



Australian Capital Territory

Workers Compensation Regulations 2002

Subordinate Law SL2002-20

The Australian Capital Territory Executive makes the following regulations under the *Workers Compensation Act 1951*.

Dated 27 June 2002.

SIMON CORBELL
Minister

TED QUINLAN
Minister



Australian Capital Territory

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Workers Compensation Act 1951

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Part 1 **Preliminary**

1 **Name of regulations**

These regulations are the *Workers Compensation Regulations 2002*.

2 **Commencement**

These regulations commence on 1 July 2002.

Part 2 Interpretation generally

3 Dictionary

The dictionary at the end of these regulations is part of these regulations.

Note 1 The dictionary at the end of these regulations defines certain words and expressions used in these regulations, and includes references (*signpost definitions*) to other words and expressions defined elsewhere in these regulations or in other legislation.

For example, the signpost definition '*approved insurer*—see the Act, dictionary' means that the expression 'approved insurer' is defined in the Act, dictionary.

Note 2 A definition in the dictionary (including a signpost definition) applies to the entire regulations unless the definition, or another provision of the regulations, provides otherwise or the contrary intention otherwise appears (see *Legislation Act 2001*, s 155 and s 156 (1)).

4 Notes

- (1) A note included in these regulations is explanatory and is not part of these regulations.

Note See *Legislation Act 2001*, section 127 (1), (4) and (5) for the legal status of notes.

- (2) In this regulation:

note includes material enclosed in brackets in regulation headings.

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

- ACT WCA: *Workers Compensation Act 1951*, as in force on 30 June 2002
- ACT WC Regs: *Workers Compensation Regulations 1946*, as in force on 30 June 2002

- NSW WIMWCA: *Workplace Injury Management and Workers Compensation Act 1998* (NSW).

- (3) Subregulation (2), this subregulation, and the material enclosed in brackets in regulation headings, expire on 1 July 2004.

5 Approval of medical guidelines

- (1) The Minister may, in writing, approve medical guidelines about—
- (a) the diagnosis of, or prognosis or treatment for, injuries; or
 - (b) how to assess the extent of an injury for the Act, part 4.4 (Compensation for permanent injuries).

Note Power given under regulations to make a statutory instrument (including medical guidelines) includes power to amend or repeal the instrument (see *Legislation Act 2001*, s 46 (1)).

- (2) If the OH&S Council sets up an advisory committee mentioned in the Act, section 216 (Minister must take advice), the Minister must consider any recommendation made by the committee about proposed medical guidelines.

- (3) An approved medical guideline is a notifiable instrument.

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

- (4) An approved medical guideline may apply, adopt or incorporate an instrument, or a provision of an instrument, as in force at a particular time.

Note The text of an applied, adopted or incorporated instrument, whether applied as in force from time to time or as at a particular time, is taken to be a notifiable instrument if the operation of the *Legislation Act 2001*, s 47 (5) or (6) is not disapplied (see s 47 (7)).

- (5) The *Legislation Act 2001*, section 47 (5) does not apply to a medical guideline mentioned in subregulation (1) (b).

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

6 Meaning of *clinically relevant research*

In these regulations:

clinically relevant research means research—

- (a) recognised as clinically relevant by a specialist medical college; or
- (b) approved by the Minister under regulation 7.

7 Approval of clinically relevant research

- (1) The Minister may, in writing, approve information (including information on an internet site) as clinically relevant research.
- (2) The *Legislation Act 2001*, section 47 (3), (5) and (6) does not apply to an approval under this regulation.
- (3) An approval is a notifiable instrument.

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

8 Meaning of *evidence-based methodology*

In these regulations:

evidence-based methodology means the application by a doctor of the doctor's clinical expertise, and any relevant approved medical guidelines or clinically relevant research, to—

- (a) identify the aetiology of an injured worker's injury; and
- (b) diagnose the injury; and
- (c) give a prognosis for the injury; and
- (d) make recommendations about medical treatment for the injury.

Part 3 **Medical assessments**

Division 3.1 **How medical assessments must be done**

9 **Using evidence-based methodology**

- (1) A doctor who does a medical assessment of an injured worker must do the assessment using evidence-based methodology.

Note The Act, s 118 (2) provides that a medical certificate required to accompany a claim for weekly compensation must comply with the requirements for medical assessments under the regulations.

If s 118 (2) is not complied with, for example, if a medical certificate about an injured worker is deficient because it does not refer to an approved medical guideline or clinically relevant research for that type of injury, under s 119 the insurer may tell the worker about the deficiency. The worker's claim is not considered to have been made until the deficiency is fixed.

If the insurer does not tell a worker about a deficiency, the claim is taken to comply with s 118 (2) (see s 119 (3)).

- (2) The doctor must record the results of the assessment, including the following matters:
- (a) the aetiology of the worker's injury;
 - (b) the diagnosis of the injury;
 - (c) the prognosis for the injury;
 - (d) the recommended medical treatment for the injury.
- (3) However, for a later medical assessment of an injured worker, the doctor who does the assessment need record a matter mentioned in subregulation (2) only if the doctor considers that there has been a change in the matter.

(4) In this regulation:

initial medical assessment, of an injured worker, means the first medical assessment by the worker's doctor for a medical certificate mentioned in the Act, section 116 (2) (Making claim for compensation).

later medical assessment, of an injured worker, means a medical assessment other than—

- (a) an initial or second medical assessment of the worker; or
- (b) if the worker's nominated treating doctor is replaced by another nominated treating doctor—the first medical assessment of the worker by the new nominated treating doctor.

second medical assessment means an assessment mentioned in the Act, section 72 (Second assessments).

Division 3.2 Medical specialists

10 Assessment by medical specialist—request by other than nominated treating doctor

- (1) This regulation does not apply to a request by an injured worker's nominated treating doctor for a medical assessment of the worker by a medical specialist.
- (2) The following (the *requesting person*) may request a medical assessment of an injured worker by a medical specialist:
 - (a) the worker;
 - (b) the worker's lawyer;
 - (c) the worker's employer;
 - (d) the employer's insurer.

- (3) At least 2 weeks before the day of the medical assessment, written notice of the request must be given—
- (a) if the request is made by the worker or the worker's lawyer—to the worker's employer and the employer's insurer;
or
 - (b) if the request is made by the worker's employer or the employer's insurer—to the worker and the worker's lawyer.
- (4) The notice must state—
- (a) the reasons for the request (including a brief description of any particular thing that led to the request); and
 - (b) why the medical specialist is the appropriate specialist to do the medical assessment; and
 - (c) which of the following matters are to be assessed in relation to the injury:
 - (i) aetiology;
 - (ii) diagnosis;
 - (iii) prognosis;
 - (iv) recommended medical treatment.

Example for par (a)

An insurer disagrees with an injured worker's nominated treating doctor's assessment that the worker has suffered a relapse, and needs more time off work. The insurer considers that the time off does not relate to the injury.

- (5) The requesting person, and the people to whom the requesting person must give notice under subregulation (3), must give all medical evidence about the injured worker to the medical specialist at least 2 working days before the day of the medical assessment.

11 **Specialist's report about assessment**

- (1) A medical specialist assessing an injured worker must, when asked by someone (the *requesting person*) under regulation 10 (2), prepare a report about the medical assessment.
- (2) If the medical specialist's assessment differs from the medical evidence about the injured worker, the report must state—
 - (a) how the assessment differs and why; and
 - (b) why the medical specialist's assessment is preferable.
- (3) If there is no difference between the medical specialist's assessment and the medical evidence, the report must say there is no difference.
- (4) The requesting person must give a copy of the report to the people to whom the requesting person must give notice under regulation 10 (3) within 5 working days after the day the report is given to the requesting person.

Note An injured worker's nominated treating doctor may adopt (completely or partly) a medical specialist's assessment about treatment for the worker's treatment.

12 **Medical specialist as new nominated treating doctor**

- (1) This regulation applies if the nominated treating doctor (the *treating doctor*) for an injured worker considers it appropriate that a medical specialist becomes the nominated treating doctor for the worker, and the worker agrees.
- (2) The treating doctor may ask the medical specialist, in writing, to become the nominated treating doctor for the worker.
- (3) If the medical specialist agrees in writing, the medical specialist becomes the nominated treating doctor for the worker instead of the treating doctor.

