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Workplace Injury Rehabilitation and Compensation Act 2013

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Authorised Version No. 053

Workplace Injury Rehabilitation and Compensation Act 2013

No. 67 of 2013

Authorised Version incorporating amendments as at 15 April 2026

The Parliament of Victoria enacts:

Part 1—Preliminary

Division 1—Introductory

1 Purpose

The purpose of this Act is to—

(a) simplify the provisions applying to the rehabilitation of injured workers and compensation in relation to injuries or deaths arising out of accidents and diseases in the workplace on or after 1 July 2014; and

(b) streamline the provisions of the **Accident Compensation Act 1985** which continue to apply in respect of injuries or deaths arising out of accidents and diseases in the workplace before 1 July 2014; and

(c) provide a single gateway for claims for compensation whether under this Act or the **Accident Compensation Act 1985**; and

(d) provide for the registration of employers and the payment of WorkCover premiums; and

(e) repeal the **Accident Compensation (WorkCover Insurance) Act 1993**; and

(f) make consequential amendments to the **Accident Compensation Act 1985**, the **Workers Compensation Act 1958** and certain other Acts.

2 Commencement

S. 2(1) amended by No. 44/2014 s. 6(1).

(1) This Act, other than sections 626, 628(1), (2), (3) and (4), 629, 630(1), (2), (3), (4), (5), (6), (10) and (11), 631, 632, 633, 637(4), 641, 642, 643 and 647, comes into operation on 1 July 2014.

(2) Section 626 (except subsection (7)) and sections 628(2), (3) and (4), 629, 630(1), (2), (4), (5), (10) and (11), 631, 632, 633, 637(4) and 642 come into operation on the day after the day on which this Act receives the Royal Assent.

S. 2(3) substituted by No. 44/2014 s. 6(2).

(3) Sections 630(3) and 641 are deemed to have come into operation on 5 April 2010.

S. 2(4) substituted by No. 44/2014 s. 6(2).

(4) Section 647 is deemed to have come into operation on 1 July 2010.

S. 2(5) substituted by No. 44/2014 s. 6(2).

(5) Sections 628(1) and 643 are deemed to have come into operation on 20 October 2010.

S. 2(5A) inserted by No. 44/2014 s. 6(2).

(5A) Section 626(7) is deemed to have come into operation on 1 July 2011.

(6) Section 630(6) is deemed to have come into operation on 1 July 2012.

3 Definitions

In this Act—

accounting records has the same meaning as it has in section 3 of the **Financial Management Act 1994**;

ACCS means the Accident Compensation Conciliation Service established under section 519;

S. 3 def. of *ACCS* inserted by No. 73/2016 s. 11(1)(a).

A.M.A Guides means the American Medical Association's Guides to the Evaluation of Permanent Impairment (Fourth Edition) (other than Chapter 15) as modified by this Act and the regulations;

ambulance service means the conveying of a worker by any reasonable means—

(a) for the purpose of receiving medical or hospital services; or

(b) to the worker's place of residence after receiving medical or hospital services;

applicable prescribed percentage, in relation to the amount paid or payable to a class of worker, means the percentage of remuneration prescribed by the regulations as not being attributable to the performance of work by a worker of that class;

apprentice, except in clause 17 of Schedule 1, means an apprentice within the meaning of the **Education and Training Reform Act 2006**;

Arbitration Officer means an Arbitration Officer holding office under section 531;

S. 3 def. of *Arbitration Officer* inserted by No. 15/2021 s. 4(a).

authorised agent means a person appointed by the Authority under section 501 as an authorised agent;

Authority means the Victorian WorkCover Authority continued in existence by section 491(1);

Board means the Board of Management of the Authority;

books includes any document;

Note

See the definition of ***document*** in section 38 of the **Interpretation of Legislation Act 1984**.

S. 3 def. of *Conciliation Officer* amended by No. 73/2016 s. 11(1)(b), substituted by No. 15/2021 s. 4(b).

Conciliation Officer means a Conciliation Officer holding office under section 531;

S. 3 def. of *Conciliation Service* substituted by No. 73/2016 s. 11(1)(c).

Conciliation Service means the Accident Compensation Conciliation Service established under section 52A of the **Accident Compensation Act 1985** as in force immediately before 1 July 2014;

Convenor means the Convenor of Medical Panels appointed under section 537;

corresponding Authority means a Government department or a statutory authority of the Commonwealth Government, or of the Government of another State or of a Territory, that is responsible for administering a law corresponding to this Act, the **Occupational Health and Safety Act 2004**, the **Dangerous Goods Act 1985** or the **Equipment (Public Safety) Act 1994**;

corrupt conduct has the meaning given in section 4 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

current weekly earnings has the meaning given by section 152;

current work capacity, in relation to a worker, means a present inability arising from an injury such that the worker is not able to return to his or her pre-injury employment but is able to return to work in suitable employment;

declared training program means a training program in respect of which a declaration under clause 2 of Schedule 1 is in force;

dependant means a person who—

(a) at the time of the death of a worker was wholly, mainly or partly dependent on the earnings of the worker; or

(b) would, but for the incapacity of a worker due to an injury, have been wholly, mainly or partly dependent on the earnings of the worker;

disease includes—

(a) any physical or mental ailment, disorder, defect or morbid condition whether of sudden or gradual development; and

(b) the aggravation, acceleration, exacerbation or recurrence of any pre-existing disease;

domestic partner of a person, means—

(a) a person who is in a registered domestic relationship within the meaning of the **Relationships Act 2008** with the person; or

(b) a person to whom the person is not married but with whom the person is living as a couple on a genuine domestic basis (irrespective of gender), taking into account all the circumstances of their relationship, including any one or more of the matters referred to in section 35(2) of the **Relationships Act 2008** as may be relevant in a particular case;

drive includes to be in control, or in charge, of a motor vehicle;

S. 3 def. of *eligible progressive disease* inserted by No. 10/2022 s. 56.

eligible progressive disease means a disease that is declared to be an eligible progressive disease by Order made under section 51A;

eligible subsidiary has the meaning given by section 372;

employer includes—

(a) a person—

(i) for whom a worker works; or

(ii) with whom a worker agrees to perform work—

at the person's direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise; and

(b) a person who is deemed to be an employer under this Act; and

(c) if the services of a worker are temporarily lent or let on hire to another person by, or with the consent of, the person with whom the worker has entered into a contract of employment or apprenticeship or otherwise, the last mentioned person, while the worker is working for that other person; and

