy of the injury notice; and
 - (ii) tell the manager, in writing, that the employer does not have a compulsory insurance policy that applies to the worker in relation to the injury.

Maximum penalty: 50 penalty units.

- (2) An offence against this section is a strict liability offence.

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94B Liquidator to give DI fund manager injury notice etc

- (1) The liquidator of an insurer (other than an insurer that has been wound up under the Corporations Act) commits an offence if—
- (a) the liquidator is given an injury notice; and
 - (b) the injury notice is for an injury of an injured worker of an employer; and
 - (c) the employer holds or held a compulsory insurance policy with the insurer that requires or required indemnity to be provided for the injured worker's injury; and
 - (d) the insurer cannot provide the indemnity required to be provided under the policy; and
 - (e) the liquidator does not, within 48 hours after receiving the injury notice—
 - (i) give the DI fund manager a copy of the injury notice; and
 - (ii) tell the manager, in writing, that the employer holds or held a compulsory insurance policy with the insurer that requires or required indemnity for the injury to be provided.

Maximum penalty: 50 penalty units.

- (2) The liquidator of an approved insurer that has been wound up under the Corporations Act commits an offence if—
- (a) the liquidator is given an injury notice; and
 - (b) the injury notice is for an injury of an injured worker of an employer; and

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- (c) the employer held a compulsory insurance policy with the insurer that required indemnity for the injured worker's injury to be provided; and
- (d) the liquidator does not, within 48 hours after the liquidator receives the notice—
 - (i) return the injury notice to the injured worker; and
 - (ii) tell the worker, in writing, to give the injury notice to the DI fund manager.

Maximum penalty: 50 penalty units.

- (3) An offence against this section is a strict liability offence.

94C Injured workers of uninsured employers may give DI fund manager injury notice

An injured worker may give the DI fund manager a copy of the injured worker's injury notice if—

- (a) the injured worker's employer—
 - (i) is required to give the notice to the fund manager under section 94A (Uninsured employer to give DI fund manager injury notice etc); but
 - (ii) has not given the notice as required; or
- (b) the injured worker's employer is required to give the notice to the fund manager under section 94A but the injured worker suspects that the employer may not have given the notice to the fund manager; or

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- (c) a liquidator—
 - (i) tells the injured worker to give the worker's injury notice to the fund manager under section 94B (Liquidator to give DI fund manager injury notice etc); or
 - (ii) is required under section 94B to tell the injured worker to give the worker's injury notice to the fund manager, but does not tell the injured worker as required; or
- (d) the injured worker was employed by an employer who held a compulsory insurance policy under which the insurer was required to provide indemnity for the worker's injury, but the insurer cannot provide the indemnity required to be provided under the policy; or
- (e) the injured worker was employed by an employer who was a self-insurer and the injured worker reasonably believes that the employer is unable to pay compensation in relation to the injury; or
- (f) the injured worker's employer no longer exists.

25 **What if employer does not give notice of injury within time?**
Section 95 (1)

omit

(the *notification time*)

26 **Section 95 (2)**

substitute

- (2) The employer is liable to pay the worker weekly compensation from the date of injury until the employer gives the insurer the injury notice.

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27 Workplace rehabilitation
New section 109 (4)*insert*

- (4) To remove any doubt, subsection (3) (d) does not limit the people the employer may consult when developing the return-to-work program.

28 Section 109 (4) to (6)*renumber as section 109 (5) to (7)***29 Section 112***substitute***112 Compliance by insurers, including DI fund**

- (1) It is a condition of an insurer's approval that the insurer must comply with the requirements of this chapter.
- (2) If, for this chapter, the insurer in relation to an injured worker's injury is the DI fund, the DI fund manager must comply with the requirements of this chapter applying to the fund.
- (3) Without limiting subsection (2), the DI fund manager must comply with the requirements of this chapter applying to the DI fund as insurer in relation to an injured worker's injury if the manager—
- (a) receives a copy of the injury notice for the worker in relation to the injury under section 94A (Uninsured employer to give DI fund manager injury notice etc), section 94B (Liquidator to give DI fund manager injury notice etc) or section 94C (Injured workers of uninsured employers may give DI fund manager injury notice); or

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- (b) is otherwise satisfied that it is reasonably likely that there is no compulsory insurance policy in force that applies to the worker in relation to the injury.

Example

Melissa suffers a workplace injury while working for Joe. Joe does not have a compulsory insurance policy and gives the DI fund manager a copy of the injury notice. The DI fund manager must comply with the requirements of an insurer under this chapter in relation to Melissa's injury.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

**30 Compliance by workers
New section 113 (1) (d)**

insert

- (d) fails to attend a medical assessment of the worker's injury; or

31 Section 113 (1) (d) and (e)

renumber as section 113 (1) (e) and (f)

**32 When is a claim made?
Section 122 (1), new note**

insert

Note Payment of weekly compensation begins when the worker gives notice of the injury to the employer (see s 38).

**33 Admissibility of statements by injured workers
Section 125 (2), definition of *insurer*, paragraph (b)**

substitute

- (b) the DI fund.

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**34 Meaning of *insurer* and *given* to insurer for pt 6.2
Section 127 (1), definition of *insurer*, paragraph (c)**

substitute

- (c) if, when the injury happened, the employer was not a self-insurer and the employer has or had no compulsory insurance policy that applies to the claim—the DI fund.

35 Section 128

substitute

128 Claim accepted if not rejected within 28 days

- (1) If the insurer does not reject a worker's claim for compensation under this Act within 28 days after the day the claim is given to the insurer—
- (a) the insurer is taken to have accepted the claim; and
 - (b) any payment made by the insurer in relation to the claim is not recoverable.
- (2) However, subsection (1) (b) does not apply to a payment made by the DI fund manager as insurer.

**36 Liability on claim not accepted or rejected
Section 134 (1)**

omit

an injury

substitute

an injury for which compensation is payable under this Act

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**37 Order for refund of overpayments of compensation
Section 135 (2)**

omit

an offence against section 213 (False claims etc)

substitute

a Criminal Code offence

38 New section 135 (7)

insert

(7) In this section:

Criminal Code offence means an offence against the Criminal Code that relates to—

- (a) completing, keeping or giving a document under or in relation to this Act; or
- (b) a requirement that a document be completed, kept or given, under or in relation to this Act.

39 New part 8.1 heading

insert

Part 8.1 General

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**40 Effect of revocation or suspension of approval
Section 146 (2) (c)**

substitute

- (c) affect the liability of the insurer under section 168A (Contributions to DI fund by approved insurers and self-insurers).

**41 Effect of failure to maintain compulsory insurance on other insurance etc for this Act
Section 149 (2) (c)**

substitute

- (c) affect the liability of the insurer under section 168A (Contributions to DI fund by approved insurers and self-insurers).

42 Section 149 (as amended)

renumber as section 148

43 Section 150

substitute

149 DI fund entitled to triple recovery amount

- (1) If an employer fails to maintain a compulsory insurance policy, the DI fund manager may recover the triple recovery amount as a debt owing by the employer to the DI fund.

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- (2) However, the employer is not liable under subsection (1) for a failure to maintain a compulsory insurance policy in relation to a worker if—
- (a) the employer believed, on reasonable grounds, that a State was the Territory or State of connection for the employment under the law of a State corresponding to part 4.2A (Employment connection with ACT or State); and
 - (b) the employer had insurance, or was registered, as required under a law of the State in relation to liability for workers compensation under the law of the State.

Note **State** includes the Northern Territory (see Legislation Act, dict, pt 1).

- (3) In this section:

employer does not include a self-insurer or non-business employer.

triple recovery amount means an amount equal to triple the amount of the premiums that would have been payable to an approved insurer if the employer had maintained a compulsory insurance policy.

| | |
|-----------|---|
| 44 | Information for insurers on application for issue or renewal of policies Section 156 (6), note |
|-----------|---|

substitute

Note An employer who makes a statement in a statutory declaration that is false, misleading or incomplete may commit an offence (see s 162 and Criminal Code, pt 3.4).

| | |
|-----------|---------------------------------|
| 45 | Section 156 (as amended) |
|-----------|---------------------------------|

renumber as section 155

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**46 Information for insurers after renewal of policies
Section 157 (1)**

omit

an insurance policy

substitute

a compulsory insurance policy

47 Section 157 (3), note

substitute

Note A recognised auditor who makes a statement in an auditor's certificate that is false, misleading or incomplete may commit an offence (see Criminal Code, pt 3.4).

48 Section 157 (as amended)

renumber as section 156

**49 Information for insurers after end or cancellation of policies
Section 158 (2), note**

substitute

Note A recognised auditor who makes a statement in an auditor's certificate that is false, misleading or incomplete may commit an offence (see Criminal Code, pt 3.4).

50 Section 158 (as amended)

renumber as section 157

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51 Six-monthly information for insurers
Section 160 (1), note

substitute

Note An employer who makes a statement in a statutory declaration that is false, misleading or incomplete may commit an offence (see s 162 and Criminal Code, pt 3.4).