Part 4 Medical referees

13 **Consultation about appointment of medical referees**

If the OH&S Council sets up an advisory committee mentioned in the Act, section 216 (Minister must take advice), the Minister may ask the committee to give advice about who should be a medical referee.

14 **Medical referee to review medical evidence etc**

- (1) This regulation applies to a medical referee for a conciliation or arbitration.
- (2) The medical referee must—
 - (a) review the medical evidence about the injured worker; and
 - (b) review any relevant approved medical guidelines or clinically relevant research about the worker's injury; and
 - (c) apply the referee's clinical expertise to the review under paragraphs (a) and (b); and
 - (d) do a medical assessment of the worker, unless the referee considers it unnecessary.

15 **Medical referee's report**

- (1) A medical referee's report for a conciliation or arbitration must state—
 - (a) the results of the referee's assessment of the aetiology or diagnosis of, or the prognosis or recommended medical treatment for, the worker's injury; and
 - (b) if the referee's assessment differs from the medical evidence about the worker's injury—
 - (i) how the assessment differs and why; and

- (ii) why the referee's assessment is preferable; and
- (c) if the referee considered it unnecessary to assess the worker—why the referee did not consider it necessary.

Example of why assessment may differ

The medical evidence does not take into account relevant approved medical guidelines or clinically relevant research.

- (2) If there is no difference between the medical referee's assessment and the medical evidence, the report must say there is no difference.

Part 5 Rehabilitation providers

Division 5.1 Preliminary

16 Meaning of *psycho-social factor*

(1) In this part:

psycho-social factor, for an injured worker, means a person or thing forming part of the worker's social environment that may inhibit the progress of the worker's vocational rehabilitation.

Examples of people or things forming part of worker's social environment

- 1 family members
- 2 workplace
- 3 other workers
- 4 friends
- 5 employers
- 6 doctors
- 7 other health care professionals.

(2) For this regulation, a person or thing *inhibits* the progress of an injured worker's rehabilitation if the worker's interaction with the person or thing influences the worker's behaviour, level of distress, attitudes or beliefs about the injury or subjective experience of pain.

Division 5.2 Approval of rehabilitation providers

17 Minister may approve rehabilitation providers

- (1) The Minister may, in writing, approve a person as a rehabilitation provider.
- (2) The Minister may approve a rehabilitation provider for not longer than 3 years.

18 Factors for approval as rehabilitation provider

- (1) In deciding whether to approve a person as a rehabilitation provider, the Minister must consider—
 - (a) the person’s qualifications; and
 - (b) if the person has employees who will be providing rehabilitation—the employees’ qualifications; and
 - (c) the effectiveness, availability and cost of rehabilitation services provided, or to be provided, by the person.
- (2) The Minister may consider any other relevant matter.

19 Application for approval as rehabilitation provider

- (1) An application for approval as a rehabilitation provider must contain or be accompanied by the following:
 - (a) a written statement by the applicant that the applicant has, or will have, the organisational structure and employees to adequately fulfil the role of approved rehabilitation provider and will comply with the conditions of approval for rehabilitation providers;
 - (b) details of the rehabilitation services provided, or to be provided, by the applicant;
 - (c) details of the applicant’s organisational structure, or proposed organisational structure;
 - (d) if the applicant is a corporation—a description of the applicant’s corporate structure;
 - (e) details of any person with whom the applicant has a business association that relates to the provision of rehabilitation;
 - (f) an audited financial statement for the last financial year.

Examples for par (e)

1. partnership
2. subsidiary
3. joint venture.

- (2) Details of a rehabilitation service under subregulation (1) (b) must include details of the effectiveness, availability and cost of the service.
- (3) The Minister may, in writing, ask the applicant for any other relevant information.

20 When may Minister approve rehabilitation provider?

The Minister may approve a person as a rehabilitation provider only if satisfied that the person will, if approved—

- (a) adequately fulfil the role of approved rehabilitation provider; and
- (b) comply with the conditions on the person's approval.

Division 5.3 Conditions on rehabilitation providers

21 Ability to provide vocational rehabilitation

- (1) It is a condition of a rehabilitation provider's approval that the rehabilitation provider maintain an organisational structure that allows the rehabilitation provider to provide appropriate, adequate and timely vocational rehabilitation services for injured workers.
- (2) In particular, the rehabilitation provider must be able to contact an injured worker by close of business on the day after the day the worker is referred to the rehabilitation provider for vocational rehabilitation.

22 Qualifications of rehabilitation providers and their employees

- (1) It is a condition of a rehabilitation provider's approval that the rehabilitation provider, or an employee of the provider, must not provide a rehabilitation service unless qualified to provide the service.

- (2) For this regulation, a person is qualified to provide a rehabilitation service mentioned in column 2 of the following table only if the person has the qualification mentioned in column 3 of the table:

column 1 item	column 2 service	column 3 qualification
1	occupational therapy	eligibility for membership of the Australian Association of Occupational Therapists
2	physiotherapy	registration under the <i>Physiotherapists Act 1977</i>
3	rehabilitation counselling	eligibility for membership of the Australian Society of Rehabilitation Counsellors
4	psychology services	registration under the <i>Psychologists Act 1994</i>
5	social work services	eligibility for membership of the Australian Association of Social Workers

- (3) For this regulation, a nurse is qualified to provide rehabilitation services if—
- (a) the nurse has at least 12 months experience providing rehabilitation services; or
 - (b) the nurse has a qualification in safety science, occupational health and safety or ergonomics.

Note The *Legislation Act 2001*, dict, defines *nurse* to mean a registered nurse under the *Nurses Act 1988*.

- (4) However, a nurse who does not have at least 12 months experience providing rehabilitation services is taken to be qualified to provide rehabilitation nursing services if the nurse—
 - (a) has experience in providing nursing services; and
 - (b) is trained in vocational rehabilitation; and
 - (c) is supervised by someone who is qualified to provide rehabilitation services.
- (5) Subregulation (3) (b) applies from 1 July 2003.
- (6) Subregulations (4) and (5) and this subregulation expire on 1 July 2003.

23 Written records by rehabilitation providers

- (1) It is a condition of a rehabilitation provider's approval that the rehabilitation provider keeps a signed copy of each injured worker's personal injury plan and written records in relation to each worker for whom the provider provides vocational rehabilitation.
- (2) The written records must contain details about the following in relation to each injured worker:
 - (a) meetings with or about the worker;
 - (b) file notes about the development of a personal injury plan for the worker;
 - (c) reasons for any amendment of the worker's personal injury plan;
 - (d) proposals in relation to suitable duties for the worker;
 - (e) any psycho-social factors affecting the worker.

24 Electronic records by rehabilitation providers

- (1) It is a condition of a rehabilitation provider's approval that the rehabilitation provider keep electronic records of the outcomes mentioned in column 2 of the following table, as described in column 3 of the table, for each injured worker for whom the provider provides vocational rehabilitation:

column 1 item	column 2 outcome	column 3 description
1	return to pre-injury work (pre-injury employer)	(a) worker has returned to work (whether or not to pre-injury duties) with pre-injury employer on pre-injury hours; and (b) insurer is not paying compensation because of injury
2	return to work on reduced capacity (pre-injury employer)	(a) worker has returned to work with pre-injury employer on reduced hours, modified duties or alternative duties; and (b) insurer may be paying compensation for injury to make up for reduced hours
3	return to pre-injury work (new employer)	(a) worker has returned to work (whether or not to pre-injury duties) with new employer on pre-injury hours; and (b) insurer is not paying compensation for injury

column 1 item	column 2 outcome	column 3 description
4	non-return to work (physical capacity demonstrated)	physical capacity of worker demonstrated by— (a) functional assessment as able to work at full or partial capacity; or (b) 4 weeks work trial or paid employment
5	non-return to work (other)	(a) worker has been medically assessed as unable to return to work in any capacity; or (b) worker has resigned or retired; or (c) worker's claim has settled; or (d) worker has been convicted of fraud; or (e) worker has disappeared or died
6	noncompliance with personal injury plan	worker has failed to take part in personal injury plan

- (2) Electronic records must be kept until the Minister tells the approved rehabilitation provider in writing that the records are not required to be kept.
- (3) If an approved rehabilitation provider completely stops providing vocational rehabilitation under the Act for any reason, the rehabilitation provider must give the Minister the electronic records kept under this regulation.