(d) the legal personal representative of an employer who is dead;

employer superannuation contribution means any contribution made by an employer in respect of a worker to any scheme or fund for the payment of superannuation, retirement or death benefits including a contribution made by an employer on behalf of the worker under a salary sacrifice agreement or arrangement but excluding—

(a) any contribution in respect of a worker that is not made for the purposes of avoiding a liability on an employer under the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; and

(b) any contribution in respect of a worker which is not made for the purposes of discharging an obligation on an employer under—

(i) an industrial award; or

(ii) a public sector superannuation scheme, agreement or arrangement; or

(iii) any other Commonwealth or State law relating to superannuation; and

(c) any contribution, made by an employer in respect of a worker under a salary sacrifice agreement or arrangement, of a kind or class specified by the Minister by an Order published in the Government Gazette;

exemption limit, in relation to a financial year, means the amount prescribed in the premiums order in respect of that financial year for the purposes of clause 20(3)(d) of Schedule 1;

first entitlement period has the meaning given by section 152;

fringe benefit has the same meaning as in the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth but does not include anything that is prescribed by the regulations not to be a fringe benefit for the purposes of this definition;

full-time worker means a worker who is employed for at least the normal number of hours fixed in any industrial award applicable to the worker or, if there is no applicable award, the prescribed number of hours;

heart attack injury means an injury to the heart, or any blood vessel supplying or associated with the heart, that consists of, is caused by, results in or is associated with any of the following—

(a) any heart attack;

(b) any myocardial infarction;

(c) any myocardial ischaemia;

(d) any angina, whether unstable or otherwise;

(e) any fibrillation, whether atrial, ventricular or otherwise;

(f) any arrhythmia of the heart;

(g) any tachycardia, whether ventricular, supra ventricular or otherwise;

(h) any harm or damage to such a blood vessel or to any associated plaque;

(i) any impairment, disturbance or alteration of blood, or blood circulation, within such a blood vessel;

(j) any occlusion of such a blood vessel, whether the occlusion is total or partial;

(k) any rupture of such a blood vessel, including any rupture of an aneurism of such a blood vessel;

(l) any haemorrhage from such a blood vessel;

(m) any aortic dissection;

(n) any consequential physical harm or damage, including harm or damage to the brain;

(o) any consequential mental harm or damage;

hospital means—

S. 3 def. of *hospital* amended by Nos 26/2014 s. 455(Sch. item 34), 39/2022 s. 884.

(a) a public hospital, denominational hospital, private hospital or public health service within the meaning of the **Health Services Act 1988**; or

(b) a day procedure centre within the meaning of the **Health Services Act 1988**; or

(c) a designated mental health service within the meaning of the **Mental Health and Wellbeing Act 2022**; or

(d) a hospital within the meaning of a law of another State or of a Territory; or

(e) a place within Australia declared by Order of the Governor in Council to be a hospital for the purposes of this Act; or

(f) a place outside Australia approved by the Authority as a hospital for the purposes of this Act;

hospital service includes—

(a) maintenance, attendance and treatment in a hospital; and

(b) the provision by a hospital of—

(i) medical attendance and treatment; and

(ii) nursing attendance; and

(iii) medicines, medical, surgical and other curative materials, appliances or apparatus; and

(iv) any other usual or necessary services provided by a hospital with respect to the treatment of an injury or disease of a worker;

IBAC means the Independent Broad-based Anti-corruption Commission established under section 12 of the **Independent Broad-based Anti-corruption Commission Act 2011**;

IBAC personnel has the same meaning as it has in the **Integrity Oversight Victoria Act 2011**;

S. 3 def. of *IBAC personnel* amended by No. 31/2024 s. 113(Sch. 1 item 44).

incapacity includes—

(a) a disfigurement that is sufficient to affect the earning capacity of a worker or a worker's opportunities for employment; and

(b) in relation to industrial deafness, inability to engage in the worker's own or other suitable employment because of an immediate and substantial risk of increasing the industrial deafness to a level of material disability;

industrial award means—

S. 3 def. of *industrial award* amended by No. 44/2014 s. 24(1).

(a) a fair work instrument (other than an FWC order) within the meaning of the Fair Work Act 2009 of the Commonwealth; or

(b) a transitional instrument within the meaning of the Fair Work (Transitional Provisions and Consequential Amendments) Act 2009 of the Commonwealth;

industrial deafness means any condition of deafness caused by—

(a) exposure; or

(b) continued exposure; or

(c) periods of continued exposure—

to industrial noise;

injury means any physical or mental injury and, without limiting the generality of that definition, includes—

(a) industrial deafness; and

(b) a disease contracted by a worker in the course of the worker's employment (whether at, or away from, the place of employment); and

(c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease;

interest at the prescribed rate means interest at the rate fixed for the time being under section 2 of the **Penalty Interest Rates Act 1983**;

S. 3 def. of *legal practitioner* amended by No. 17/2014 s. 160(Sch. 2 item 113.1).

legal practitioner means an Australian legal practitioner;

S. 3 def. of *lung transplant surgery* inserted by No. 10/2022 s. 56.

lung transplant surgery means the replacement of one or both lungs;

Medical Panel means a Medical Panel constituted under Division 2 of Part 12;

medical practitioner means—

(a) a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student); and

(b) in relation to anything done for the purposes of this Act—

(i) in a place within Australia but outside Victoria, a medical practitioner who is lawfully qualified in that place to do that thing; and

(ii) in a place outside Australia, a medical practitioner who is lawfully qualified in that place to do that thing and who is approved for the purposes of this Act by the Authority or a self-insurer;

medical question means any of the following—

(a) a question as to the nature of a worker's medical condition relevant to an injury or alleged injury;

(b) a question as to the existence, extent or permanency of any incapacity of a worker for work or suitable employment and the question whether a worker is partially or totally incapacitated;

(c) a question as to whether a worker has a current work capacity or has no current work capacity and what employment would or would not constitute suitable employment;

(d) a question as to whether a worker, on a particular date or during a particular period, had no current work capacity and, if not, what employment would, or would not, have constituted suitable employment on that date or during that period;

(e) a question as to whether a worker has no current work capacity and is likely to continue indefinitely to have no current work capacity;

(f) a question as to whether a worker has a current work capacity and, because of the injury, is, and is likely to continue indefinitely, to be incapable of undertaking—

(i) further or additional employment or work; or

(ii) further or additional employment or work that would increase the worker's current weekly earnings—

and, if not so incapable, what further or additional employment or work the worker is capable of undertaking;

(g) a question as to the medical, personal and household or occupational rehabilitation service provided, or to be provided, to a worker for an injury, including a question as to the adequacy, appropriateness or frequency of that service;