52 Section 160 (as amended)

renumber as section 159

53 New sections 160 and 161

insert

160 Certificate of currency

- (1) An approved insurer must give an employer a certificate (a ***certificate of currency***) for a compulsory insurance policy held with the insurer within 5 business days after the day the employer asks for the certificate if—
 - (a) the employer asks, in writing, for a certificate of currency for the policy; and
 - (b) the employer has not been given a certificate of currency for the policy within the last 6 months.
- (2) An approved insurer must give an employer a certificate (a ***certificate of currency***) for a compulsory insurance policy held with the insurer within 5 business days after the day the employer asks for the certificate if—
 - (a) the employer asks, in writing, for a certificate of currency for the policy; and

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- (b) the employer has been given a certificate of currency for the policy within the last 6 months; and
- (c) either—
 - (i) the details of the risk covered by the policy have changed since the certificate was issued; or
 - (ii) the employer reasonably requires another certificate.

Example of reasonably requiring another certificate

the previous certificate has been destroyed in a fire

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A certificate of currency for a compulsory insurance policy held by an employer with an approved insurer must—
 - (a) state the details given by the employer to the insurer under section 155 (Information for insurers on application for issue or renewal of policies); and
 - (b) state the period for which the employer is insured under the policy; and
 - (c) state the period of not longer than 6 months for which the certificate is current.
- (4) Subsections (1) and (2) do not apply in relation to a request by an employer to an approved insurer for a certificate of currency for a compulsory insurance policy if—
 - (a) the employer is in default under the policy; and
 - (b) the insurer has told the employer, or tells the employer within 5 business days after the day the employer asks for the certificate, that the employer is in default under the policy.

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- (5) A certificate of currency given after the commencement of this section in relation to a compulsory insurance policy issued before the commencement of this section must also include the following information:
- (a) the required information given by the employer to the approved insurer;
 - (b) the proportion of the premium payment for the policy that has been charged to offset levies paid by the insurer to the nominal insurer.
- (6) In subsection (5):
- required information***, given by the employer to the approved insurer, means information given by the employer to the insurer under the following sections:
- section 155 (Information for insurers on application for issue or renewal of policies)
 - section 156 (Information for insurers after renewal of policies)
 - section 157 (Information for insurers after end or cancellation of policies)
 - section 158 (Information for new insurers after change of insurers)
 - section 159 (Six-monthly information for insurers).
- (7) Subsections (5) and (6) and this subsection expire 1 year after the day this section commences.

161 Requirement to produce certificate of currency

- (1) An employer commits an offence if—
- (a) the employer holds a compulsory insurance policy with an approved insurer; and

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- (b) an authorised person asks to see a certificate of currency for the policy; and
- (c) the employer does not produce a certificate of currency for the policy for inspection.

Maximum penalty: 50 penalty units.

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

- (a) the defendant has a reasonable excuse for failing to produce the certificate of currency when required to; and
- (b) either—
 - (i) within 5 business days after the day (the *request day*) the defendant is required to produce the certificate, the defendant produces the certificate for inspection at a place prescribed by regulation for this subsection or at a place directed in writing by the authorised person; or
 - (ii) the defendant establishes that the defendant took reasonable steps to produce the certificate to the authorised person within 5 business days after the request day.

- (3) An offence against this section is a strict liability offence.

- (4) In this section:

authorised person, in relation to a certificate of currency for a compulsory insurance policy, means—

- (a) an inspector; or
- (b) the principal of a worker who is, is to be, or could reasonably be expected to be, covered by the policy; or

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- (c) an industrial union of workers representing a worker employed by the employer.

certificate of currency—see section 160.

principal, of a worker—if the worker is employed to fulfil a contract the employer has with someone else to do work in the other person's trade or business, the other person is the *principal* of the worker.

54 **Provision of information to Minister**
Section 163 (8), definition of *applicable offence*,
paragraph (b)

substitute

- (b) an offence against the Criminal Code, section 338 (which is about giving false or misleading information) or section 339 (which is about producing false or misleading documents) in relation to a notice that relates to—
 - (i) completing, keeping or giving a document under or in relation to this Act; or
 - (ii) a requirement that a document be completed, kept or given under or in relation to this Act.

55 **Section 163 (as amended)**

renumber as section 164

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56 Sections 164 to 175
*substitute***Part 8.2 Default insurance fund****Division 8.2.1 Definitions for pt 8.2****165 Definitions for pt 8.2**

In this part:

claim for payment—see section 170.*claims manager* means an entity appointed as claims manager under section 166F.*DI fund*—see section 166.*DI fund actuary* means the actuary engaged as DI fund actuary under section 166H.*DI fund manager* means the DI fund manager appointed under section 166C.**Division 8.2.2 Establishment, staff and consultants of DI fund****166 Establishment of DI fund**

- (1) The Default Insurance Fund (the *DI fund*) is established.
- (2) The DI fund consists of—
 - (a) amounts received or recovered by or on behalf of the DI fund manager under this Act; and
 - (b) income from the investment of amounts of the fund; and

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- (c) amounts borrowed by the Territory for the fund; and
 - (d) other amounts lawfully paid into the fund.
- (3) The DI fund is to be managed by the DI fund manager and money paid into it is taken to be trust money under the *Financial Management Act 1996*.

166A Purpose of DI fund

The DI fund provides a safety net to meet the costs of workers compensation claims made by workers if—

- (a) an employer does not have a compulsory insurance policy; or
- (b) an approved insurer is wound up under the Corporations Act or cannot provide the indemnity required to be provided under a compulsory insurance policy.

166B Payments out of DI fund

- (1) The DI fund manager may pay out of the fund—
- (a) amounts required by this Act to be paid in settlement of a claim made under this Act; and
 - (b) the amount of any costs or fees payable under this Act to the liquidator of an approved insurer; and
 - (c) costs and expenses incurred by a DI fund claims manager in the settlement of claims made under this Act; and
 - (d) any amount payable under section 168B (Refunds of excess DI fund amounts); and
 - (e) repayments of, and interest on, any amount borrowed for, or contributed by the Territory to, the fund; and

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- (f) the amount of any fees, costs and expenses incurred in, or in relation to, the administration of the fund; and
 - (g) any other amount that may be paid out of the fund under a territory law.
- (2) The DI fund manager must pay out of the fund any amount the Minister directs be transferred to the terrorism cover temporary reinsurance fund under chapter 15 (Temporary provisions for acts of terrorism).
- (3) Subsection (2) and this subsection expire on 1 October 2009.

166C Appointment of DI fund manager

The chief executive may appoint a public servant as the DI fund manager (the *DI fund manager*) for this Act.

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

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

166D DI fund manager's functions etc

- (1) The DI fund manager manages the DI fund.
- (2) The DI fund manager also exercises any other function given to the manager under this Act or any other territory law.

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

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

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- (3) Anything done in the name of, or for, the DI fund by the DI fund manager in exercising a function of the fund is taken to have been done for, and binds, the fund.

166E DI fund staff

The staff of the DI fund must be employed under the *Public Sector Management Act 1994*.

166F DI fund manager may engage consultants including claims manager

- (1) The DI fund manager may engage consultants.
- (2) Without limiting subsection (1), the DI fund manager may engage an entity (a *claims manager*) to manage injuries in relation to which claims may be, or have been, made against the DI fund.

Note The DI fund manager must engage an actuary (see s 166H).

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

166G Claims manager's functions

- (1) This section applies if the DI fund manager engages a claims manager.

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- (2) A claims manager may do the following in relation to a claim that the claims manager was engaged to manage:
- (a) investigate the claim;
 - (b) negotiate the terms of settlement of the claim, either by payment of a lump sum or by weekly payments in accordance with this Act;
 - (c) if the injured worker was covered at the time of injury by a compulsory insurance policy issued by an approved insurer—exercise any right of the insurer arising from or in relation to the policy;
 - (d) anything prescribed by regulation.
- (3) Subsection (2) does not authorise a claims manager to—
- (a) pay an amount to satisfy a claim; or
 - (b) recover an amount owed to an approved insurer against whom a claim is made under this Act.
- (4) A claims manager may also exercise any other function given to the claims manager under this Act or any other territory law.

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

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

166H Engagement of DI fund actuary

- (1) The DI fund manager must engage an actuary as the DI fund actuary.

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- (2) However, the DI fund manager must not engage a person under subsection (1) unless satisfied that the person has the experience and expertise necessary to exercise the functions of the DI fund actuary.
- (3) The conditions of the DI fund actuary's appointment are the conditions agreed between the DI fund manager and the actuary.

166I Delegation by DI fund manager

The DI fund manager may delegate the manager's functions under this Act or any other territory law to a public servant or a consultant engaged under this Act (including a claims manager and the DI fund actuary).

Note For the making of delegations and the exercise of delegated functions, see Legislation Act, pt 19.4.

Division 8.2.3 Administration of DI fund

167 Accounts for DI fund

- (1) The DI fund manager must keep a separate account in the DI fund for—
 - (a) claims made against employers without compulsory insurance policies; and
 - (b) an approved insurer if—
 - (i) a claim is, or has been, made against a compulsory insurance policy issued by the insurer; and
 - (ii) the insurer cannot provide the indemnity required to be provided under the policy.