25 Giving information by rehabilitation providers

It is a condition of a rehabilitation provider's approval that the provider gives the Minister any information reasonably required in writing by the Minister to allow the Minister to assess whether the provider is adequately fulfilling the role of approved rehabilitation provider and complying with the conditions of the approval.

26 Compliance with protocol by rehabilitation providers

It is a condition of a rehabilitation provider's approval that the provider complies with any protocol about vocational rehabilitation approved by the Minister.

27 Establishing personal injury plan

It is a condition of a rehabilitation provider's approval that the provider complies with regulation 30 (Role of approved rehabilitation provider—establishing personal injury plan) if helping to establish a personal injury plan for an injured worker.

28 Other conditions on rehabilitation providers

The Minister may impose on a rehabilitation provider's approval any condition relating to the fulfilment of the role of approved rehabilitation provider.

Division 5.4 Role of approved rehabilitation provider and protocol

29 Role of approved rehabilitation provider—general

An approved rehabilitation provider for an injured worker must liaise and negotiate with everyone involved in the worker's rehabilitation in an independent way.

30 Role of approved rehabilitation provider—establishing personal injury plan

- (1) This regulation applies if an approved rehabilitation provider helps to establish a personal injury plan for an injured worker.
- (2) The approved rehabilitation provider must actively help the employer and worker to cooperate, and take part, in the development of the personal injury plan.

Examples of active help

- 1 arranging a meeting with the employer and worker
 - 2 giving information to the employer and worker about personal injury plans.
- (3) The approved rehabilitation provider must have regard to—
 - (a) the medical evidence about the worker; and
 - (b) if a timetable for rehabilitation is recommended by the worker's nominated treating doctor—the timetable; and
 - (c) any relevant approved medical guidelines or clinically relevant research.
 - (4) The approved rehabilitation provider must—
 - (a) initiate proposals for suitable duties for the worker; and
 - (b) initiate proposals for the worker's return to suitable work; and
 - (c) identify any psycho-social factors affecting the worker; and
 - (d) identify any other factor inhibiting the worker's vocational rehabilitation; and
 - (e) develop reasonable strategies to deal with any factor inhibiting the worker's vocational rehabilitation.
 - (5) The approved rehabilitation provider must try to ensure that the personal injury plan—
 - (a) meets the needs of the particular worker; and
 - (b) takes into account the medical evidence about the worker; and

- (c) takes into account any timetable for rehabilitation recommended by the worker's nominated treating doctor; and
 - (d) takes into account any relevant approved medical guidelines or clinically relevant research.
- (6) In this regulation:
- employer* means an employer other than a non-business employer.
- non-business employer*—see the Act, dictionary.

31 Protocol about vocational rehabilitation

- (1) The Minister may, in writing, approve a protocol about vocational rehabilitation.
- (2) An approved protocol is a notifiable instrument.

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

Division 5.5 Action against rehabilitation providers

32 Notice of proposed action on rehabilitation provider's approval

If the Minister proposes to take action (the *proposed action*) mentioned in regulation 33 (2) in relation to a rehabilitation provider, or to revoke the provider's approval, the Minister must give the provider a notice—

- (a) stating the proposed action; and
- (b) stating the grounds for the proposed action; and
- (c) inviting the provider to make written representations, within a stated period of not less than 14 days after the day the provider is given the notice, about why the proposed action should not be taken.

33 Action other than revocation of rehabilitation provider's approval

- (1) This regulation applies to an approved rehabilitation provider if—
 - (a) the provider—
 - (i) fails to adequately fulfil the role of approved rehabilitation provider; or
 - (ii) fails to comply with a condition of the provider's approval; and
 - (b) the Minister has given the provider notice under regulation 32.
- (2) After considering any written representation made by the rehabilitation provider within the period for representations stated in the notice, the Minister may—
 - (a) if the proposed action is to suspend the approval for a stated period—suspend the approval for not longer than the period, or do 1 or more of the things mentioned in paragraph (b); or
 - (b) if the proposed action is to do a thing mentioned in this paragraph—do 1 or more of the following:
 - (i) order the provider to pay to the Territory a financial penalty of not more than \$1 000;
 - (ii) impose a condition on the provider's approval (for example, by including a condition providing for increased supervision of the provider by the Minister);
 - (iii) censure the provider;
 - (iv) order the provider to take remedial action.
- (3) The Minister must tell the provider in writing about the decision—
 - (a) if the decision is to take action other than suspension—in a way that complies with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1); or

(b) if the decision is to suspend the provider's approval—under regulation 35 (What if Minister decides to suspend or revoke rehabilitation provider's approval?).

(4) In this regulation:

proposed action—see regulation 32 (Notice of proposed action on rehabilitation provider's approval).

34 Revocation of rehabilitation provider's approval

(1) This regulation applies to an approved rehabilitation provider if the provider—

(a) fails to—

(i) adequately fulfil the role of approved rehabilitation provider; or

(ii) comply with a condition of the provider's approval; and

(b) the Minister has done a thing mentioned in regulation 33 (2) (Action other than revocation of rehabilitation provider's approval), but the failure continues or is repeated; and

(c) the Minister gives notice under regulation 32 (Notice of proposed action on rehabilitation provider's approval) that the Minister proposes to revoke the approval.

(2) After considering any written representation made by the rehabilitation provider within the period for representations stated in the notice, the Minister may—

(a) do 1 or more of the things mentioned in regulation 33 (2); or

(b) revoke the provider's approval.

(3) The Minister must tell the provider in writing about the decision—

(a) if the decision is to take action other than suspension or revocation—in a way that complies with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1); or

- (b) if the decision is to suspend or revoke the provider's approval—under regulation 35.

35 What if Minister decides to suspend or revoke rehabilitation provider's approval?

- (1) If the Minister decides to suspend or revoke a rehabilitation provider's approval, the Minister must tell the provider in writing about the decision and when the suspension or revocation takes effect.

Note The Minister's notice must comply with the requirements of the Act, section 208.

- (2) The suspension or revocation must not take effect earlier than 7 days after the day the rehabilitation provider is told about the decision.
- (3) If the Minister suspends a rehabilitation provider's approval, the provider is, during the suspension—
- (a) taken not to be an approved rehabilitation provider; and
 - (b) disqualified from applying for approval as a rehabilitation provider.
- (4) The Minister may, at any time, by written notice to the rehabilitation provider, end or reduce the period of suspension of the provider's approval.

Part 6 Conciliation

Division 6.1 Appointment and functions of conciliators

36 Appointment of conciliators

- (1) The Minister must appoint conciliators for these regulations.

Note For the making of appointments (including acting appointments), see *Legislation Act 2001*, pt 19.3.

- (2) The Minister may appoint a person as a conciliator only if satisfied that the person has expertise in dispute resolution relating to workers compensation.
- (3) If the OH&S Council sets up an advisory committee mentioned in the Act, section 216 (Minister must take advice), the Minister may ask the committee to give advice about who should be a conciliator.

37 Function of conciliators

- (1) The function of a conciliator is to help injured workers and their employers to reach agreement about matters in issue arising from workers' claims for compensation.
- (2) The conciliator must encourage injured workers and their employers to reach agreements that allow injury management to continue.

Division 6.2 Conciliations

38 When must conciliation be held?

- (1) A conciliation about a matter in issue arising from a worker's claim for compensation must be held before arbitration of the matter.
- (2) This regulation does not apply if the matter in issue is an insurer's rejection of a worker's claim for compensation.

39 Action by conciliator

If a worker or the worker's employer has asked a conciliator to help them reach agreement on a matter in issue arising from the worker's claim for compensation, the conciliator who receives the request must, as soon as practicable—

- (a) set a time and place for the conciliation; and
- (b) tell each party to the conciliation, in writing, about the time and place.

Note For how documents may be served, see *Legislation Act 2001*, pt 18.5.

40 Particulars of matters in issue

- (1) Each party to the conciliation must, at least 7 days before the day for conciliation, give to each other party and the conciliator, written details of the matters in issue arising from the worker's claim for compensation (the *written details document*).

Note For how documents may be served, see *Legislation Act 2001*, pt 18.5.

- (2) The written details document must include information available to a party that the party reasonably believes would help the parties reach agreement about the matter.

41 Parties to attend conciliation

- (1) The parties to a conciliation must attend the conciliation.
- (2) A party's representative may also attend the conciliation.