(h) a question whether a worker's employment was in fact, or could possibly have been—

(i) a significant contributing factor; or

(ii) a contributing factor—

to an injury or alleged injury, or to a similar injury;

(i) a question as to the extent to which any physical or mental condition, including any impairment, results or resulted from or was or is, materially contributed to by the injury;

(j) a question as to the level of impairment of a worker, including—

(i) a question of the degree of impairment of a worker assessed in accordance with Division 4 of Part 2 of this Act or section 91 of the **Accident Compensation Act 1985**;

(ii) a question as to whether or not that impairment is permanent;

(k) a question as to the amount of the total percentage referred to in section 61(2)(b) of this Act or section 89(3)(b) of the **Accident Compensation Act 1985**;

(l) a question as to whether a worker has an injury which is a total loss mentioned in the Table in Schedule 4 of this Act or the Table in Schedule 3B of the **Accident Compensation Act 1985**;

(m) a question whether a worker's incapacity for work results or resulted from, or is or was materially contributed to by, an injury or alleged injury;

(n) a question prescribed to be a medical question in respect of an application for leave under section 335(2)(d) of this Act or section 134AB(16)(b) of the **Accident Compensation Act 1985**;

(o) a question determined to be a medical question by a court hearing an application for leave under section 335(2)(d) of this Act or section 134AB(16)(b) of the **Accident Compensation Act 1985**;

medical service includes—

(a) attendance, examination or treatment of any kind by a medical practitioner, registered dentist, registered optometrist, registered physiotherapist, registered chiropractor, registered osteopath or registered podiatrist; and

(b) the provision and, as may be necessary from time to time (including at the time of the injury), the repair, adjustment or replacement of crutches, artificial members, orthoses, eyes, teeth or spectacle glasses; and

(c) the provision and, as may be necessary from time to time (including at the time of the injury), the repair, adjustment or replacement of hearing aids of a type approved by the Authority by a person or a class of persons approved by the Authority; and

(d) the provision by a registered pharmacist, on the request of a medical practitioner or registered dentist, of medicines or curative apparatus, appliances or materials; and

(e) the provision, on the request of a medical practitioner, by a person approved by the Authority of any health service approved by the Authority; and

(f) the provision by a medical practitioner, registered dentist, registered optometrist, registered physiotherapist, registered chiropractor, registered osteopath or registered podiatrist of—

(i) a certificate required by the worker, the worker's dependants, an employer, the Authority or a self-insurer; or

(ii) a report authorised by the Authority or a self-insurer—

for any purpose relating to this Act or the **Accident Compensation Act 1985**; and

(g) the provision, at the request of a medical practitioner, hospital or provider of a hospital service, of special food or a special food formula; and

(h) the provision, at the request of a medical practitioner, of room temperature control equipment for a person who is unable to adequately regulate his or her own body temperature; and

(i) the provision, at the request of a medical practitioner, of equipment intended to treat or stabilise any injury; and

Example

Examples of equipment referred to in paragraph (i) include life support equipment, ventilators and special lighting.

(j) the provision of anything needed to operate, run, maintain or repair any equipment referred to in paragraph (h) or (i);

Example

Examples of things referred to in paragraph (j) include electricity, water, lubricating oil and replacement filters and batteries.

member of a family has the meaning given in clause 26 of Schedule 1;

S. 3 def. of *mental injury* inserted by No. 8/2024 s. 4.

mental injury means an injury that—

(a) causes significant behavioural, cognitive or psychological dysfunction; and

(b) is diagnosed by a medical practitioner in accordance with the latest version of the Diagnostic and Statistical Manual of Mental Disorders;

midwife means a person registered—

(a) under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a midwife (other than as a student); and

(b) in the register of midwives kept for that profession;

motor vehicle means a motor vehicle within the meaning of section 3(1) of the **Road Safety Act 1986**;

no current work capacity, in relation to a worker, means a present inability arising from an injury such that the worker is not able to return to work, either in the worker's pre-injury employment or in suitable employment;

non-WorkCover employer has the meaning given by section 413;

notice of penalty means a notice in writing of a penalty payable by an employer under Part 10;

nurse means a person registered under the Health Practitioner Regulation National Law to practise in the nursing and midwifery profession as a nurse (other than as a midwife or as a student);

nursing service means—

(a) a nursing service rendered by a nurse; or

(b) a midwifery service rendered by a midwife—

otherwise than at a hospital or as a member of the nursing staff of a hospital;

occupational rehabilitation service means any of the following services provided by a person who is approved by the Authority as a provider of an occupational rehabilitation service—

(a) initial rehabilitation assessment;

(b) functional assessment;

(c) workplace assessment;

(d) job analysis;

(e) advice concerning job modification;

(f) occupational rehabilitation counselling;

(g) vocational assessment;

(h) advice or assistance concerning job-seeking;

(i) vocational re-education;

(j) advice or assistance in arranging vocational re-education;

(k) advice or assistance in return to work planning;

(l) the provision of aids, appliances, apparatus or other material likely to facilitate the return to work of a worker after an injury;

(m) modification to a work station or equipment used by a worker that is likely to facilitate the return to work of the worker after an injury;

(n) any other service authorised by the Authority—

but does not include a hospital service;

partner means—

(a) in relation to a worker, the worker's spouse or domestic partner; or

(b) in relation to a worker who dies, the worker's spouse or domestic partner at the time of the worker's death;

person under a disability means a person who is incapable by reason of injury, disease, senility, illness, or physical or mental infirmity of managing his or her affairs in relation to a matter or proceeding under this Act or the **Accident Compensation Act 1985**;

personal and household service means the provision of any one or more of the following of a kind or type, and by a person, approved by the Authority—

(a) attendant care;

(b) household help;

(c) transportation costs;

(d) at the request of a medical practitioner, an aid, assistance, appliance, apparatus or service, other than a medical service, hospital service or nursing service;

police officer has the same meaning as in the **Victoria Police Act 2013**;

S. 3 def. of *police officer* inserted by No. 37/2014 s. 10(Sch. item 188.1).

pre-injury average weekly earnings has the meaning given by Division 1 of Part 5;

premium period, in relation to a premiums order, means the period beginning on 1 July 2014 and ending on 30 June 2015 and each succeeding year beginning on 1 July;

premiums order means a premiums order in force under section 448;

professional service means—

(a) a hospital service, medical service, ambulance service, nursing service, accident rescue service, personal and household service or occupational rehabilitation service; or