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- (2) The DI fund manager must keep accounts for—
 - (a) amounts paid into the DI fund under division 8.2.4 (Contributions to DI fund); and
 - (b) amounts withdrawn from the fund.
- (3) Accounts kept of amounts withdrawn from the fund must show the reason why each amount is withdrawn.

167A Investments of amounts of DI fund

The DI fund manager must invest amounts of the DI fund that are, in the manager's opinion, not immediately needed to make payments out of the fund under this Act.

167B Borrowing for DI fund

- (1) The Treasurer may, on the conditions the Treasurer considers appropriate—
 - (a) borrow money for the DI fund; or
 - (b) lend public money to the DI fund.
- (2) The Treasurer may borrow money for the DI fund or lend money to the DI fund to meet the costs of claims against the DI fund only if—
 - (a) the costs, or the amount of the costs, are unexpected; and
 - (b) either—
 - (i) the costs cannot be met through the apportionment of liability under section 168A; or
 - (ii) the Treasurer is satisfied that it is not appropriate to meet the costs through the apportionment of liability under section 168A.

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- (3) Borrowing for the DI fund may be secured by the DI fund's assets that are approved in writing by the Treasurer.
- (4) The DI fund manager may only arrange an overdraft or credit facility for the DI fund with the Treasurer's written approval.
- (5) A loan under subsection (1) (b) may be made only from—
 - (a) money appropriated for the loan; or
 - (b) money appropriated for purposes that include making the loan.

167C Audit of DI fund

- (1) The DI fund manager must have the accounts for the DI fund for a financial year audited by a recognised auditor as soon as practicable after the end of the financial year.
- (2) The DI fund manager must give the recognised auditor's report and the audited accounts to the chief executive as soon as practicable after the end of the financial year to which the report relates.

167D Information and assistance by employer to DI fund manager

- (1) The DI fund manager may, by written notice given to an employer, require the employer to do 1 or more of the following:
 - (a) give the manager stated information and assistance that the manager considers necessary for the exercise of the manager's functions;
 - (b) give the manager stated documents in the employer's possession or control that the manager considers necessary for the exercise of the manager's functions;

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- (c) execute stated documents that the manager considers necessary for the employer to execute for the exercise of the manager's functions;
 - (d) allow the manager or a person authorised by the manager, at a stated reasonable time, to inspect any plant, works, machinery and appliances used in the employer's business that the manager considers necessary for the exercise of the manager's functions.
- (2) An employer must take all reasonable steps to comply with a requirement of the DI fund manager under subsection (1).

Maximum penalty: 50 penalty units.

Note The Legislation Act, s 170 deals with the application of the privilege against selfincrimination.

- (3) An offence against this section is a strict liability offence.

Division 8.2.4 Contributions to DI fund

168 Approved insurers must give information

- (1) The DI fund manager may, by written notice given to an approved insurer, require the insurer to give the manager, within a stated reasonable time, the following for a quarter:
 - (a) a written statement of the insurer's earned premium;
 - (b) any other stated information in relation to the amounts paid or earned by the insurer in relation to compulsory insurance policies.
- (2) The approved insurer must comply with the notice.

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168A Contributions to DI fund by approved insurers and self-insurers

- (1) The DI fund manager must get the DI fund advisory committee's written advice on the DI fund's existing and expected liabilities for each quarter.
- (2) The DI fund manager—
 - (a) must decide the DI fund's liability for a quarter, taking into account the DI fund advisory committee's advice in relation to the quarter; and
 - (b) may apportion the DI fund's liability for the quarter among the entities that were approved insurers and self-insurers during the quarter.
- (3) In making an apportionment under subsection (2) for a quarter, the DI fund manager must take into account—
 - (a) the earned premium of each approved insurer in relation to the quarter; and
 - (b) the premium that would have been payable by each self-insurer for the quarter if the self-insurer had obtained a compulsory insurance policy for the quarter (or the part of the quarter for which the self-insurer was a self-insurer).
- (4) If the DI fund manager makes an apportionment for a quarter, the manager must give each approved insurer and self-insurer a written notice that—
 - (a) sets out details of the apportionment; and
 - (b) requires the insurer or self-insurer to pay to the DI fund the amount apportioned to the insurer or self-insurer within the time for payment stated in the notice.

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- (5) The time stated for payment in the notice must not be shorter than 2 weeks after the day the approved insurer or self-insurer receives the notice.
- (6) The DI fund manager may amend or revoke a notice given under this section.
- (7) If an amount apportioned to the insurer or self-insurer is not paid within the time stated for payment in the notice, the amount is a debt owing to the DI fund by the insurer or self-insurer.
- (8) The DI fund manager must pay into the DI fund each amount received or recovered under this section from an approved insurer or self-insurer.

168B Refunds of excess DI fund amounts

- (1) This section applies if—
 - (a) an approved insurer or self-insurer contributed an amount to the DI fund during a period (the *refund period*); and
 - (b) after taking into account the advice of the DI fund advisory committee, the DI fund manager is satisfied that—
 - (i) the DI fund can more than cover its current and expected liabilities; and
 - (ii) it is reasonable to refund the excess in the DI fund.
- (2) The DI fund manager may refund the amount in the DI fund decided by the DI fund manager to be in excess of the fund's needs.
- (3) The refund must be made—
 - (a) to each approved insurer and self-insurer who contributed to the DI fund during the refund period; and

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- (b) on the basis of the approved insurer's or self-insurer's contribution as a proportion of the total contributions made to the DI fund in that period.
- (4) An amount refunded to an approved insurer under this section must be paid by the insurer to the employers who had compulsory insurance policies with the approved insurer during the refund period, as directed by the DI fund manager.

Division 8.2.5 DI fund's relationship with liquidators of approved insurers

169 Displacement of liquidator's Corporations Act obligation

- (1) The recovery of amounts by the DI fund from liquidators of approved insurers is declared to be an excluded matter for the purposes of the Corporations Act, section 5F in relation to the Corporations Act, section 477, other than to the extent stated in subsection (2), section 169A and section 169B.

Note The Corporations Act, s 5F provides that, if a law of a State or Territory declares a matter to be an excluded matter for the purposes of that section in relation to all or part of the Corporations legislation of the Commonwealth, the provisions that are the subject of the declaration will not apply in relation to that matter in the State or Territory that made the declaration.

- (2) The liquidator of an approved insurer may exercise his or her powers under the Corporations Act, section 477 in relation to a claim, judgment, order or award arising out of or in relation to a compulsory insurance policy issued by the insurer, subject to the following changes:
 - (a) the reference in section 477 to the approval of the court or the committee of inspection or of a resolution of the creditors is taken to be a reference to the approval of the DI fund manager;

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- (b) the words ‘subject to the provisions of section 556,’ is omitted from subsection (1) (b);
- (c) any other necessary changes are taken to have been made;
- (d) any other changes prescribed by regulation are taken to have been made.

169A Payment to DI fund of amounts recovered by liquidator from reinsurer

- (1) This section applies if—
 - (a) an approved insurer is, under a contract of reinsurance, insured against liability in relation to compulsory insurance policies issued by the insurer and liability in relation to them is incurred by the insurer; and
 - (b) any part of the liability is met by an amount paid out of the DI fund under this Act; and
 - (c) an amount in relation to that part of the liability of the insurer is received by a liquidator of the insurer from the reinsurer.
- (2) The liquidator must pay the amount to the DI fund, in priority to all payments in relation to debts mentioned in the Corporations Act, section 556.
- (3) However, the liquidator may deduct from the amount the reasonable expenses of or incidental to recovering the amount.
- (4) This section has effect despite any agreement to the contrary.

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169B Payment to DI fund of amounts recovered by liquidator using fund amounts

- (1) This section applies if—
 - (a) the liquidator of an approved insurer recovers an amount owed to the insurer; and
 - (b) the amount is recovered because of the payment of an amount out of the DI fund of part of a claim, judgment, order or award arising out of or in relation to a compulsory insurance policy issued by the insurer.
- (2) The liquidator must pay the amount to the DI fund, in priority to all payments in relation to debts mentioned in the Corporations Act, section 556.
- (3) However, the liquidator may deduct from the amount the reasonable expenses of or incidental to recovering the amount.
- (4) This section has effect despite any agreement to the contrary.

169C Rights of DI fund manager against approved insurer

- (1) This section applies if—
 - (a) an approved insurer cannot provide to an employer the indemnity required to be provided by a compulsory insurance policy issued by the insurer to the employer; and
 - (b) any part of the employer's liability is met by an amount paid out of the DI fund under this Act; and
 - (c) all or part of the amount (the *unrecovered amount*) is not recovered by the DI fund manager under section 169A or section 169B.

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- (2) The DI fund manager has the same rights against the insurer as the employer in relation to the unrecovered amount.

169D Liquidator to notify DI fund manager of dissolution

If the liquidator of an approved insurer applies to a court for an order that the insurer be dissolved under the Corporations Act, the liquidator must as soon as practicable—

- (a) tell the DI fund manager in writing about the application; and
- (b) give the fund manager a copy of any order made by the court on the application.