42 Parties must make genuine effort to agree

At conciliation, the parties must make a genuine effort to reach an agreement that allows injury management to continue for the injured worker.

43 Medical referee and conciliation

- (1) With the agreement of the parties to the conciliation, the conciliator may ask a medical referee to prepare a report to help the parties to reach agreement.

Note Regulation 14 (Medical referee to review medical evidence etc) sets out what a medical referee must do for a conciliation and reg 15 (Medical referee's report) states what a medical referee's report for a conciliation must contain.

- (2) The medical referee must give a copy of the report to the conciliator.
- (3) The conciliator must give a copy of the report to each party.

44 Decision or recommendation by conciliator

- (1) The conciliator may, at any time, decide that a matter in issue arising from the worker's claim for compensation is not suitable for resolution by conciliation.
- (2) If agreement is reached on a matter in issue between the parties to the conciliation, the parties must, with the help of the conciliator, record the agreement in writing.
- (3) If a matter in issue between the parties remains unresolved at the end of the conciliation, the conciliator may make a recommendation about the matter.
- (4) The written details document mentioned in regulation 40 (1), evidence given during a conciliation, or anything said or done during conciliation, must not be admitted in evidence at an arbitration.
- (5) However, any recommendation by the conciliator under subregulation (3) may be admitted in evidence at an arbitration.

45 Costs of conciliation

- (1) The costs and disbursements of, and incidental to, conciliation must be met by the insurer.
- (2) If a party is represented at conciliation by a lawyer, the lawyer may claim from the insurer costs and disbursements in relation to the conciliation.
- (3) The lawyer may claim costs (other than disbursements) payable at 2/3 of the prescribed scale of costs set out in the *Supreme Court Rules*, schedule 4.
- (4) Disbursements are payable in full.
- (5) If a party is represented at conciliation by a representative other than a lawyer, the conciliator may allow the representative to claim from the insurer reasonable expenses for preparing for, and attending, the conciliation.

46 Review by Minister

- (1) The Minister must review the operation of this part as soon as practicable after August 2004.
- (2) A report on the outcome of the review must be presented by the Minister to the Legislative Assembly within 6 months after the completion of the review.
- (3) This regulation expires on the day after the day the report is presented to the Legislative Assembly.

47 Protocol about conciliation

- (1) The Minister may, in writing, approve a protocol about—
 - (a) the administration of conciliations; and
 - (b) the giving of information to the Minister by conciliators or other people about conciliations in a way that maintains the confidentiality of conciliations.

(2) An approved protocol is a notifiable instrument.

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

Part 7 Arbitration

48 **When may application for arbitration be filed?**

An injured worker or the worker's employer may file an application for the arbitration of—

- (a) a matter in issue arising from the worker's claim for compensation only if—
 - (i) the worker or employer has asked a conciliator to help the parties reach agreement on the matter; and
 - (ii) the parties have attended the conciliation; and
 - (iii) either the matter was not resolved at the conciliation or the conciliator decided that the matter was not suitable for conciliation; or
- (b) the insurer's rejection of the worker's claim for compensation.

49 **Commercial Arbitration Act not apply** (ACT WCA sch 4, cl 3)

The *Commercial Arbitration Act 1986* does not apply to an arbitration.

50 **Representative committee already in existence** (ACT WCA sch 4, cl 1)

- (1) This regulation applies to a matter to be decided by arbitration if there is a committee.
- (2) The matter must be decided by arbitration by the committee unless a party to the matter objects to the arbitration by written notice given to the other party before the committee meets to consider the matter.

- (3) However, the committee may refer a matter it is required to arbitrate for arbitration by the Magistrates Court under this part if the committee considers it appropriate to do so.

51 When must Magistrates Court arbitrate matter?

(ACT WCA sch 4, cl 2)

The Magistrates Court must arbitrate a matter if—

- (a) there is no committee; or
- (b) there is a committee but—
 - (i) a party to the matter objects to the matter being arbitrated by the committee; or
 - (ii) the committee refers the matter to the court for arbitration; or
 - (iii) the committee fails to decide the matter within 1 month after the day the claim the matter arises from is made.

52 Committee may refer questions of law

(ACT WCA sch 4, cl 3)

A committee may refer a question of law to the Magistrates Court.

53 Powers of Magistrates Court on arbitration

(ACT WCA sch 4, cl 4)

For a proceeding on an arbitration, the Magistrates Court has the same power to require the attendance of witnesses and the production of documents as it would have if the proceeding were an action in the court.

54 Medical referees (ACT WCA sch 4, cl 5, cl 14)

- (1) The Magistrates Court or a committee may ask a medical referee to help the court or committee to assess a medical matter during an arbitration.
- (2) The Magistrates Court or committee may ask a medical referee to report on a medical matter during, or arising from, an arbitration.

55 Only 1 medical referee for arbitration

- (1) The same medical referee must help the Magistrates Court or a committee throughout an arbitration.
- (2) However, another medical referee may help the Magistrates Court or committee if the medical referee is unavailable for any reason.

56 Procedure on arbitration (ACT WCA sch 4, cl 6A)

- (1) This regulation applies to an arbitration unless the Act or rules expressly state otherwise.
- (2) The Magistrates Court or a committee may decide its own procedures.
- (3) The Magistrates Court or a committee need not act in a formal way and is not bound by rules of evidence.
- (4) The Magistrates Court or a committee may inform itself about anything in the way it considers appropriate.
- (5) The Magistrates Court or a committee must act according to equity, good conscience and the substantial merits of the matter being arbitrated, without regard to technicalities and legal forms.

57 Costs (ACT WCA sch 4, cl 7)

- (1) The successful party to an arbitration or related proceeding is entitled to be indemnified for party and party costs (including reasonable disbursements) by the unsuccessful party, unless the Magistrates Court or a committee otherwise orders.
- (2) However, the Magistrates Court or committee must not award the costs of, or incidental to, an arbitration or related proceeding (including reasonable disbursements) against someone claiming compensation honestly in the arbitration or proceeding.
- (3) The costs of, and incidental to, an arbitration or related proceeding are payable at 2/3 of the prescribed scale of costs set out in the *Supreme Court Rules*, schedule 4, unless the Magistrates Court or a committee otherwise orders.
- (4) Costs must be taxed, unless the parties otherwise agree.
- (5) Disbursements are payable in full.

58 Claim against arbitration award (ACT WCA sch 4, cl 13)

- (1) This regulation applies if a worker is paid an amount of compensation on arbitration.
- (2) The worker's lawyer or the lawyer's agent may claim costs in relation to the arbitration, or claim a lien in relation to the costs, from the compensation only if, on application by the worker, lawyer or agent, the Magistrates Court or committee awards the lawyer or agent the costs.
- (3) Costs to be awarded to the lawyer or the lawyer's agent—
 - (a) are payable at 2/3 of the prescribed scale of costs set out in the *Supreme Court Rules*, schedule 4, unless the Magistrates Court or committee otherwise orders; and
 - (b) must be taxed.

Part 8 Compulsory insurance policies—contents

59 Definitions for pt 8

In this part:

employer, in relation to a compulsory insurance policy, means the employer to whom the policy was issued.

insurer, in relation to a compulsory insurance policy, means the insurer who issued the policy.

60 Insurer to indemnify employer

- (1) The compulsory insurance policy must provide that the insurer will indemnify the employer against any compensation the employer is liable to pay under the Act.
- (2) However, the compulsory insurance policy must provide that the insurer will not indemnify the employer for any amount for which the Act expressly states that the employer is not to be indemnified.

Note The employer is liable to pay any amount incurred between the time by which the employer must tell the insurer that an injury has happened and the time the employer tells the insurer that the injury has happened and may not be indemnified by the insurer for the amount (see the Act, s 9).

61 Insurer to notify renewal

The compulsory insurance policy must provide that the insurer must notify the employer when the policy will end at least 30 days before the day the policy is to end.

62 Insurer to tell employer about certain obligations

The compulsory insurance policy must provide that the insurer must tell the employer about the employer's obligations under the following sections of the Act within 14 days after the day the policy is issued:

- section 156 (Information for insurers before renewal);
- section 157 (Information for insurers after end of policy);
- section 158 (Information for insurers about reporting period);
- section 159 (Information for insurers after cancellation).