(b) legal services provided by a legal practitioner; or

(c) a service, provision of goods or any other matter referred to in Division 7 of Part 5 of this Act or Division 2B of Part IV of the **Accident Compensation Act 1985** in relation to the costs of which a liability arises, or may arise, under that Division;

rateable remuneration has the meaning given by clause 24 of Schedule 1;

registered chiropractor means a person registered under the Health Practitioner Regulation National Law to practise in the chiropractic profession (other than as a student);

registered dentist means a person registered—

(a) under the Health Practitioner Regulation National Law to practise in the dental profession as a dentist (other than as a student); and

(b) in the dentists division of that profession;

registered employer means an employer who is registered with the Authority under Part 10;

registered optometrist means a person registered under the Health Practitioner Regulation National Law to practise in the optometry profession (other than as a student);

registered osteopath means a person registered under the Health Practitioner Regulation National Law to practise in the osteopathy profession (other than as a student);

registered physiotherapist means a person registered under the Health Practitioner Regulation National Law to practise in the physiotherapy profession (other than as a student);

registered podiatrist means a person who is registered under the Health Practitioner Regulation National Law to practise in the podiatry profession (other than as a student);

registered psychologist means a person registered under the Health Practitioner Regulation National Law to practise in the psychology profession (other than as a student);

remuneration has the meaning given by Part 2 of Schedule 1;

retirement age, in relation to a worker, means the age at which the worker attains pension age within the meaning of the Social Security Act 1991 of the Commonwealth;

S. 3 def. of *retirement age* substituted by No. 73/2016 s. 11(2).

second entitlement period has the meaning given by section 152;

self-insurer means—

(a) a body corporate that—

(i) is approved as a self-insurer under Division 3 of Part 8; or

(ii) immediately before 1 July 2014, was a self-insurer within the meaning of the **Accident Compensation Act 1985**;

(b) a body corporate that—

(i) has been a self-insurer within the meaning of paragraph (a) or a self-insurer within the meaning of the **Accident Compensation Act 1985** as in force immediately before 1 July 2014; and

(ii) has elected, or entered into an arrangement with the Authority, to retain liability for its tail claims; and

(iii) has not ceased to be liable for those tail claims;

* * * * *

S. 3 def. of *Senior Conciliation Officer* amended by No. 73/2016 s. 11(1)(d), repealed by No. 15/2021 s. 4(c).

S. 3 def. of *serious lung injury* inserted by No. 10/2022 s. 56.

serious lung injury means an injury that requires treatment with lung transplant surgery;

shift allowance means an allowance or loading paid or payable for shift work or working on public holidays, Saturdays or Sundays;

significant contributing factor has the meaning given by clause 25 of Schedule 1;

specified workplace means—

(a) a factory, mine, office, quarry, shop or warehouse; or

(b) a place at which 10 or more workers are engaged in work or from which the work of the workers is managed or controlled;

spouse of a person means a person to whom that person is married;

State average weekly earnings, in relation to compensation payable in a financial year, means the average weekly total earnings of all employees in Victoria in original terms published by the Australian Bureau of Statistics as at 15 June in the preceding financial year in respect of the most recent reference period ending on or before

31 December in that preceding financial year;

stroke injury means an injury to the brain, or any of the blood vessels supplying or associated with the brain, that consists of, is caused by, results in or is associated with any of the following—

(a) any stroke;

(b) any cerebral infarction;

(c) any cerebral ischaemia;

(d) any rupture of such a blood vessel, including any rupture of an aneurism of such a blood vessel;

(e) any subarachnoid haemorrhage;

(f) any haemorrhage from such a blood vessel;

(g) any harm or damage to such a blood vessel or to any associated plaque;

(h) any impairment, disturbance or alteration of blood, or blood circulation, within such a blood vessel;

(i) any occlusion of such a blood vessel, whether the occlusion is total or partial;

(j) any consequential physical harm or damage, including neurological harm or damage;

(k) any consequential mental harm or damage;

student worker means a worker within the meaning of clause 1(1)(a), (b), (c), (d) or (e) of Schedule 1;

suitable employment, in relation to a worker, means employment in work for which the worker is currently suited—

(a) having regard to the following—

(i) the nature of the worker's incapacity and the details provided in medical information including, but not limited to, the certificate of capacity supplied by the worker;

(ii) the nature of the worker's pre-injury employment;

(iii) the worker's age, education, skills and work experience;

(iv) the worker's place of residence;

(v) any plan or document prepared as part of the return to work planning process;

(vi) any occupational rehabilitation services that are being, or have been, provided to or for the worker;

(b) regardless of whether—

(i) the work or the employment is available; or

(ii) the work or the employment is of a type or nature that is generally available in the employment market;

and, for the purposes of Part 4, includes—

(c) employment in respect of which the number of hours each day or week that the worker performs work, or the range of duties the worker performs, is

suitably increased in stages in accordance with return to work planning or otherwise; and

(d) employment the worker is undertaking or that is offered to the worker, regardless of whether the work or the employment is of a type or nature that is generally available in the employment market; and

(e) suitable training or vocational re-education provided by the employer, or under arrangements approved by the employer (whether or not the employer also provides employment involving the performance of work duties), but only if the employer pays an appropriate wage or salary to the worker in respect of the time the worker attends suitable training or vocational re-education;

superannuation benefit has the meaning given by clause 27 of Schedule 1;

transport accident means a transport accident within the meaning of section 3(1) of the **Transport Accident Act 1986**;

twice the State average weekly earnings has the meaning given by section 159(3);

weekly payment means compensation in the form of a weekly payment under Division 2 of Part 5;

WorkCover Authority Fund means the Fund continued in existence under section 513;

worker means an individual—

(a) who—

(i) performs work for an employer; or

(ii) agrees with an employer to perform work—

at the employer's direction, instruction or request, whether under a contract of employment (whether express, implied, oral or in writing) or otherwise; or

(b) who is deemed to be a worker under this Act;

workers compensation cover means insurance or registration required under a law of another State or of a Territory in respect of liability for statutory workers compensation under that law;

workplace particulars, in relation to a record of an injury to a worker entered in the register of injuries, means the following—

(a) the name of the worker;

(b) the worker's occupation or job title;

(c) the time and date of the injury;

(d) the worker's exact location at the time of the injury;

(e) the names of witnesses, if any, to the injury;

(f) the date on which the entry in the register of injuries is made;

(g) the name of the person making the entry.

4 Interpretation provisions

S. 4(1) amended by No. 44/2014 s. 7.

(1) For the purposes of the definition of ***injury***, the employment of a worker is taken to include any travelling or other circumstances referred to in section 46 of this Act, other than subsection (1)(a), or in section 83 of the **Accident Compensation Act 1985**, other than subsection (1)(a).