Division 8.2.6 Making claims for payment

170 Who may make claim for payment

A person may make a claim for payment under this division (a *claim for payment*) if the person is eligible to make the claim under 1 of the following provisions:

- (a) section 170E (Claim for payment if employer to pay and liability not covered by compulsory insurance policy etc);
- (b) section 170F (Claim for payment if final judgment etc and liability not covered by compulsory insurance policy);
- (c) section 170G (Claim for payment if agreement to discharge liability at common law and liability not covered by compulsory insurance policy);
- (d) section 170H (Claim for payment if final judgment etc and liability covered by compulsory insurance policy);
- (e) section 170I (Claim for payment if entitlement to claim compensation and liability covered by compulsory insurance policy).

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170A When must claim for payment be made

- (1) A claim for payment by a person must be made within—
 - (a) 1 month after the day the person becomes eligible to make the claim; or
 - (b) any further time that the DI fund manager, on application, allows.
- (2) An application for further time may be made before or after the end of the 1-month period.

170B How claim for payment made if no insurer

- (1) This section applies to a claim for payment in relation to a workers compensation liability if—
 - (a) the claim is made against the employer; and
 - (b) the liability of the employer to pay the compensation is not covered by a compulsory insurance policy; and
 - (c) either—
 - (i) the employer has been wound up; or
 - (ii) a liquidator has been appointed for the employer but the employer has not been wound up; or
 - (iii) the liability of the employer to pay the compensation remains unpaid for 1 or more months.
- (2) The claim for payment must be—
 - (a) in writing; and

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- (b) given to the DI fund manager with a copy of any judgment, order or award relating to the claim.

Note If a form is approved under s 222 for this provision, the form must be used.

170C How claim for payment made if insurer not wound up

- (1) This section applies to a claim for payment in relation to a workers compensation liability if—
 - (a) the claim is made against the employer; and
 - (b) the liability of the employer to pay the compensation is covered by a compulsory insurance policy; and
 - (c) a liquidator has been appointed for the insurer but the insurer has not been wound up.
- (2) The claim for payment must be—
 - (a) in writing; and
 - (b) given to the liquidator of the insurer, with a copy of any judgment, order or award relating to the claim.

Note If a form is approved under s 222 for this provision, the form must be used.

170D How claim for payment made if insurer wound up

- (1) This section applies to a claim for payment in relation to a workers compensation liability if—
 - (a) the claim is made against the employer; and
 - (b) the liability of the employer to pay the compensation is covered by a compulsory insurance policy; and
 - (c) the insurer has been wound up.

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- (2) The claim for payment must be—
 - (a) in writing; and
 - (b) given to the DI fund manager with a copy of any judgment, order or award relating to the claim.

Note If a form is approved under s 222 for this provision, the form must be used.

170E Claim for payment if employer to pay and liability not covered by compulsory insurance policy etc

- (1) This section applies if—
 - (a) a person has made a claim against an employer for compensation under this Act; and
 - (b) the employer is not a self-insurer; and
 - (c) either—
 - (i) the employer has agreed to pay compensation; or
 - (ii) the liability of the employer to pay compensation has been established; and
 - (d) the liability of the employer to pay the compensation is not covered by a compulsory insurance policy; and
 - (e) the compensation (or any part of it) is not paid to the person within 1 month after the day the compensation becomes payable.
- (2) The person is eligible to make a claim for payment against the DI fund for payment of the amount of the compensation that remains unpaid.

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- (3) In this section:

compensation includes—

- (a) an amount in settlement of a claim for compensation; and
- (b) costs payable to a worker by an employer in relation to a claim for compensation.

170F Claim for payment if final judgment etc and liability not covered by compulsory insurance policy

- (1) This section applies if—

- (a) a person has obtained a final judgment against an employer; and
- (b) the employer is not a self-insurer; and
- (c) the judgment relates to the employer's liability independently of this Act in relation to an injury to, or the death of, a territory worker of the employer; and
- (d) execution of the judgment has not been stayed; and
- (e) the liability of the employer under the judgment, order or award is not covered by a compulsory insurance policy; and
- (f) the judgment has remained completely or partly unsatisfied for at least 1 month.

- (2) The person is eligible to make a claim for payment against the DI fund of the amount of the judgment that remains unsatisfied.

Note See s 170 for def ***claim for payment***.

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170G Claim for payment if agreement to discharge liability at common law and liability not covered by compulsory insurance policy

- (1) This section applies if—
 - (a) an employer has agreed with a person to pay an amount to discharge the employer's liability independently of this Act in relation to an injury to, or the death of, a territory worker of the employer; and
 - (b) the employer is not a self-insurer; and
 - (c) the liability of the employer under the agreement is not covered, or is not completely covered, by a compulsory insurance policy; and
 - (d) the amount (or any part of it) is not paid to the person within 1 month after the day the amount is payable.
- (2) The person is eligible to make a claim for payment against the DI fund of the amount that remains unpaid.

170H Claim for payment if final judgment etc and liability covered by compulsory insurance policy

- (1) This section applies if—
 - (a) a person has obtained a final judgment, or an order or award has been made against an employer; and
 - (b) the judgment, order or award relates to the employer's liability independently of this Act in relation to, or the death of, a territory worker of the employer; and
 - (c) the liability of the employer under the judgment, order or award is covered by a compulsory insurance policy; and

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- (d) the approved insurer is wound up or cannot provide the indemnity required by the policy to be provided.
- (2) The person is eligible to make a claim for payment against the DI fund of the amount of the judgment, order or award that remains unsatisfied.

170I Claim for payment if entitlement to claim compensation and liability covered by compulsory insurance policy

- (1) This section applies if—
 - (a) a person is entitled to claim against an employer for compensation under this Act for an injury to, or the death of, a territory worker employed by the employer; and
 - (b) the liability of the employer to pay the compensation is covered by a compulsory insurance policy; and
 - (c) the approved insurer is wound up or cannot provide the indemnity required by the policy to be provided.
- (2) The person is eligible to make a claim for payment against the DI fund of the amount.

170J Liquidator to forward claims to DI fund manager

The liquidator of an approved insurer who receives a claim for payment must—

- (a) give a copy of the claim to the DI fund manager; and
- (b) give the manager all the information, and a copy of all the documents (including a copy of any judgment, order or award) that the liquidator has relating to the claim.

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170K Power of Supreme Court to set aside agreements

- (1) If a claim for payment is made against the DI fund by someone eligible to make the claim under section 170G (Claim for payment if agreement to discharge liability at common law and liability not covered by compulsory insurance policy), the DI fund manager may apply to the Supreme Court for an order setting aside the agreement to which the claim relates.
- (2) The Supreme Court may set aside the agreement if satisfied that there are reasonable grounds for believing that the employer has not honestly tried to protect the employer's own interests and taken all reasonable steps to protect the employer's own interests.
- (3) If the Supreme Court sets the agreement aside, the costs of the respondent in relation to the application are to be paid by the DI fund, unless the Supreme Court orders otherwise.
- (4) The Supreme Court may make an order about costs under subsection (3) only if satisfied that it is appropriate to make the order because of the special circumstances surrounding the making of the agreement.

170L Treatment of set aside agreement

- (1) If an agreement is set aside under section 170K—
 - (a) the agreement is taken never to have had effect for the purpose of any proceeding in a court; and
 - (b) evidence of a statement or communication, or a part of a statement or communication, tending to establish the existence of the agreement is not admissible in any proceeding in a court, unless the Supreme Court orders otherwise.

EXPOSURE DRAFT

- (2) The Supreme Court may make an order under subsection (1) (b) only if satisfied that the admission of the evidence is necessary to avoid injustice to a party to the proceeding.

170M Time-barred rights after agreement set aside

- (1) This section applies if—
- (a) an agreement is set aside under section 170K; and
 - (b) apart from this section, an action by a party to the agreement to recover damages in relation to a liability to which the agreement related would be barred when the agreement is set aside, or would become barred within 3 months after the day the agreement is set aside, by the *Limitation Act 1985* or another territory law (the *limitations law*).
- (2) The action may be started at any time within 3 months after the day the agreement was set aside, despite the limitations law.

170N Action after agreement set aside

- (1) A person commits an offence if—
- (a) an agreement is set aside under section 170K; and
 - (b) the person was a party to the agreement; and
 - (c) the person takes action to recover damages in relation to a liability under the agreement; and
 - (d) the person does not give the DI fund manager written notice of the action within 7 days after the day the action is started.

Maximum penalty: 5 penalty units.

- (2) An offence against this section is a strict liability offence.

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- (3) If notice is given to the DI fund manager under subsection (1) (d), the fund manager—
 - (a) may, on behalf of the employer sued in the action, conduct the defence of the action in the name of the employer and in the way the fund manager considers appropriate; and
 - (b) must indemnify the employer against all costs and expenses in relation to the action.

1700 DI fund manager not to consent to judgment etc unless defendant agrees

This division does not authorise the DI fund manager—

- (a) to consent to judgment in an action against a defendant in the action, unless the defendant agrees; or
- (b) to compromise an action against a defendant in the action, unless the defendant agrees.