63 Services to be provided under policy

The compulsory insurance policy must include a description of the services to be provided under the policy and when they will be provided.

64 Cancellation of insurance policy

The compulsory insurance policy must include a statement that the policy may only be cancelled by the insurer in accordance with a protocol approved by the Minister.

65 Compliance with Act by employer

The compulsory insurance policy must include a provision that states that the employer must comply with the Act, chapter 5 (Injury management process) and section 126 (Action by employer in relation to claims).

66 Result of under-reporting of wages by employer

- (1) The compulsory insurance policy must provide that the employer must pay the insurer the amount mentioned in subregulation (2) if—
 - (a) the employer, to obtain insurance from the insurer, has told the insurer the employer is paying a stated amount of wages; and
 - (b) the amount of wages the employer is paying is at least 10% more than the amount the employer told the insurer.

- (2) The amount payable to the insurer is the amount equal to double the difference between the premium the employer paid and the premium the employer would have paid if the employer had told the insurer the true amount of wages the employer was paying.

67 Insurance policy may contain other provisions

The compulsory insurance policy may contain any other provision the parties agree to if the provision is not inconsistent with the Act, these regulations or the rules.

Part 9 Approved insurers

Division 9.1 Approval of insurers

68 Application for approval of insurers

- (1) An application for approval as an insurer must contain or be accompanied by the following:
 - (a) a written statement by the insurer that the insurer will be able to meet present and future claims under the Act for which the insurer is, or is expected to be, liable;
 - (b) evidence that the insurer has a place of business in the ACT, and the place's address;
 - (c) if the insurer has, or is applying for, a corresponding approval—evidence of the approval or application;
 - (d) evidence that the insurer has unlimited reinsurance for a single event to cover the insurer's future liability under the Act;
 - (e) a copy of the insurer's annual report and balance sheet (or, if either is not available, equivalent information) for each of the previous 3 years;
 - (f) a written agreement by the insurer to allow the Minister to discuss the affairs and performance of the insurer with Commonwealth or State Ministers responsible for workers compensation or corporate or prudential regulation;
 - (g) a written agreement by the insurer to allow, and pay the costs of, an audit by the Minister to establish that the insurer has adequate resources to meet the insurer's current and expected liabilities under the Act;
 - (h) a written statement by the insurer that the insurer will be able to meet its obligations under the Act in relation to injury management programs and personal injury plans;

- (i) a written agreement by the insurer to allow, and pay the costs of, an investigation by the Minister to assess the insurer's statement under paragraph (h).

Example for par (h)

An insurer includes in its written statement that it has hired an external provider to establish and maintain its injury management program, and gives details about the arrangement with the provider.

- (2) The Minister may, in writing, require further information from the insurer that provides evidence the insurer—
 - (a) is financially and prudentially sound; or
 - (b) will be able to meet its obligations under the Act in relation to injury management programs and personal injury plans.
- (3) In this regulation:

corresponding approval means an approval under a State law that has the same effect, or substantially the same effect, as an approval under this part.

69 When must Minister not approve insurer?

The Minister may approve an insurer only if satisfied—

- (a) the insurer is financially and prudentially sound; and
- (b) the insurer, if approved, will—
 - (i) be able to meet the insurer's current and expected liabilities under the Act; and
 - (ii) be able to meet the insurer's obligations under the Act in relation to injury management programs and personal injury plans; and
 - (iii) comply with the conditions on the approval.

70 How long does insurer's approval last?

The Minister may approve an insurer under this part for not longer than 3 years.

71 What must insurer's approval state?

An insurer's approval must state the insurer's name and the length of the approval.

Division 9.2 Conditions on insurers

72 Information about ability to meet liabilities etc

- (1) It is a condition of an insurer's approval that the insurer gives the Minister information reasonably required in writing by the Minister to allow the Minister to assess—
 - (a) the insurer's continuing ability to meet the insurer's current and expected liabilities under the Act; and
 - (b) whether the insurer continues to be financially and prudentially sound; and
 - (c) the insurer's continuing ability to meet its obligations under the Act in relation to injury management programs and personal injury plans.

73 Information about workers compensation

It is a condition of an insurer's approval that the insurer gives information reasonably required in writing by the Minister about claims that have been made against the insurer under the Act.

74 Information on working out premiums

- (1) It is a condition of an insurer's approval that—
 - (a) on written request by the Minister, the insurer gives the Minister, in writing, any relevant information about how the insurer works out premiums for compulsory insurance policies; and
 - (b) the insurer must give information under paragraph (a) within the period stated in the request that is not less than 21 days after the day the Minister asked for the information.
- (2) In this regulation:

relevant information means information the Minister is satisfied, on reasonable grounds, will help the Minister to decide whether premiums are being worked out in accordance with the principles for working out premiums under regulation 75.

75 Principles for working out premiums

- (1) In working out premiums, an insurer must—
 - (a) provide for sufficient (but not excessive) income from premiums to fully fund liabilities arising from policies of insurance to which the premiums relate; and
 - (b) ensure that premiums are structured so as to minimise, as far as reasonably practicable, the cross subsidisation of premium rating groups.
- (2) For this regulation, there is sufficient income from premiums to fully fund the liabilities to which the premiums relate if the premiums are sufficient to do all of the following:
 - (a) fully fund claims liabilities arising from the insurance policies to which the premiums relate;
 - (b) pay all acquisition, policy administration and claims settlement expenses of the insurer;

- (c) provide a profit margin after the payment of claims, costs and expenses that represents an adequate return on capital invested and compensation for the risk taken;
 - (d) provide for anything else that a prudent insurer should, in the circumstances, provide for;
 - (e) provide for contributions or other charges payable by the insurer under the Act.
- (3) An insurer is taken to have complied with subregulation (1) (a) if the insurer provides for sufficient (but not excessive) income from premiums in accordance with actuarial advice about the liability arising from policies of insurance to which the premiums relate.

76 Information to be given quickly

- (1) It is a condition of an insurer's approval that any information required to be given to the Minister is given within 14 days after the day the information is asked for, or within a longer period allowed by the Minister.
- (2) This regulation does not apply to regulation 74 (Information on working out premiums).

77 Action if rehabilitation provider's approval suspended or revoked

It is a condition of an insurer's approval that the insurer must arrange for another rehabilitation provider to be responsible for a worker's vocational rehabilitation under a personal injury plan if—

- (a) the approval of the rehabilitation provider responsible for the worker's rehabilitation under the plan has been suspended or revoked; and
- (b) the insurer is responsible for the personal injury plan for the worker.

78 Compliance with protocols by insurer

It is a condition of an insurer's approval that the insurer complies with any protocol approved by the Minister that relates to insurers.

79 Other conditions on insurers

The Minister may impose on an insurer's approval any condition relating to the insurer's—

- (a) financial and prudential soundness; or
- (b) ability to meet the insurer's current and expected liabilities under the Act; or
- (c) ability to meet the insurer's obligations under the Act in relation to injury management programs and personal injury plans.

Division 9.3 Action against insurers

80 Notice of proposed action on insurer's approval

If the Minister proposes to take action (the *proposed action*), mentioned in regulation 81 (2) (Action other than revocation of insurer's approval) in relation to an insurer, or to revoke the insurer's approval the Minister must give the insurer a notice—

- (a) stating the proposed action; and
- (b) stating the grounds for the proposed action; and
- (c) inviting the insurer to make written representations, within a stated period of not less than 14 days after the day the insurer is given the notice, about why the proposed action should not be taken.

81 Action other than revocation of insurer's approval
(NSW WIMWCA s 55 (2)-(8))

- (1) This regulation applies to an approved insurer if—
 - (a) the insurer—
 - (i) contravenes the Act, section 112 (Compliance by insurers) or another provision of the Act; or
 - (ii) is unable to meet the insurer's current and expected liabilities under the Act; or
 - (iii) no longer has unlimited reinsurance for a single event to cover the insurer's expected liability under the Act; or
 - (iv) no longer has a place of business in the ACT; or
 - (v) fails to comply with a condition on the insurer's approval; and
 - (b) the Minister has given the insurer notice under regulation 80 (Notice of proposed action on insurer's approval).
- (2) After considering any written representations made by the insurer within the period for representations stated in the notice, the Minister may—
 - (a) if the proposed action is to suspend the approval for a stated period—suspend the approval for not longer than the period, or do 1 or more of the things mentioned in paragraph (b); or
 - (b) if the proposed action is to do a thing mentioned in this paragraph—do 1 or more of the following:
 - (i) order the insurer to pay to the Territory a financial penalty of not more than \$1 000;
 - (ii) impose a condition on the insurer's approval (for example, by including a condition providing for increased supervision of the insurer by the Minister);
 - (iii) censure the insurer;

- (iv) order the insurer to take remedial action.
- (3) The Minister must tell the insurer in writing about the decision—
 - (a) if the decision is to take action other than suspension—in a way that complies with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1); or
 - (b) if the decision is to suspend the insurer's approval—under regulation 83 (What if Minister decides to suspend or revoke insurer's approval?).
- (4) In this regulation:
proposed action—see regulation 80 (Notice of proposed action on insurer's approval).