(2) A reference in this Act to a ***determination*** or ***decision*** includes a reference to—

(a) making, suspending, varying, revoking or refusing or failing to make an order, award, decision or determination; and

(b) giving, suspending, varying, revoking or refusing or failing to give a certificate, direction, approval, consent or permission; and

(c) issuing, suspending, varying, revoking or refusing or failing to issue a licence, authority or other instrument.

(3) Part 1 of Schedule 1 provides that, for the purposes of this Act, certain persons are deemed to be workers or employers.

(4) Part 2 of Schedule 1 contains provisions relating to the meaning of ***remuneration*** for the purposes of this Act.

(5) Part 3 of Schedule 1 contains certain other interpretation provisions for the purposes of this Act.

5 Application of this Act to injuries

(1) Except as otherwise expressly provided in this Act, this Act applies to the entitlement of a worker to compensation under this Act in respect of—

(a) an injury to the worker arising out of, or in the course of, or due to the nature of, employment on or after 1 July 2014; and

(b) an injury arising—

(i) out of, or in the course of, or due to the nature of, employment; and

(ii) by way of gradual process over a period beginning before, and continuing on or after 1 July 2014—

but does not apply to or in relation to an injury arising out of, or in the course of, or due to the nature of, employment solely before 1 July 2014.

(2) If a worker suffers an injury that—

(a) arises out of, or in the course of, or due to the nature of, employment; and

(b) occurs by way of gradual process over a period beginning on or after 20 October 1999 and continuing on or after 1 July 2014—

the worker may rely on any part of the injury that occurred before 1 July 2014 for the purposes of establishing that the injury constitutes a serious injury for the purposes of Division 2 of Part 7.

(3) Subsection (2) does not apply to any part of the injury that was the subject of an application made under section 134AB(4) of the **Accident Compensation Act 1985**.

(4) Division 5 of Part 7 applies in relation to an injury, disease or industrial deafness caused to or suffered by a worker before, on or after 1 July 2014 that has arisen out of, or in the course of, or due to the nature of, any employment in which the worker was employed at any time.

6 Claims for compensation

(1) On and after 1 July 2014, a claim for compensation under this Act or under the **Accident Compensation Act 1985** (other than a claim for compensation for maims or pain and suffering under section 98 or 98A of that Act) is to be given, served or lodged in accordance with Divisions 1 and 2 of Part 2 of this Act, unless specific provision to the contrary is made in this Act or the **Accident Compensation Act 1985**.

(2) If the Authority receives a claim from a person for compensation under the **Workers Compensation Act 1958** in respect of an injury occurring before 4 p.m. on 31 August 1985, the Authority may, in its discretion, provide guidance to the person as to how to make such a claim.

(3) Proceedings may not be brought against the Authority in respect of guidance given, or not given, or anything done, or omitted to be done, in relation to the receipt of a claim referred to in subsection (2).

(4) If a claim for compensation is made under the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** by a dependant of a worker in respect of the death of the worker, a claim for compensation under this Act must not be made unless the first mentioned claim is withdrawn or rejected.

(5) Compensation for the death of a worker is not payable under this Act if compensation for the death of the worker has been paid under the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

(6) Part 6 applies to, and in respect of, any dispute—

(a) arising under this Act in relation to a claim for compensation under this Act; or

(b) arising on or after 1 July 2014 in relation to a claim for compensation under the **Accident Compensation Act 1985**, whether made before, on or after 1 July 2014; or

(c) arising under the **Workers Compensation Act 1958**.

(7) For the purposes of subsection (6)(b), a reference in the **Accident Compensation Act 1985** to Part III of that Act is to be taken to be a reference to Part 6 of this Act.

(8) For the purposes of subsection (6), a dispute concerning a matter arises when—

S. 6(8)(a) amended by Nos 73/2016 s. 21(1), 15/2021 s. 5.

(a) an application for conciliation of the matter is, or was, lodged with ACCS in accordance with section 289A of this Act or section 55 of the **Accident Compensation Act 1985**; or

(b) if the matter is a medical question, when the medical question is, or was, referred to a Medical Panel in accordance with section 304 of this Act or section 65(6A) of the **Accident Compensation Act 1985**; or

(c) when proceedings concerning the matter are instituted in a court or VCAT.

(9) For the purposes of subsection (6), a dispute concerning a matter is concluded when—

S. 6(9)(a) amended by No. 73/2016 s. 21(2).

(a) if the matter was referred for conciliation, ACCS has issued an outcome certificate; or

(b) if the matter was a medical question referred to a Medical Panel, the Medical Panel has given its opinion; or

(c) if the matter was a proceeding instituted in a court or VCAT, all appeal rights in relation to a decision or determination in respect of the matter have been exhausted.

7 Matters affecting entitlement to compensation

(1) Nothing in this Act entitles a worker to compensation under this Act in respect of a disease due to the nature of employment in which the worker was employed unless the worker has been employed in employment of that nature on or after 1 July 2014.

(2) A person is not entitled to receive compensation in the form of weekly payments in respect of the same injury under this Act and under the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

(3) If a worker is entitled to receive weekly payments under this Act and under the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**, or both, at the same time, the sum of the rate of weekly payments received under the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** and the rate of the weekly payments under this Act must not exceed the maximum rate of weekly payments specified in this Act and the amount of weekly payments payable under this Act is reduced accordingly.

(4) If a worker commences, or has commenced, to receive compensation in the form of weekly payments under this Act, the entitlement of the worker to continue to receive weekly payments, and the amount of those payments, depends on the provisions of this Act as in force from time to time.

Note

Entitlement to compensation for an injury to a worker arising out of, or in the course of, or due to the nature of, employment solely before 1 July 2014 will be determined under sections 4 and 4A of the **Accident Compensation Act 1985** or section 1A of the **Workers Compensation Act 1958** as in force from time to time.

8 Act binds the Crown

(1) This Act binds the Crown—

(a) in right of the State of Victoria; and

(b) to the extent that the legislative power of the Parliament permits, in all its other capacities.

(2) To avoid doubt, the Crown is a body corporate for the purposes of this Act and the regulations.

9 Access to information

(1) Subject to this Act, the Authority or a self-insurer must, at the request of a person who has made a claim for compensation, give that person in accordance with this section any information held by the Authority or self-insurer which is relevant to the claim for compensation.

(2) The Authority, a self-insurer or an employer must, at the request of a person who has made a claim for compensation, give that person any information received from a provider to that person of a medical service or hospital service, being information regarding that service and relevant to the claim.