Division 8.2.7 Payment of claims

171 Payments out of DI fund

- (1) A claim for payment may only be paid if the terms of settlement of the claim are approved.
- (2) The terms of settlement of a claim for payment may be approved by—
 - (a) if they provide for payment of a lump sum to the claimant—the Magistrates Court; or
 - (b) in any other case—the DI fund manager.

EXPOSURE DRAFT

171A Reopening of agreements and awards

- (1) This section applies if a claim for payment is made against the DI fund under section 170E (Claim for payment if employer to pay and liability not covered by compulsory insurance policy etc).
- (2) The DI fund manager may apply to the Magistrates Court for an order directing that the agreement or award under which the compensation under the claim is payable be reopened on the ground that—
 - (a) there is reason to believe that the employer has not honestly endeavoured to protect the employer's own interests; and
 - (b) the employer has not taken all reasonable steps to protect the employer's own interests.
- (3) The Magistrates Court may order that the agreement or award be reopened.

171B Deciding or re-deciding claim

- (1) If the Magistrates Court makes an order under section 171A, the court must decide or re-decide the claim for compensation by arbitration.
- (2) The DI fund manager is a party to the arbitration.
- (3) In an award made by the Magistrates Court under this section, the court may set aside the previous agreement or award.
- (4) An agreement by a person to accept, in settlement of a claim for payment against the DI fund, an amount less than the amount payable according to an agreement or award has no effect unless approved by the Magistrates Court.

EXPOSURE DRAFT

171C Approval of terms of settlement by court

- (1) This section applies if proposed terms of settlement of a claim for payment provide for payment of a lump sum to the claimant.
- (2) The DI fund manager may apply to the Magistrates Court for approval of the terms of settlement.
- (3) The Magistrates Court may approve the terms of settlement if satisfied that they are just.

171D DI fund paying claims for payment if liability not completely covered by a compulsory insurance policy and settlement approved

- (1) This section applies to a claim for payment if—
 - (a) the claim was made by a person eligible to make the claim under section 170E, section 170F or section 170G; and
Note Under s 170E, s 170F and s 170G, the employer's liability is not covered by a compulsory insurance policy.
 - (b) the terms of settlement of the claim are approved by the Magistrates Court or DI fund manager under this division.
- (2) The DI fund manager must pay the claimant out of the DI fund the amount necessary to satisfy the claim in accordance with the terms of settlement.

EXPOSURE DRAFT

171E DI fund paying claims for payment against approved insurers settlement approved

- (1) This section applies to a claim for payment if—
 - (a) the claim was made by a person eligible to make the claim under section 170H, or section 170I; and

Note Under s 170H and s 170I the employer's liability is covered by a compulsory insurance policy but the insurer has been wound up or cannot provide the indemnity required to be provided under the policy.
 - (b) the terms of settlement of the claim are approved by the Magistrates Court or DI fund manager under this division.
- (2) The DI fund manager must—
 - (a) pay the liquidator out of the DI fund—
 - (i) the amount necessary for the liquidator to satisfy the claim in accordance with the terms of settlement; and
 - (ii) any further amount agreed to between the manager and liquidator for the liquidator's costs in satisfying the claim; and
 - (b) give the liquidator copies of all documents the fund manager has that relate to the claim.
- (3) The liquidator must pay the amount mentioned in subsection (2) (a) (i) to the claimant in satisfaction of the claim in accordance with the terms of settlement.
- (4) However, if the approved insurer has been wound up under the Corporations Act before the DI fund manager makes a payment to the liquidator under subsection (2), the fund manager may directly pay the claimant the amount necessary to satisfy the claim in accordance with the terms of settlement.

EXPOSURE DRAFT

171F Liquidators to account to DI fund manager

- (1) This section applies if a liquidator receives an amount (the *settlement amount*) under section 171E (2) (a) (i).
- (2) For each prescribed period, the liquidator must give the DI fund manager a written statement setting out the payments made by the liquidator out of the settlement amount during the period.
- (3) A statement under subsection (2) must—
 - (a) be given to the DI fund manager within 2 weeks after the end of the prescribed period to which it relates; and
 - (b) be certified as correct by an auditor.
- (4) In this section:
prescribed period, in relation to a settlement amount, means—
 - (a) the period of 3 months starting the day after the settlement amount is received; and
 - (b) each following period of 3 months, ending at the end of the 3-month period when the liquidator pays the last amount to the claimant out of the settlement amount.

171G Intervention by DI fund manager

- (1) A person commits an offence if—
 - (a) a claim for compensation has been made against the person; and
 - (b) the person is not a self-insurer; and
 - (c) the person's liability to pay compensation is not covered by a compulsory insurance policy; and

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- (d) the person does not give the DI fund manager a copy of the claim within 48 hours after the claim is made.

Maximum penalty: 10 penalty units.

- (2) A person commits an offence if—
 - (a) a claim for compensation has been made against the person; and
 - (b) the person is not a self-insurer; and
 - (c) the person's liability to pay compensation is not covered by a compulsory insurance policy; and
 - (d) the person makes an agreement or admission in relation to the claim.

Maximum penalty: 20 penalty units.

- (3) Subsection (2) does not apply to an admission or agreement if the DI fund manager consents to the admission or agreement.
- (4) The DI fund manager is entitled to intervene in any arbitration proceeding on the claim as a party.
- (5) The DI fund manager has the same right of objection to arbitration by a committee as the employer has under the regulations.
- (6) An offence against this section is a strict liability offence.

171H DI fund manager may act

- (1) This section applies to a claim for payment if the claim was made by a person eligible to make the claim under section 170E, section 170F or section 170G.

Note Under s 170E, s 170F and s 170G, the employer's liability is not covered by a compulsory insurance policy.

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- (2) The DI fund manager may treat the claim for payment as having been made against the DI fund if—
 - (a) the manager receives a copy of the claim under section 171G; or
 - (b) otherwise satisfied that it is reasonably likely that there is no compulsory insurance policy in force that applies to the claim.

171I Effect of payment of claims

- (1) If an amount is paid to a claimant under this division in settlement of a claim made under this Act in relation to a liability of an employer—
 - (a) the payment operates to discharge the liability of the DI fund in relation to the claim; and
 - (b) the payment operates to discharge the liability of the employer; and
 - (c) an amount equal to 3 times the amount of the payment is a debt owing by the employer to the DI fund; and
 - (d) the DI fund has the right of subrogation for any right that the employer has against anyone in relation to the matter that is the subject of the claim that caused the liability of the employer.
- (2) Subsection (1) (c) does not apply in relation to a non-business employer.

Division 8.2.8 Miscellaneous

172 Proceedings to be in the name of ‘Workers Compensation Default Insurance Fund Manager’

Any proceeding by or against the DI fund may be taken in the name of ‘Workers Compensation Default Insurance Fund Manager’.

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173 DI fund manager not personally liable

- (1) The DI fund manager is not personally liable to pay an amount payable in satisfaction of any claim made or judgment obtained against the DI fund manager or the amount of any costs or expenses of the DI fund manager in relation to such a claim or judgment.
- (2) An amount mentioned in subsection (1) is to be paid by the DI fund manager out of the DI fund.

57 Section 182*substitute***182 Payments by DI fund manager**

- (1) If the DI fund manager pays compensation in relation to an injury to a worker, this chapter applies as if a reference to the worker's employer were a reference to the DI fund.
- (2) If the DI fund manager and an employer both pay compensation in relation to an injury suffered by a worker, the rights of the DI fund under this chapter in relation to the payment have priority over the rights of the employer.

**58 No compensation if damages received
Section 184 (1) and (2)***substitute*

- (1) Compensation under this Act (***ACT compensation***) is not payable in relation to a worker's injury or the death of a worker to the extent that, independently of this Act, a judgment or agreement for damages (***independent damages***) has been obtained in relation to the injury or death.

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- (2) If a person receives ACT compensation from an employer in relation to a worker's injury or the death of a worker and later receives independent damages in relation to the injury or death, the employer is entitled to recover from the person the recoverable amount.

59 Section 189

substitute

189 Identity cards

- (1) The chief executive must give an inspector an identity card stating the person's name and that the person is an inspector.
- (2) The identity card must show—
 - (a) a recent photograph of the person; and
 - (b) the card's date of issue and expiry; and
 - (c) anything else prescribed by regulation.
- (3) A person commits an offence if—
 - (a) the person stops being an inspector; and
 - (b) the person does not return the person's identity card to the chief executive as soon as practicable, but no later than 7 days after the day the person stops being an inspector.

Maximum penalty: 1 penalty unit.

- (4) An offence against this section is a strict liability offence.
- (5) Subsection (2) applies only in relation to a card given by the chief executive after the commencement of this section.
- (6) Subsection (5) is a law to which the Legislation Act, section 88 (Repeal does not end effect of transitional laws etc) applies.

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- (7) Subsections (5) and (6) and this subsection expire on the day this section commences.

**60 Provision of information to inspectors
Section 190 (3), note**

substitute

Note A recognised auditor who makes a statement in an auditor's certificate that is false, misleading or incomplete may commit an offence (see Criminal Code, pt 3.4).

**61 Obstruction or hindrance of inspector
Section 194**

omit

**62 Admissibility of statements by injured workers
Section 196 (2), definition of *insurer*, paragraph (b)**

substitute

(b) the DI fund.