82 Revocation of insurer's approval

- (1) This regulation applies to an insurer's approval if—
 - (a) a matter mentioned in regulation 81 (1) (a) (Action other than revocation of insurer's approval) applies to the insurer; and
 - (b) either—
 - (i) the Minister has done a thing mentioned in regulation 81 (2) (Action other than revocation of insurer's approval), but the matter continues or is repeated; or
 - (ii) the Minister considers the matter serious; and
 - (c) the Minister gives notice under regulation 80 (Notice of proposed action on insurer's approval) that the Minister proposes to revoke the approval.

- (2) After considering any written representation made by the insurer within the period for representations stated in the notice, the Minister may—
- (a) do 1 or more of the things mentioned in regulation 81 (2) (Action other than revocation of insurer’s approval); or
 - (b) revoke the insurer’s approval.
- (3) Without limiting subregulation (1) (b) (ii), a *serious matter* includes the following:
- (a) failing to establish an injury management program under the Act, section 88 (Insurer to establish etc injury management program);
 - (b) failing to give effect to an injury management program under the Act, section 89 (Insurer to give effect to injury management program);
 - (c) failing to establish a personal injury plan for an injured worker under the Act, section 97 (Personal injury plan for worker with significant injury);
 - (d) contravening a direction under the Act, section 114 (Unreasonableness in stopping payment);
 - (e) failing to comply with the Minister’s notice, or giving details that are false or misleading in a material respect, under the Act, section 163 (Provision of information to Minister).
- (4) The Minister must tell the insurer in writing about the decision—
- (a) if the decision is to take action other than suspension or revocation—in a way that complies with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1); or
 - (b) if the decision is to suspend or revoke the insurer’s approval—under regulation 83.

83 What if Minister decides to suspend or revoke insurer's approval?

- (1) If the Minister decides to suspend or revoke an insurer's approval, the Minister must tell the insurer in writing about the decision and when the suspension or revocation takes effect.

Note The Minister's notice must comply with the requirements of the Act, section 208.

- (2) A suspension or revocation must not take effect earlier than 7 days after the day the insurer is told about the decision.
- (3) Subject to the Act, section 146 (Effect of revocation or suspension of approval), if the Minister suspends an insurer's approval, the insurer is, during the suspension—
- (a) taken not to be an approved insurer; and
 - (b) disqualified from applying for approval as an insurer.
- (4) The Minister may, at any time, by written notice to the insurer, end or reduce the period of suspension of the insurer's approval.

84 When does revocation make previous insurance policies not compulsory insurance policies? (ACT WCA s 17B (2))

- (1) If an insurer's approval is revoked, a compulsory insurance policy issued before the revocation is taken not to be a compulsory insurance policy only if a reason for the revocation is the winding-up of the insurer.
- (2) The compulsory insurance policy stops being a compulsory insurance policy 7 days after the day the revocation takes effect.

Part 10 Self-insurers

Division 10.1 Preliminary

85 Meaning of *exemption*

In this part:

exemption means an exemption from an employer's requirement under the Act, section 147 (Compulsory insurance—employers) to maintain a compulsory insurance policy with an approved insurer.

Division 10.2 Exemption by Minister

86 What application for exemption must contain

- (1) An application by an employer for exemption must contain or be accompanied by the following:
 - (a) a written statement by the employer that the employer will be able to meet present and future claims under the Act for which the employer is, or is expected to be, liable;
 - (b) if the employer has, or is applying for, a corresponding exemption—evidence of the exemption or application;
 - (c) evidence that the employer has reinsurance of at least \$500 000 cpi indexed for a single event to cover the employer's future liability under the Act;
 - (d) a copy of the employer's annual report and balance sheet (or, if either is not available, equivalent information) for each of the previous 3 years;
 - (e) an actuarial report;

Note See subreg (3) for what must be included in an actuarial report.

- (f) a guarantee from an authorised deposit-taking institution in favour of the nominal insurer for the guaranteed amount in relation to the employer;

Note The guaranteed amount is defined in subreg (4).

- (g) a written agreement by the employer to allow the Minister to discuss the affairs and performance of the employer with Commonwealth or State Ministers responsible for workers compensation or corporate or prudential regulation;
- (h) a written agreement by the employer to allow, and pay the cost of, an audit conducted on behalf of the Minister to establish that the employer has adequate resources to meet the employer's expected liabilities under the Act;
- (i) a copy of the employer's OH&S policy and evidence that it has been brought to the attention of the employer's workers;
- (j) the name, address in the ACT and telephone number of a person nominated by the employer to be the contact officer who is to give information about claims under the Act to the Minister;
- (k) evidence that the employer has in place an occupational health and safety management system that complies with Australian Standard 4801;

Note Australian Standard 4801 is *Occupational Health and Safety Management Systems—specification with guidance for use*.

- (l) a written statement by the employer that the employer will be able to meet its obligations under the Act in relation to injury management programs and personal injury plans;
- (m) a written agreement by the employer to allow, and pay the cost of, an investigation by the Minister to assess the employer's statement under paragraph (l).

- (2) The Minister may, in writing, require further information from the employer that provides evidence the employer—
- (a) is financially and prudentially sound; or
 - (b) will be able to meet the employer’s obligations under the Act in relation to injury management programs and personal injury plans.
- (3) For subregulation (1) (e), the actuarial report must contain the following:
- (a) an estimate of the employer’s current outstanding liability in relation to compensable injuries);
 - (b) an estimate of the total of the employer’s expected liability for each year in relation to which the employer is applying to be a self-insurer;
 - (c) an estimate of the total of the expected payments in satisfaction of the employer’s liability for compensable injuries that will be made for each year in relation to which the employer is applying to be a self-insurer.
- (4) For subregulation (1) (f), the ***guaranteed amount*** is the greater of the following amounts:
- (a) \$750 000; or
 - (b) an amount calculated by an actuary to be the estimate of outstanding claims liability at the balance date, plus a prudential margin of 30%.
- (5) The *Legislation Act 2001*, section 47 (5) and (6) does not apply to the Australian Standard mentioned in subregulation (1) (k).
- (6) In this regulation:
- corresponding exemption*** means an exemption under a State law that has the same effect, or substantially the same effect, as an exemption under this part.

cpi indexed—see the Act, section 20 (Meaning of *cpi indexed* and *awe indexed*).

OH&S policy, of an employer, means a policy developed and maintained by the employer under the *Occupational Health and Safety Act 1989*, section 27 (2) (e).

87 Minister may exempt (ACT WCA s 17C (1)–(2))

- (1) On application under regulation 86 (What application for exemption must contain), the Minister may, in writing, exempt the employer from the requirement to comply with the Act, section 147 (1).
- (2) However, the Minister may exempt the employer only if satisfied—
 - (a) the employer is financially and prudentially sound; and
 - (b) the employer, if exempted, will—
 - (i) be able to meet the employer’s current and expected liabilities under the Act; and
 - (ii) be able to meet the employer’s obligations under the Act in relation to injury management programs and personal injury plans; and
 - (iii) comply with the conditions on the exemption.

Division 10.3 Conditions on exemptions

88 Giving information about workers compensation, vocational rehabilitation and occupational health and safety

It is a condition of an exemption that the employer gives information to the Minister reasonably required in writing by the Minister about workers compensation, vocational rehabilitation and occupational health and safety in relation to the employer to allow the Minister to assess the employer’s continuing suitability to be a self-insurer.