(3) The Authority, a self-insurer or an employer must take all reasonable steps, as soon as is practicable but in any case not later than 28 days of the request being received, to give to the person making the request—

(a) a notice of the reasons for its decision; and

(b) if the decision is to provide all or part of the information requested under subsection (1) or (2), that information.

(4) The Authority or self-insurer may refuse to provide the information requested under subsection (1) if the Authority or self-insurer is satisfied that—

(a) subject to subsection (5), the information is exempt information; or

(b) there are no reasonable grounds for requesting information—

(i) which is the same as information which has been given to the person making the request under this or any other Act in the period of 12 months before the request; or

(ii) to which access has previously been refused under this or any other Act.

(5) If—

(a) the Authority or self-insurer decides not to grant a request for information on the ground that some of the information is exempt information; and

(b) it is practicable for the Authority or self-insurer to give a copy of the information with deletions of the exempt information; and

(c) it appears from the request or subsequent indications from the person making the request, that the person would wish to have access to information with those deletions—

the Authority or self-insurer must provide that information.

(6) If the Authority, a self-insurer or an employer believes on reasonable grounds that the information requested under subsection (1) or (2) includes information which is exempt information because it is health information which would pose a serious threat to the life or health of the person if the information were to be given to that person—

(a) the Authority, a self-insurer or an employer must not give access to that health information; and

(b) the procedure set out in Division 3 of Part 5 of the **Health Records Act 2001** applies as if the refusal of access were a refusal under section 26 of that Act.

(7) The failure by the Authority, a self-insurer or an employer to comply with this section is to be taken to be a dispute to which Divisions 1 and 2 of Part 6 apply.

(8) In this section, ***exempt information*** means information of a kind which, if it were contained in a document requested under the **Freedom of Information Act 1982**, would make that document an exempt document because section 30, 31, 32, 33 or 35 of the **Freedom of Information Act 1982** would apply.

Division 2—Principles and guides

10 Objectives of Act

The objectives of this Act are to—

(a) reduce the incidence of accidents and diseases in the workplace; and

(b) make provision for the effective occupational rehabilitation of injured workers and their early return to work; and

(c) increase the provision of suitable employment to workers who are injured to enable their early return to work; and

S. 10(ca) inserted by No. 27/2025 s. 4.

(ca) ensure the accident compensation scheme operates so that all claimants and users of the scheme are treated fairly, respectfully and with dignity; and

S. 10(cb) inserted by No. 27/2025 s. 4.

(cb) ensure the accident compensation scheme provides a high-quality service to all claimants and users of the scheme; and

S. 10(d) amended by No. 5/2021 s. 4.

(d) ensure appropriate compensation and provisional payments under this Act or the **Accident Compensation Act 1985** is paid to injured workers in the most socially and economically appropriate manner, as expeditiously as possible; and

(e) ensure workers compensation costs are contained so as to minimise the burden on Victorian businesses; and

(f) establish incentives that are conducive to efficiency and discourage abuse; and

(g) enhance flexibility in the system and allow adaptation to the particular needs of disparate work situations; and

(h) maintain a fully-funded scheme; and

(i) in this context, to improve the health and safety of persons at work and reduce the social and economic costs to the Victorian community of accident compensation.

11 Statement of rights and obligations of workers

A worker—

(a) is entitled to appropriate compensation under this Act or the **Accident Compensation Act 1985** in relation to an injury to the

worker arising out of or in the course of employment; and

(b) must give notice of an injury to the employer in accordance with this Act; and

(c) must comply with any requirement under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** relating to a claim for compensation; and

(d) is entitled to information relevant to a claim for compensation in accordance with section 9; and

S. 11(e) amended by No. 27/2025 s. 5(a).

(e) must comply with the obligations of a worker specified in section 27 and Division 3 of Part 4; and

S. 11(f) inserted by No. 27/2025 s. 5(b).

(f) is entitled to be treated fairly, respectfully and with dignity when pursuing their entitlement to compensation under this Act.

12 Statement of rights and obligations of employers

An employer—

(a) is entitled to have the liability to pay compensation in respect of an injury arising out of or in the course of any employment determined in accordance with this Act or the **Accident Compensation Act 1985**; and

(b) must comply with any requirement under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** relating to a claim for compensation; and

(c) must provide information relevant to a claim for compensation in accordance with section 9; and

(d) must comply with the obligations of an employer specified in Division 2 of Part 4, Part 7 and Part 10.

12A Code of Claimants' Rights

S. 12A inserted by No. 27/2025 s. 6.

(1) The Minister may approve, by Order published in the Government Gazette, a Code of Claimants' Rights developed in accordance with this section and section 12B for the purposes of ensuring—

(a) claimants are treated with dignity and respect by the Authority, its agents and self-insurers; and

(b) service standards are set for the Authority, its agents and self-insurers in operating the accident compensation scheme.

(2) The Minister may approve, by Order published in the Government Gazette, the variation or revocation of the Code of Claimants' Rights approved under subsection (1).

(3) An Order under subsection (1) or (2) takes effect on publication of the Order in the Government Gazette or on such later date specified in the Order.

(4) The Code of Claimants' Rights is a legislative instrument for the purposes of the **Subordinate Legislation Act 1994**.

12B Preparation and release of draft Code of Claimants' Rights for public comment

S. 12B inserted by No. 27/2025 s. 6.

(1) For the purposes of section 12A, the Authority may recommend to the Minister that the Minister approve a Code of Claimants' Rights.

(2) Before the Authority makes a recommendation to the Minister under subsection (1), the Authority must issue the proposed Code of Claimants' Rights for public review and comment.

S. 12C inserted by No. 27/2025 s. 6.

12C Matters to be included in the Code of Claimants' Rights

The Code of Claimants' Rights must provide for the following matters—

(a) the rights of claimants under the Code;

(b) the obligations of the Authority, its agents and self-insurers in providing services to claimants so as to ensure the rights of claimants are promoted and upheld;

(c) who has obligations under the Code;

(d) a procedure for lodging and dealing with complaints in relation to non-compliance with the Code by the Authority, its agents or self-insurers;

(e) remedies that apply if any complaints are substantiated.

S. 12D inserted by No. 27/2025 s. 6.

12D Rights and obligations in the Code of Claimants' Rights

(1) Any rights and obligations specified in the Code of Claimants' Rights do not affect the entitlements and responsibilities of claimants under this Act, or any other Act, or at common law.

(2) Any right or obligation specified in the Code of Claimants' Rights does not create a legal right in any person.

(3) Contravention of a right or obligation specified in the Code of Claimants' Rights does not give rise to any civil cause of action merely because of contravention of the right or obligation and no damages may be awarded in respect of any such contravention.