**63 On-the-spot fines
Chapter 12**

omit

64 New sections 204 and 205

insert

204 Court-directed publicity for offences

If an employer is convicted or found guilty of an offence against this Act, the court may direct the employer to publish a statement in relation to the offence.

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205 Publication by chief executive of convictions etc

- (1) This section applies if a person, or a representative of a person, is convicted or found guilty of an offence against this Act and—
- (a) the time for making an appeal against the conviction or finding of guilt ends without an appeal being made; or
 - (b) if an appeal is made against the conviction or finding of guilt—
 - (i) the conviction or finding is confirmed on appeal, and the time for making any further appeal in relation to the conviction or finding ends without an appeal being made; or
 - (ii) the appeal is withdrawn, struck out or discontinued or lapses; or
 - (c) if a retrial has been ordered—the time for making an appeal on the retrial ends in accordance with paragraph (a) or (b).

Note For the meaning of **found guilty**, see the Legislation Act, dict, pt 1.

- (2) The chief executive may publish the following information in relation to the conviction or finding of guilt in a way that the chief executive considers appropriate:
- (a) particulars that allow the public to identify the person;
 - (b) details of the offence;
 - (c) the decision of the court and the penalty imposed on the person or a representative of the person (including the forfeiture of anything under this Act).

Examples of publication

- 1 a press release
- 2 an article in a document published by the Territory or a territory authority

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- 3 an advertisement in a newspaper circulating generally in the ACT

Examples for par (a)

- 1 the employer's name and ACN (if any)
- 2 any name (and, if relevant, ACN) used in the past by the employer
- 3 the employer's current and previous business addresses

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the conviction or finding of guilt is quashed or set aside on appeal, the information must not be published.
- (4) If the penalty is changed on appeal, this section applies in relation to the penalty as changed.
- (5) In this section:

representative, of a person means—

- (a) if the person is an individual—an employee or agent of the person; or
- (b) if the person is a corporation—an employee, agent or executive officer of the person.

65 Section 210

substitute

200 Secrecy

- (1) In this section:

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

divulge includes communicate.

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person to whom this section applies means a person who exercises, or has exercised, a function under this Act.

produce includes allow access to.

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

- (2) A person to whom this section applies commits an offence if—
- (a) the person—
 - (i) makes a record of protected information about someone else; and
 - (ii) is reckless about whether the information is protected information about someone else; or
 - (b) the person—
 - (i) does something that divulges protected information about someone else; and
 - (ii) is reckless about whether—
 - (A) the information is protected information about someone else; and
 - (B) doing the thing would result in the information being divulged to another person.

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

- (3) Subsection (2) does not apply if the record is made, or the information is divulged—
- (a) under this Act or another territory law; or

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- (b) in relation to the exercise of a function, as a person to whom this section applies, under this Act or another territory law.
- (4) Subsection (2) does not apply to the divulging protected information about someone with the person's consent.
- (5) A person to whom this section applies need not divulge protected information to a court, or produce a document containing protected information to a court, unless it is necessary to do so for this Act or another territory law.

66 **False information etc**
Section 213

omit

67 **Criminal liability of executive officers**
Section 214 (1)

substitute

- (1) An executive officer of a corporation commits an offence if—
 - (a) the corporation commits an offence (a ***relevant offence***) by contravening a defined provision of this Act; and

Note See s (6) for the ***defined*** provisions to which this par applies.

 - (b) the officer was reckless about whether the contravention would happen; and
 - (c) the officer was in a position to influence the conduct of the corporation in relation to the contravention; and

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- (d) the officer failed to take all reasonable steps to prevent the contravention.

Maximum penalty: The maximum penalty that may be imposed for the commission of the relevant offence by an individual.

68 Section 214 (6)

substitute

- (6) In this section:

defined provision, of this Act, means—

- (a) any of the following provisions:
 - (i) section 92 (3) (Register of injuries);
 - (ii) section 126 (Action by employer in relation to claims);
 - (iii) section 142 (Vocational rehabilitation);
 - (iv) section 147 (Compulsory insurance—employers);
 - (v) section 152 (Compulsory insurance—insurers);
 - (vi) section 155 (Information for insurers on application for issue or renewal of policies);
 - (vii) section 156 (Information for insurers after renewal of policies);
 - (viii) section 157 (Information for insurers after end or cancellation of policies);
 - (ix) section 158 (Information for new insurers after change of insurers);
 - (x) section 159 (Six-monthly information for insurers);

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- (xi) section 162 (Statutory declarations—false information etc);
 - (xii) section 163 (Employment after 2nd offence);
 - (xiii) section 164 (Provision of information to Minister);
 - (xiv) section 176 (Premiums—maximum rates);
 - (xv) section 190 (Provision of information to inspectors);
 - (xvi) section 191 (Entry and inspection of premises);
 - (xvii) section 200 (Secrecy); and
- (b) includes an offence against the Criminal Code that relates to—
- (i) completing, keeping or giving a document under or in relation to this Act; or
 - (ii) a requirement that a document be completed, kept or given, under or in relation to this Act.

69 Section 214 (as amended)

renumber as section 203

70 Sections 219 and 220

substitute

209 References to Workers' Compensation Act etc

In any Act, statutory instrument or document—

- (a) a reference to the *Workers' Compensation Act 1951* or the Workers Compensation Supplementation Fund Act 1980 is a reference to this Act; and

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- (b) a reference to the nominal insurer is a reference to the DI fund manager; and
- (c) a reference to the workers compensation supplementation fund is a reference to the DI fund.

210 Apportionment of costs of administration of Act

- (1) Liability for the costs of administration of this Act for a financial year may be apportioned by the Minister among the entities that were approved insurers or self-insurers during the year.
- (2) In making an apportionment under subsection (1) for a financial year, the Minister must, as far as practicable, take into account the costs of administering this Act that are attributable to each insurer and self-insurer during the year.

Example of attributable costs

ABC Insurance Limited has 30% of the market share, however it only accounts for 2% of costs under this Act for workers compensation cases. XYZ Insurance limited has 20% of the market share but is accountable for 50% of the total costs incurred under this Act for workers compensation cases. The Minister may apportion 50% of costs under this Act for workers compensation cases to XYZ Insurance limited to reflect their use of the court.

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) If the Minister makes an apportionment under this section, the Minister must give each approved insurer and self-insurer a written notice that—
 - (a) sets out details of the apportionment; and
 - (b) requires the insurer or self-insurer to pay to the Territory the amount apportioned to the insurer or self-insurer within the time for payment stated in the notice.

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- (4) The time stated for payment in the notice must not be shorter than 2 weeks after the day the approved insurer or self-insurer receives the notice.
- (5) The Minister may amend or revoke a notice given under this section.
- (6) If an amount apportioned to the insurer or self-insurer is not paid within the time stated for payment in the notice, the amount is a debt owing to the Territory by the insurer or self-insurer.
- (7) An amount received because of an apportionment under this section must be paid into a departmental bank account maintained by the chief executive in accordance with the *Financial Management Act 1996*, section 34 (2).
- (8) To remove any doubt, the *costs of administration of this Act* include costs incurred by the Magistrates Court in relation to this Act.

211 Amounts for administration of Act

- (1) The costs of administration of this Act may be paid out of amounts received by the Territory under section 210 and any other amounts received by the Territory under this Act.
- (2) To remove any doubt, costs incurred by the Magistrates Court in relation to this Act may be paid out of amounts mentioned in subsection (1).

71 Terrorism cover temporary reinsurance fund Section 227 (2) (d)

substitute

- (d) any amount paid to the fund by the DI fund manager under section 166B (2); and

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72 New chapter 19

insert

**Chapter 19 Transitional—Workers
Compensation Amendment
Act 2005 (No 2)**

255 Definitions—ch 19

In this chapter:

commencement day means the day this section commences.

nominal insurer means the nominal insurer under this Act, as in force before commencement day.

WCSF Act means the *Workers Compensation Supplementation Fund Act 1980*.

workers compensation supplementation fund means the workers compensation supplementation fund under the WCSF Act.

256 Transfer of nominal insurer's assets and liabilities

- (1) This section applies to the assets and liabilities of the nominal insurer immediately before commencement day.
- (2) The assets and liabilities are taken to be the assets and liabilities of the DI fund.
- (3) The DI fund manager must—
 - (a) pay any asset that is an amount into the DI fund account that relates to claims made against employers without compulsory insurance policies; and

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- (b) attribute any liability that is an amount owed or deficit in the account kept by the nominal insurer to that account.

257 Amounts in workers compensation supplementation fund

- (1) This section applies to the amount (if any) in the workers compensation supplementation fund under the WCSF Act immediately before commencement day.
- (2) The DI fund manager must transfer the amount to the accounts in the DI fund that relate to claims made against compulsory insurance policies issued by insurers that have been wound up or cannot provide the indemnity required by the policies to be provided.
- (3) The Minister may give directions to the DI fund manager about the amount that must be transferred to each of the accounts.