89 Action if rehabilitation provider's approval suspended or revoked

It is a condition of an exemption that the employer must arrange for another rehabilitation provider to be responsible for a worker's vocational rehabilitation under a personal injury plan if—

- (a) the approval of the rehabilitation provider responsible for the worker's rehabilitation under the plan has been suspended or revoked; and
- (b) the employer is responsible for the personal injury plan for the worker.

90 Compliance with protocols by self-insurer

It is a condition of an exemption that the employer complies with any protocol approved by the Minister that relates to self-insurers.

91 Other conditions on exemptions

The Minister may impose on an employer's exemption any condition relating to the employer's (the *self-insurer*)—

- (a) financial and prudential soundness; or
- (b) ability to meet the self-insurer's current and expected liabilities under the Act; or
- (c) ability to meet the self-insurer's obligations under the Act in relation to injury management programs and personal injury plans.

Division 10.4 Action against self-insurers

92 Notice of proposed action against self-insurer (ACT WCA s 17C (3))

If the Minister proposes to take action (the *proposed action*) mentioned in regulation 93 (Action other than revocation of self-insurer's exemption) in relation to a self-insurer, or to revoke the self-insurer's exemption, the Minister must give the self-insurer a notice—

- (a) stating the proposed action; and
- (b) stating the grounds for the proposed action; and
- (c) inviting the self-insurer to make written representations, within a stated period of not less than 14 days after the day the self-insurer is given the notice, about why the proposed action should not be taken.

93 Action other than revocation of self-insurer's exemption (ACT WCA s 17C (4) (a); NSW WIMWCA s 55 (2)-(8))

- (1) This regulation applies to a self-insurer if—
 - (a) the self-insurer—
 - (i) contravenes the Act, section 112 (Compliance by insurers) or another provision of the Act; or
 - (ii) is unable to meet the self-insurer's current and expected liabilities under the Act; or
 - (iii) no longer has reinsurance of at least \$500 000 cpi indexed for a single event to cover the employer's future liability under the Act; or
 - (iv) does not have the guarantee from an authorised deposit-taking institution mentioned in regulation 86 (1) (f) (What application for exemption must contain); or

- (v) fails to comply with a condition on the self-insurer's exemption; and
 - (b) the Minister has given the self-insurer notice under regulation 92 (Notice of proposed action against self-insurer).
- (2) After considering any written representation made by the self-insurer within the period for representations stated in the notice, the Minister may—
- (a) if the proposed action is to suspend the self-insurer's exemption for a stated period—suspend the exemption for not longer than the period, or do 1 or more of the things mentioned in paragraph (b); or
 - (b) if the proposed action is to do a thing mentioned in this paragraph—do 1 or more of the following:
 - (i) order the self-insurer to pay to the Territory a financial penalty of not more than \$1 000;
 - (ii) impose a condition on the self-insurer's exemption (for example, by including of a condition providing for increased supervision of the self-insurer by the Minister);
 - (iii) censure the self-insurer;
 - (iv) order the self-insurer to take remedial action.
- (3) The Minister must tell the self-insurer in writing about the decision—
- (a) if the decision is to take action other than suspension—in a way that complies with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1); or
 - (b) if the decision is to suspend the self-insurer's exemption—in accordance with regulation 95 (What if Minister decides to suspend or revoke self-insurer's exemption?).

(4) In this regulation:

proposed action—see regulation 92 (Notice of proposed action against self-insurer).

94 Revocation of self-insurer's exemption (ACT WCA s 17C (4) (b))

- (1) This regulation applies to a self-insurer if—
- (a) a matter mentioned in regulation 93 (1) (a) (Action other than revocation of self-insurer's exemption) applies to the self-insurer; and
 - (b) the Minister has done a thing mentioned in regulation 93 (2), but the matter continues or is repeated; and
 - (c) the Minister gives notice under regulation 92 (Notice of proposed action against self-insurer) that the Minister proposes to revoke the exemption.
- (2) After considering any written representation made by the self-insurer within the period for representations stated in the notice, the Minister may—
- (a) do 1 or more of the things mentioned in regulation 93 (2); or
 - (b) revoke the self-insurer's exemption.
- (3) The Minister must tell the self-insurer in writing about the decision—
- (a) if the decision is to take action other than suspension or revocation—in a way that complies with the requirements of the code of practice in force under the *Administrative Appeals Tribunal Act 1989*, section 25B (1); or
 - (b) if the decision is to suspend or revoke the self-insurer's exemption—in accordance with regulation 95.

95 What if Minister decides to suspend or revoke self-insurer's exemption? (ACT WCA s 17C (5))

- (1) If the Minister decides to suspend or revoke a self-insurer's exemption, the Minister must tell the self-insurer in writing about the decision and when the suspension or revocation takes effect.

Note The Minister's notice must comply with the requirements of the Act, section 208.

- (2) A suspension or revocation must not take effect earlier than 7 days after the day the self-insurer is told about the decision.
- (3) If the Minister suspends a self-insurer's exemption, the self-insurer is, during the suspension—
- (a) taken not to be a self-insurer; and
 - (b) disqualified from applying for an exemption.
- (4) The Minister may, at any time, by written notice to the self-insurer, end or reduce the period of suspension of the self-insurer's exemption.

Part 11 Miscellaneous

96 **Diseases related to employment** (ACT WC Regs r 13)

For the Act, section 28 (Employment-related diseases), a disease of a kind mentioned in an item in schedule 1, column 2 is related to employment of a kind mentioned in column 3 of the item.

97 **Prescribed offences and fines** (ACT WC Regs r 16)

- (1) For the Act, chapter 12 (On-the-spot fines), a prescribed offence is an offence against a provision of the Act mentioned in an item in schedule 2, column 2.
- (2) For the definition of *on-the-spot fine* in the Act, section 198 (Definitions for ch 12), the prescribed fine in relation to an offence prescribed by subregulation (1) is the fine specified in column 3 of the item in schedule 2 that relates to the offence.

98 **Reviewable decisions**

For the definition of *reviewable decision* in the Act, section 208 (1) (Notice of reviewable decisions to be given to affected people), the decisions of the Minister mentioned in schedule 3 are reviewable decisions.

99 **Court approved termination** (ACT WCA s 26E and 26F)

- (1) This regulation applies if an insurer intends to apply to the Magistrates Court under the Act, section 132 (Rejecting claims from 1 year) for leave to end payments of weekly compensation to a worker.

Note An insurer must apply to the Magistrates Court if the insurer wants to end payments of compensation 1 year or longer after the claim is made (see the Act, s 132).

- (2) The insurer must give the worker notice of the insurer's intention to apply to the Magistrates Court for leave.
- (3) The insurer must give a copy of the notice under subregulation (2) to the nominal insurer as soon as practicable.

Maximum penalty: 5 penalty units.

- (4) If the Magistrates Court is satisfied that the worker is not entitled to receive weekly compensation, the court must give leave to the insurer to end payment of the compensation to the worker after a stated day that is at least 8 weeks after the day the insurer gave the worker notice under subregulation (2).

100 Approved protocols about certain documents and information

- (1) The Minister may, in writing, approve a protocol about the requirements for or contents of—
 - (a) a form for a claim; or
 - (b) the register; or
 - (c) an injury notice; or
 - (d) any other document (other than approved forms) mentioned in the Act that is used in relation to injury management or claims by injured workers.

- (2) The Minister may, in writing, approve a protocol about the form in which information required under the Act or these regulations must be given.

- (3) An approved protocol is a notifiable instrument.

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

- (4) In this regulation:

injury notice—see the Act, section 93 (Early notification of workplace injury).

register—see the Act, section 92 (Register of injuries).

101 Repeal

The *Workers Compensation Regulations 1946* SL No 4 are repealed.