13 Flow charts

A flow chart in this Act does not form part of this Act.

Note

Despite section 36(3A) of the **Interpretation of Legislation Act 1984**, a flow chart included in this Act does not form part of the Act and is intended only as a guide to the reader as to the general scheme of the provisions to which it relates.

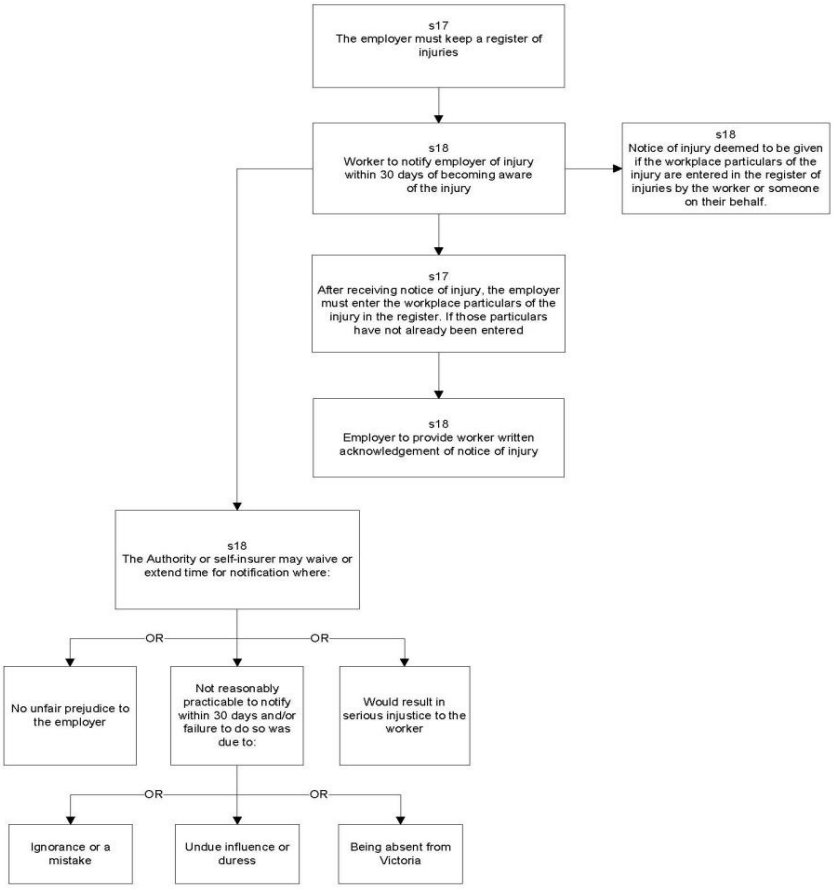
14 Effect of this Division

The Parliament does not intend by this Division to create in any person any legal right or give rise to any civil cause of action.

Part 2—Workplace injuries

Division 1—Injuries

15 Flow chart 1—notice of injury



16 Notice to be displayed at workplaces

(1) The employer must cause to be displayed—

(a) at each specified workplace at which workers are employed by the employer; and

(b) at a place in that specified workplace readily accessible at all reasonable times to a worker employed at the workplace—

a summary, in a form approved by the Authority, of—

(c) the requirements under this Act relating to the giving of notice of an injury; and

(d) the requirements under this Act for making a claim for compensation under this Act or the **Accident Compensation Act 1985**; and

(e) if an authorised agent is responsible for managing claims against the employer, the name of the authorised agent; and

(f) the benefits available to workers under this Act or the **Accident Compensation Act 1985**.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) A form approved by the Authority for the purposes of subsection (1) must be—

S. 16(2) amended by No. 44/2014 s. 24(2).

(a) published on a Government Internet website; and

(b) available for inspection by members of the public without charge at the office of the Authority during normal business hours.

17 Register of injuries

(1) The employer must cause a register of injuries to be kept—

(a) at each specified workplace; and

(b) at a place in that specified workplace readily accessible at all reasonable times to a worker employed in the specified workplace or a person acting on such a worker's behalf.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) A worker, or any person acting on a worker's behalf, may enter the workplace particulars of an injury in the register of injuries.

(3) On receiving notice of an injury of which the workplace particulars have not been entered in the register, an employer must cause the workplace particulars of the injury to be entered in the register as far as reasonably practicable.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

18 Notice of injury

(1) Notice of an injury that may entitle a person to compensation under this Act or the **Accident Compensation Act 1985** must be given by the person to the employer within 30 days after the person becomes aware of the injury.

(2) Notice of an injury must—

(a) be given in a manner and form approved by the Authority; and

(b) include the workplace particulars of the injury as far as reasonably practicable.

(3) Notice of an injury is deemed to have been given to an employer if the workplace particulars of the injury are entered in the register of injuries.

(4) The employer must acknowledge in writing the giving of notice of an injury.

(5) Subject to subsection (6), a person is not entitled to recover compensation under this Act or the **Accident Compensation Act 1985** unless notice of the injury has been given to the employer within the time specified in subsection (1).

(6) The Authority or self-insurer may waive or extend the time limit specified in subsection (1), if the Authority or self-insurer is satisfied that—

(a) it was not reasonably practicable for the person, or another person on his or her behalf, to have given notice in accordance with subsection (1); or

(b) the failure to give notice of the injury in accordance with the time limit specified in subsection (1) did not unfairly prejudice the employer; or

(c) to rely on subsection (5) would result in a serious injustice to the person.

(7) Without limiting the generality of subsection (6)(a), it is to be taken not to have been reasonably practicable to give notice of the injury in accordance with the time limit specified in subsection (1) if the failure to give notice was due to—

(a) ignorance or a mistake; or

(b) undue influence or duress; or

(c) being absent from Victoria.