258 Amounts to be paid

- (1) If, immediately before commencement day, an amount was required to be, or was to be, paid to the nominal insurer or workers compensation supplementation fund, the amount must be paid to the DI fund.
- (2) If, immediately before commencement day, an amount was required to be, or was to be, paid by the nominal insurer or from the workers compensation supplementation fund, the amount must be paid from the DI fund.

259 Proceedings and evidence in relation to previous entities

- (1) In this section:
proceeding means—
 - (a) a civil or administrative proceeding to which the previous entity was a party immediately before commencement day; and

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- (b) includes a right of appeal or review (including a right of review under the *Ombudsman Act 1989*).

previous entity means—

- (a) the nominal insurer; or
 - (b) the workers compensation supplementation fund.
- (2) For a proceeding started before commencement day, the DI fund manager is substituted for the previous entity as a party to the proceeding.
 - (3) A proceeding that was not started before commencement day and that apart from this Act could, after that day, be brought by or against the previous entity may be started by or against the DI fund manager.
 - (4) A court, tribunal, commission or other entity in which a proceeding may be or has been started or continued under this section may give directions in relation to the starting or continuation of the proceeding.
 - (5) Any evidence that, apart from this section, would have been admissible for or against the previous entity is admissible for or against the DI fund manager.
 - (6) An order made in a proceeding by or against the previous entity before commencement day may, after that day, be enforced by or against the DI fund manager.

260 Claims made against nominal insurer

- (1) This section applies if—
 - (a) a claim was made against the nominal insurer under section 165 (Claims for payment by nominal insurer), as in force at any time before commencement day; and

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- (b) liability for the claim had not been discharged before commencement day.
- (2) The claim is taken—
 - (a) if the claim was made under section 165 (1)—to be a claim the person made under section 170E; or
 - (b) if the claim was made under section 165 (2)—to be a claim the person made under section 170F; or
 - (c) if the claim was made under section 165 (3)—to be a claim the person made under section 170G.
- (3) Also, the claim is taken to have been made when it was made under section 165.
- (4) Anything done in relation to the claim under this Act before commencement day is taken to have been done—
 - (a) under this Act as in force after commencement day; and
 - (b) when it was done under this Act before commencement day.

261 Claims made under WCSF Act before commencement day

- (1) This section applies if—
 - (a) a claim was made under the WCSF Act, part 5 (Payment of claims) at any time before commencement day; and
 - (b) liability for the claim had not been discharged before commencement day.
- (2) The claim is taken—
 - (a) if the claim was made under the WCSF Act, section 26 (1)—to be a claim the person made under section 170H; or

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- (b) if the claim was made under the WCSF Act, section 26 (2)—to be a claim the person made under section 170L.
- (3) Also, the claim is taken to have been made when it was made under the WCSF Act.
- (4) Anything done in relation to the claim under the WCSF Act is taken to have been done—
 - (a) under this Act as in force after commencement day; and
 - (b) when it was done under the WCSF Act.

262 Claims for weekly payments

Neither section 260 nor section 261 requires the DI fund to pay weekly compensation to an injured worker entitled to weekly compensation for an injury if—

- (a) the injury happened before commencement day; and
- (b) the nominal insurer had been given an injury notice for the injury or was otherwise aware, immediately before commencement day, that—
 - (i) there was no compulsory insurance policy that covered the worker in relation to the injury and the worker's employer was not a self-insurer; or
 - (ii) the compulsory insurance policy that covered the worker in relation to the injury was issued by an insurer that could not provide the indemnity required to be provided under the policy.

263 Transitional regulations

- (1) A regulation may prescribe transitional matters necessary or convenient to be prescribed because of the enactment of this Act.

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- (2) A regulation may modify this chapter (including its operation in relation to another territory law) to make provision in relation to anything that, in the Executive's opinion, is not, or not adequately or appropriately, dealt with in this chapter.
- (3) A regulation under subsection (2) has effect despite anything elsewhere in this Act.

264 Expiry of ch 19

This chapter expires 2 years after the day it commences.

73 New schedule 3

insert

Schedule 3 DI fund advisory committee

3.1 Establishment of DI fund advisory committee

The DI fund advisory committee is established.

3.2 Functions of DI fund advisory committee

- (1) The DI fund advisory committee has the following functions:
 - (a) monitoring the operations of the DI fund;
 - (b) advising the Minister or DI fund manager on matters in relation to part 8.2 if asked.
- (2) The DI fund advisory committee may exercise any other function given to it under this Act or any other territory law.

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

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3.3 Membership of DI fund advisory committee

- (1) The DI fund advisory committee consists of—

- (a) the DI fund manager; and
- (b) the DI fund actuary; and
- (c) 6 members appointed by the Minister.

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

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

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

- (2) The Minister must appoint the following DI fund advisory committee members:

- (a) 2 members nominated by a group the Minister is satisfied represents employer interests;
- (b) 2 members nominated by a group the Minister is satisfied represents employee interests;
- (c) 2 members nominated by a majority of approved insurers.

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

3.4 When DI fund manager not member of DI fund advisory committee

The DI fund manager is not a member of the DI fund advisory committee if it is considering the manager's conduct under this Act.

3.5 Ending of DI fund advisory committee members' appointments

- (1) The Minister may end the appointment of a member of the DI fund advisory committee (other than the DI fund manager or DI fund actuary)—
 - (a) if the member contravenes a territory law; or
 - (b) for misbehaviour; or
 - (c) if the member becomes bankrupt or executes a personal insolvency agreement; or
 - (d) if the member is convicted, in the ACT, of an offence punishable by imprisonment for at least 1 year; or
 - (e) if the member is convicted outside the ACT, in Australia or elsewhere, of an offence that, if it had been committed in the ACT, would be punishable by imprisonment for at least 1 year.
- (2) The Minister must end a member's appointment—
 - (a) if the member is absent, other than on leave approved by the Minister, from 3 consecutive meetings of the committee; or
 - (b) for physical or mental incapacity, if the incapacity substantially affects the exercise of the member's functions.

3.6 DI fund advisory committee chair

- (1) The members of the DI fund advisory committee must elect a member as chair of the committee.
- (2) The chair presides at all meetings at which the chair is present.
- (3) If the chair is absent, the member chosen by the members present presides.

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3.7 Protection of DI advisory committee members from liability

- (1) In this section:
member means a member of the DI fund advisory committee.
- (2) A member is not personally liable for anything done or omitted to be done honestly and without recklessness—
 - (a) in the exercise of a function under this Act; or
 - (b) in the reasonable belief that the conduct was in the exercise of a function under this Act.
- (3) Any civil liability that would, apart from subsection (2), attach to a member attaches instead to the Territory.

3.8 Time and place of DI fund advisory committee meetings

- (1) The DI fund advisory committee is to meet when and where the chair decides.
- (2) However, the DI fund advisory committee must meet at least once every quarter.
- (3) The chair—
 - (a) may at any time call a meeting of the DI fund advisory committee; and
 - (b) must call a meeting if asked by the Minister, DI fund manager, DI fund actuary or at least 2 members.
- (4) If, for any reason, there is no DI fund advisory committee chair, the chief executive—
 - (a) may at any time call a meeting of the DI fund advisory committee; and

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- (b) must call a meeting if asked by the Minister, DI fund manager, DI fund actuary or at least 2 members.
- (5) The chair or chief executive must give the DI fund advisory committee members reasonable notice of the time and place of a meeting called by the chair or chief executive.

3.9 Quorum at DI fund advisory committee meetings

Business may be carried on at a meeting of the DI fund advisory committee only if at least 3 members appointed by the Minister are present.

3.10 Voting at DI fund advisory committee meetings

- (1) At a meeting of the DI fund advisory committee each member (other than the DI fund manager and DI fund actuary) has a vote on each question to be decided.
- (2) A question is decided by a majority of the votes of the members present and voting but, if the votes are equal, the member presiding has a deciding vote.

3.11 Conduct of DI fund advisory committee meetings etc

- (1) The DI fund advisory committee may conduct its meetings as it considers appropriate.

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- (2) A meeting may be held using a method of communication, or a combination of methods of communication, that allows a committee member taking part to hear what each other member taking part says without the members being in each other's presence.

Examples

a phone link, a satellite link

Note An example is part of the Act, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see Legislation Act, s 126 and s 132).

- (3) A DI fund advisory committee member who takes part in a meeting conducted under subsection (2) is taken, for all purposes, to be present at the meeting.

74 Dictionary, new notes

insert

Note 1 The Legislation Act contains definitions and other provisions relevant to this Act.

Note 2 For example, the Legislation Act, dict, pt 1 defines the following terms:

- ACT
- chief executive (see s 163)
- contravene
- doctor
- fail
- financial year
- in relation to
- law, of the Territory
- Magistrates Court
- penalty unit (see s 133)
- proceeding
- public servant

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- quarter
- under
- year.

75 Dictionary, new definitions

insert

auditor means any of the following:

- (a) an auditor registered under the Corporations Act;
- (b) a member of the Institute of Chartered Accountants in Australia;
- (c) a member of CPA Australia;
- (d) a member of the National Institute of Accountants.

claim for payment, by a person, for part 8.2 (Default insurance fund)—see section 170.

claims manager, for part 8.2 (Default insurance fund)—see section 165.