Schedule 1 Diseases related to employment

(see reg 96)

column 1 item	column 2 disease	column 3 employment
1	ankylostomiasis	employment in or about a mine
2	anthrax	employment in relation to— (a) animals infected with anthrax; or (b) animal carcasses or parts of such carcasses; or (c) wool, hair, bristles, hides or skins; or (d) loading, unloading or transport of animals, animal carcasses or parts of such carcasses, wool, hair, bristles, hides or skins
3	asbestosis	employment involving exposure to, or contact with, asbestos
4	chrome ulceration of skin or mucous membrane; any of the sequelae of such an ulceration	employment involving exposure to or contact with— (a) chromic acid; or (b) bichromate of— (i) ammonium; or (ii) potassium; or (iii) sodium, or a preparation containing any of those substances
5	mesothelioma	employment involving exposure to, or contact with, asbestos

column 1 item	column 2 disease	column 3 employment
6	pathological condition caused by— (a) radium or another radioactive substance; or (b) x-rays	employment involving exposure to or contact with radium, other radioactive substances or x-rays
7	pneumoconiosis	employment involving inhalation of matter capable of causing pneumoconiosis
8	poisoning by antimony or a compound of antimony; any of the sequelae of such a poisoning	employment involving exposure to or contact with antimony, a compound of antimony or a preparation containing antimony or such a compound
9	poisoning by arsenic or a compound of arsenic; any of the sequelae of such a poisoning	employment involving exposure to or contact with arsenic, a compound of arsenic or a preparation containing arsenic or such a compound
10	poisoning by benzene, a homologue of benzene or a nitro-derivative or amido-derivative of benzene; any of the sequelae of such a poisoning	employment involving exposure to or contact with benzene, a homologue of benzene or a nitro-derivative or amido-derivative of benzene
11	poisoning by beryllium or a compound of beryllium; any of the sequelae of such a poisoning	employment involving exposure to or contact with beryllium, a compound of beryllium or a preparation containing beryllium or such a compound
12	poisoning by cadmium or a compound of cadmium; any of the sequelae of such a poisoning	employment involving exposure to or contact with cadmium, a compound of cadmium or a preparation containing cadmium or such a compound
13	poisoning by carbon bisulphide	employment involving exposure to or contact with carbon bisulphide
14	poisoning by carbon monoxide	employment involving exposure to carbon monoxide

Schedule 1 Diseases related to employment

column 1 item	column 2 disease	column 3 employment
15	poisoning by copper or a compound of copper; any of the sequelae of such a poisoning	employment involving exposure to or contact with copper, a compound of copper or a preparation containing copper or such a compound
16	poisoning by a halogen derivative of a hydrocarbon of the aliphatic series	employment involving exposure to or contact with a halogen derivative of a hydrocarbon of the aliphatic series
17	poisoning by hydrogen cyanide or a compound of hydrogen cyanide	employment involving exposure to or contact with hydrogen cyanide, a compound of hydrogen cyanide or a preparation containing hydrogen cyanide or such a compound
18	poisoning by hydrogen sulphide	employment involving exposure to hydrogen sulphide
19	poisoning by lead or a compound of lead; any of the sequelae of such a poisoning	employment involving exposure to or contact with lead, a compound of lead or a preparation containing lead or such a compound
20	poisoning by manganese or a compound of manganese; any of the sequelae of such a poisoning	employment involving exposure to or contact with manganese, a compound of manganese or a preparation containing manganese or such a compound
21	poisoning by mercury or a compound of mercury; any of the sequelae of such a poisoning	employment involving exposure to or contact with mercury, a compound of mercury or a preparation containing mercury or such a compound
22	poisoning by an oxide of nitrogen; any of the sequelae of such a poisoning	employment involving contact with nitric acid or the inhalation of oxides of nitrogen
23	poisoning by phosphorus or a compound of phosphorus; any of the sequelae of such a poisoning	employment involving exposure to or contact with phosphorus, a compound of phosphorus or a preparation containing phosphorus or such a compound
24	poisoning by vanadium or a compound of vanadium; any of the sequelae of such a poisoning	employment involving exposure to or contact with vanadium, a compound of vanadium or a preparation containing vanadium or such a compound

column 1 item	column 2 disease	column 3 employment
25	poisoning by zinc or a compound of zinc; any of the sequelae of such a poisoning	employment involving exposure to or contact with zinc, a compound of zinc or a preparation containing zinc or such a compound
26	primary epitheliomatous cancer of the skin	employment involving exposure to or contact with tar, pitch, bitumen, mineral oil, paraffin or a compound, product, or residue of any of those substances
27	Q fever	employment involving exposure to or contact with <i>Coxiella burnetii</i>
28	tenosynovitis	employment which requires repetitive movements of a hand and forearm

Schedule 2 On-the-spot fines

(see reg 97)

column 1 item	column 2 offence	column 3 fine
1	section 147 (1) (a)	\$1000
2	section 147 (1) (b)	\$2000

Schedule 3 Reviewable decisions

(see reg 98)

Part 3.1 The Act

column 1 item	column 2 section	column 3 decision
1	18 (3)	refuse to exempt principal from s 18 (2) (which makes commercial volunteers workers)
2	145 (1)	refuse to approve insurer

Part 3.2 These regulations

column 1 item	column 2 regulation	column 3 decision
1	17 (1)	refuse to approve person as rehabilitation provider
2	17 (2)	approve rehabilitation provider for less than 3 years
3	28	impose condition on rehabilitation provider's approval
4	33	suspend rehabilitation provider's approval, amend conditions of rehabilitation provider's approval or censure the approved rehabilitation provider
5	34	revoke or suspend rehabilitation provider's approval, amend conditions of rehabilitation provider's approval or censure the approved rehabilitation provider
6	70	approve insurer for less than 3 years
7	79	impose condition on insurer's approval
8	81	suspend insurer's approval, amend conditions of insurer's approval or censure the approved insurer
9	82	suspend or revoke insurer's approval, amend conditions of insurer's approval or censure the approved insurer
10	87	refuse to exempt an employer from requirement to maintain compulsory insurance policy

Schedule 3 Reviewable decisions
Part 3.2 These regulations

column 1 item	column 2 regulation	column 3 decision
11	91	impose condition on employer's exemption
12	93	suspend self-insurer's exemption, amend conditions of self-insurer's exemption or censure the self-insurer
13	94	suspend or revoke self-insurer's exemption, amend conditions of self-insurer's exemption or censure the self-insurer

Dictionary

(see reg 3)

approved insurer—see the Act, dictionary.

approved medical guidelines means medical guidelines approved under regulation 5 (Approval of medical guidelines).

approved rehabilitation provider—see the Act, section 139 (Meaning of approved rehabilitation provider etc).

arbitration means arbitration under the Act.

clinically relevant research—see regulation 6 (Meaning of *clinically relevant research*).

committee—see the Act, dictionary.

compulsory insurance policy—see the Act, section 144 (Meaning of *compulsory insurance policy*).

conciliation means conciliation under the Act.

employer—

- (a) see the Act, dictionary; or
- (b) for part 8 (Compulsory insurance policies—contents)—see regulation 59 (Definitions for pt 8).

evidence-based methodology—see regulation 8 (Meaning of *evidence-based methodology*).

exemption, for part 10 (Self-insurers)—see regulation 85 (Meaning of *exemption*).

injured worker—see the Act, dictionary.

injury management—see the Act, section 86 (Definitions for ch 5).

injury management program—see the Act, section 86 (Definitions for ch 5).

insurer—

- (a) see the Act, dictionary; or
- (b) for part 8 (Compulsory insurance policies—contents)—see regulation 59 (Definitions for pt 8).

medical evidence, for an injured worker, means a record (however described) made in relation to the worker's injury by—

- (a) a doctor; or
- (b) a rehabilitation provider; or
- (c) a dentist, chiropractor, psychologist, masseur, osteopath, physiotherapist, remedial kinesiologist or speech therapist.

medical referee—see the Act, dictionary.

medical specialist means a doctor—

- (a) with specialist qualifications and experience in medicine recognised by the relevant Australian specialist medical college; and
- (b) who practises within the specialty.

nominated treating doctor—see the Act, section 102 (Nomination of doctor for personal injury plan).

OH&S Council—means the Occupational Health and Safety Council established under the *Occupational Health and Safety Act 1989*, section 9.

personal injury plan—see the Act, section 86 (Definitions for ch 5).

protocol—see the Act, dictionary.

psycho-social factor, for part 5 (Rehabilitation providers)—see regulation 16 (Meaning of *psycho-social factor*).

self-insurer—see the Act, dictionary.

specialist medical college means a specialist medical college recognised by the National Specialist Qualification Advisory Council of Australia.

weekly compensation—see the Act, dictionary.

workplace injury—see the Act, dictionary.

Endnotes

Notification

- 1 Notified under the *Legislation Act 2001* on 28 June 2002.
(see www.legislation.act.gov.au)

Penalty units

- 2 The *Legislation Act 2001*, s 133 deals with the meaning of offence penalties that are expressed in penalty units.

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