DI fund means the Default Insurance Fund established under section 166.

DI fund actuary, for part 8.2 (Default insurance fund)—see section 165.

DI fund advisory committee means the DI fund advisory committee established under schedule 3.

DI fund manager means the DI fund manager appointed under section 166C.

earned premium, for a period, means the total billed underwritten premium for compulsory insurance policies for the period.

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76 Dictionary, definition of *incapacity date*

omit

77 Dictionary, new definition of *initial incapacity date*

insert

initial incapacity date, for part 4.3 (Weekly compensation)—see section 36G.

78 Dictionary, definition of *insurer*

substitute

insurer—

- (a) for chapter 5 (Injury management process)—
 - (i) see section 86A; and
 - (ii) if there is more than 1 employer of the worker—see section 87; and
- (b) for part 6.2 (Time for accepting or rejecting claims)—see section 127 (1).

79 Dictionary, new definitions

insert

liquidator, of an insurer, includes—

- (a) the official manager of the insurer; or
- (b) the receiver of the insurer's property; or
- (c) the receiver and manager of the insurer's property; or
- (d) the managing controller of the insurer's property.

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managing controller—see the Corporations Act, section 9 (Dictionary).

80 Dictionary, definition of *nominal insurer*

omit

81 Dictionary, new definitions

insert

official manager—see the Corporations Act, section 9 (Dictionary).

receiver and manager—see the Corporations Act, section 9 (Dictionary).

82 Dictionary, definition of *recognised auditor*

substitute

recognised auditor means—

- (a) for a certificate provided, or to be provided, for an employer for this Act—an auditor who is not the employer or an employee or executive officer of the employer; and
- (b) for the DI fund—an auditor who is not employed or engaged by the DI fund.

83 Dictionary, definition of *rules*

omit

84 Dictionary, definition of *weekly compensation*

substitute

weekly compensation—see section 36G, meaning of weekly compensation.

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85 Repeal of Workers Compensation Supplementation Fund Act 1980

The *Workers Compensation Supplementation Fund Act 1980* A1980-28 is repealed.

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Schedule 1 Further amendments

(see s 3)

[1.1] Section 8 (3) (a) and (b)

substitute

- (a) section 155 (6), definition of *employer's estimate*, paragraphs (a) and (b) (Information for insurers on application for issue or renewal of policies);
- (b) section 159 (1) (a) and (b) (Six-monthly information for insurers);

[1.2] Sections 30 to 32

renumber as sections 31 to 33

[1.3] Section 36 (1), note

substitute

Note Compensation may be payable for an injury arising out of, or in the course of, employment under s 31 (General entitlements to compensation for personal injury).

[1.4] Section 144 (2)

substitute

- (2) Subject to section 147 (7) (Compulsory insurance—employers) and section 154 (Cover notes), a cover note may be a compulsory insurance policy.

[1.5] Sections 151 to 155

renumber as sections 150 to 154

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[1.6] Section 159 (2) and (3)

omit

section 158 (2)

substitute

section 157 (2)

[1.7] Section 159 (as amended)

renumber as section 158

[1.8] Section 161 (5), definition of *relevant statutory declaration*

substitute

relevant statutory declaration means a statutory declaration provided by an employer for either of the following provisions:

- section 155 (2) (Information for insurers on application for issue or renewal of policies)
- section 159 (1) (Six-monthly information for insurers).

[1.9] Section 161

renumber as section 162

[1.10] Section 162 (1) and (2)

substitute

- (1) For this section, an employer has been ***convicted of an offence*** if the employer has been convicted of a 2nd or subsequent offence against any of the following sections:
- section 147 (Compulsory insurance—employers)
 - section 155 (Information for insurers on application for issue or renewal of policies)

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- section 156 (Information for insurers after renewal of policies)
 - section 157 (Information for insurers after end or cancellation of policies)
 - section 158 (Information for new insurers after change of insurers)
 - section 159 (Six-monthly information for insurers)
 - section 203 (Criminal liability of executive officers).
- (2) Subsection (1) only applies to an offence against section 203 if the offence relates to the contravention by a corporation of another section mentioned in subsection (1).

[1.11] Section 162 (as amended)

renumber as section 163

[1.12] Chapter 13

renumber as chapter 12

[1.13] Sections 208 and 209

renumber as sections 198 and 199

[1.14] Chapter 14

renumber as chapter 13

[1.15] Section 211

renumber as section 201

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[1.16] Section 212 (1) and (2)

substitute

- (1) A prosecution for an offence against any of the following sections may be begun within 5 years after the day, or the last day, the offence is committed:
 - section 147 (Compulsory insurance—employers)
 - section 155 (Information for insurers on application for issue or renewal of policies)
 - section 156 (Information for insurers after renewal of policies)
 - section 157 (Information for insurers after end or cancellation of policies)
 - section 158 (Information for new insurers after change of insurers)
 - section 159 (Six-monthly information for insurers)
 - section 203 (Criminal liability of executive officers).
- (2) Subsection (1) only applies to an offence against section 203 if the offence relates to the contravention by a corporation of another section mentioned in subsection (1).

[1.17] Sections 212 (as amended)

renumber as sections 202

[1.18] Sections 216 to 218

renumber as sections 206 to 208

[1.19] Section 224 (3), definition of *insurer's market share*

substitute

insurer's market share means the proportion (expressed as a percentage) of the administrative costs of the Act apportioned by the Minister to the insurer under section 210 (1) (Apportionment of

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costs of administration of Act) in relation to the financial year before the act of terror happens.

[1.20] Dictionary, definition of *medical referee*

substitute

medical referee means a medical referee appointed under section 201.

[1.21] Dictionary, definition of *reviewable decision*

substitute

reviewable decision, for chapter 12 (Review of decisions by administrative appeals tribunal)—see section 198 (Notice of reviewable decisions to be given to affected people).

[1.22] Dictionary, definition of *self-insurer*

substitute

self-insurer means an employer who is exempted under section 151 (Self-insurers).

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Schedule 2 Consequential amendments

(see s 3)

Part 2.1 Occupational Health and Safety Act 1989

[2.1] Section 12 (2) (f)

substitute

- (f) the approval of a protocol or an amendment to a protocol under the *Workers Compensation Act 1951*;

[2.2] Dictionary, definition of *associated law*, paragraphs (f) and (g)

substitute

- (f) any other Act or subordinate law, or provision of an Act or subordinate law, prescribed by regulation.

Part 2.2 Supreme Court Rules 1937

[2.3] Order 26 rule 2 (1) (b)

omit

nominal insurer

substitute

DI fund manager

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Part 2.3 Taxation Administration Act 1999

[2.4] Section 97 (d) (iv)

substitute

- (iv) for the *Workers Compensation Act 1951*—the DI fund manager;

Part 2.4 Workers Compensation Regulation 2002

[2.5] Section 5 (2)

omit

section 216

substitute

section 206

[2.6] Section 13

omit

section 216

substitute

section 206

[2.7] Section 35 (1), note

substitute

Note The Minister's notice must comply with the requirements of the Act, s 198 (Notice of reviewable decisions to be given to affected people).

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[2.8] Section 36 (3)

omit

section 216

substitute

section 206

[2.9] Section 62 (3)

substitute

- (3) The sections of the Act are as follows:
- section 155 (Information for insurers on application for issue or renewal of policies);
 - section 156 (Information for insurers after renewal of policies);
 - section 157 (Information for insurers after end or cancellation of policies);
 - section 158 (Information for new insurers after change of insurers);
 - section 159 (Six-monthly information for insurers).

[2.10] New section 62A

insert

62A Required information from employer in policy

- (1) The compulsory insurance policy issued by an insurer to an employer must include the following information:
- (a) the required information given by the employer to the insurer;
 - (b) the proportion of the premium payment for the policy that has been recovered from the employer to offset amounts paid by the insurer to the DI fund.

(2) In this section:

required information, given by an employer, means the information given by the employer under a provision of the Act mentioned in section 62 (3).

(3) Subsection (1) applies in relation to an insurance policy given to an employer after the commencement of this section.

(4) Subsection (3) and this subsection expire 1 year after the day this section commences.

[2.11] Section 81 (1) (a) (i)

after

Compliance by insurers

insert

, including DI fund

[2.12] Section 82 (3) (e)

omit

section 163

substitute

section 164

[2.13] Section 83 (1), note

substitute

Note The Minister's notice must comply with the requirements of the Act, s 198 (Notice of reviewable decisions to be given to affected people).

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[2.14] Section 86 (1) (f)

omit

nominal insurer

substitute

DI fund

[2.15] Section 95 (1), note

substitute

Note The Minister's notice must comply with the requirements of the Act, s 198 (Notice of reviewable decisions to be given to affected people).

[2.16] Section 97

omit

[2.17] Section 98

omit

section 208 (1)

substitute

section 198 (1)

[2.18] Section 99 (3)

omit

nominal insurer

substitute

DI fund manager

[2.19] Schedule 2

omit

Endnotes

1 Presentation speech

Presentation speech made in the Legislative Assembly on 2005.

2 Notification

Notified under the Legislation Act on 2005.

3 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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