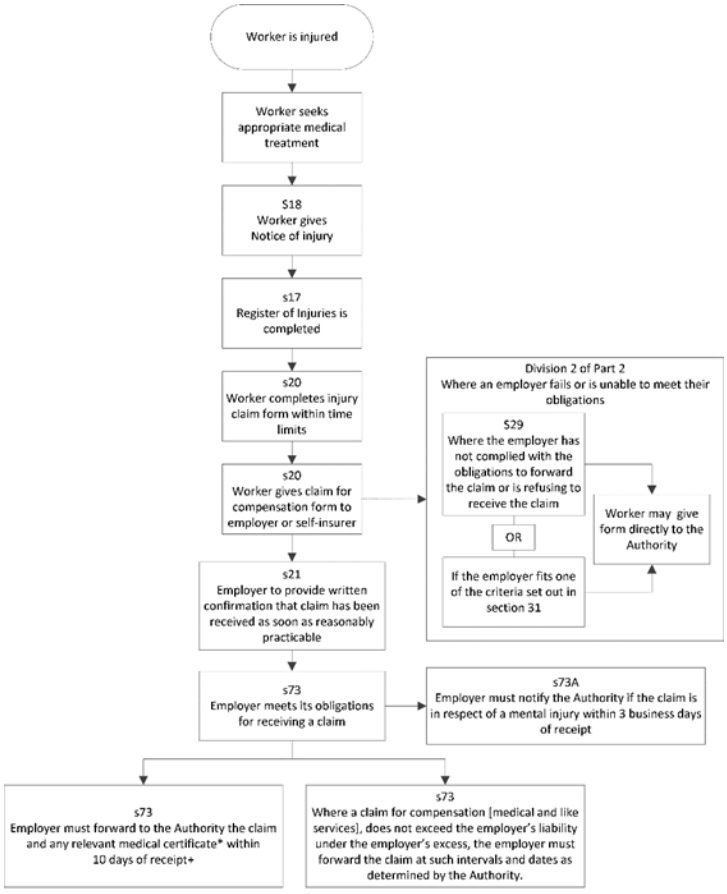
(8) Any instrument made by the Authority setting out the manner and form of a notice of injury for the purposes of subsection (2)(a) must be—

(a) published on a Government Internet website; and

(b) available for inspection by members of the public without charge at the office of the Authority during normal business hours.

19 Flow chart 2—making a claim

S. 19 amended by No. 5/2021 s. 5.



*Where the claim for compensation is in the form of weekly payments, the worker must provide medical certificate
+Where an employer fails to forward the claim for compensation within the required timeframes, the employer may incur additional liability and penalties for failure to forward claim without reasonable cause

20 Claim for compensation

(1) A claim for compensation under this Act or the **Accident Compensation Act 1985** must be in a form approved by the Authority in respect of that type or class of claim.

(2) A claim for compensation in the form of weekly payments must—

(a) state the date on which the worker ceased work because of the injury; or

(b) be accompanied by a medical certificate in accordance with section 25; or

(c) be supplemented at a later date by a medical certificate in accordance with section 25.

(3) A claim for compensation (other than a claim arising from the death of a worker) must include an authority, signed by the worker, authorising a provider of a medical service or hospital service to the worker in connection with the injury to which the claim relates to give to the Authority, self-insurer or employer information regarding the service relevant to the claim.

(4) If a claim for compensation in the form of weekly payments has been given to or served on the employer or self-insurer or lodged with the Authority but was not accompanied, or supplemented, by a medical certificate in accordance with section 25, compensation in the form of weekly payments is not payable unless and until a medical certificate in accordance with section 25 has been given to or served on the employer or self-insurer or lodged with the Authority.

(5) A claim for compensation—

(a) must be given to or served on the employer or self-insurer; or

(b) if section 29 or 31(4) applies, may be lodged with the Authority.

(6) A claim for compensation is deemed to have been given to or served on the employer or self-insurer or lodged with the Authority if it is given, served or lodged in accordance with guidelines made by the Minister in accordance with section 23.

(7) A claim is deemed to have been made in accordance with this section despite any material defect, omission or irregularity in the claim that relates to information that is within the knowledge of the employer or self-insurer or the Authority, as the case requires.

(8) Subject to subsection (9), a claim for compensation must be given, served or lodged under this section or section 29 or 31—

(a) in the case of a claim for compensation in the form of weekly payments, as soon as practicable after the incapacity arising from the injury becomes known; or

(b) in the case of a claim for compensation under section 235, 236, 237, 237AA, 237A or 241 of this Act or section 92, 92A or 92B of the **Accident Compensation Act 1985**, within the period of 2 years after the date of the death of the relevant worker; or

S. 20(8)(b) amended by No. 27/2025 s. 7.

(c) in the case of a claim for compensation under Division 7 of Part 5 of this Act or Division 2B of Part IV of the **Accident Compensation Act 1985**, within 6 months after the date of the relevant service.

(9) If the Authority or self-insurer is satisfied that a person making a claim for compensation had a special excuse for not making the claim within the relevant applicable time limit, the Authority or self-insurer may waive or extend the time limit to enable the claim for compensation to be made.

(10) Any instrument made by the Authority setting out the form of a claim for compensation must be—

(a) published on a Government Internet website; and

(b) available for inspection by members of the public without charge at the office of the Authority during normal business hours.

21 Acknowledgement or notice of claim

(1) If the employer or self-insurer or the Authority receives from a worker a claim for compensation made in accordance with section 20, the employer or self-insurer or the Authority must, as soon as is reasonably practicable, give the worker acknowledgement in writing that the claim has been received.

(2) A worker may notify the Authority that the worker has given to or served on the employer a claim for compensation in the form of weekly payments by giving to the Authority—

(a) a copy of the claim signed and dated by the worker; and

(b) a copy of the relevant medical certificate in accordance with section 25.

22 When claim deemed not to have been made

(1) A claim is deemed not to have been made in accordance with section 20 if—

(a) it contains a material defect, omission or irregularity (other than a material defect, omission or irregularity referred to in section 20(7)); and

(b) within 14 days after the claim is given to or served on the employer, lodged with the Authority or given to the self-insurer, as the case requires, the Authority or the self-

insurer returns the claim to the claimant with a notice that—

(i) specifies in detail each material defect, omission and irregularity identified in the claim; and

(ii) states that any period within which the claim is required to be dealt with does not commence until a claim that does not contain any specified material defect, omission or irregularity is given to, served on or lodged with the Authority or the self-insurer.

(2) If—

(a) a claim for compensation is made under section 20 in respect of an injury to a worker arising out of or in the course of, or due to the nature of, employment with a particular employer; and

(b) the claim is made after the worker ceases to be employed by that employer—

the claim is deemed not to have been made unless the claimant satisfies the Authority or self-insurer that he or she could not reasonably have made the claim while employed by that employer.

S. 22(3) amended by No. 37/2014 s. 10(Sch. item 188.2).

(3) If a claim for compensation under section 20 relates to an injury resulting from an accident involving a motor vehicle within the meaning of the **Road Safety Act 1986**, the claim is deemed not to have been made unless a report of the accident has been made to a police officer, whether under section 61 of that Act or otherwise.

23 Guidelines for sections 20, 21 and 22

The Minister may make guidelines in accordance with section 611 for the purposes of section 20, 21 or 22 specifying the manner and form in which a claim for compensation may be given, served or lodged by a worker.

24 Prohibition on recovery of certain costs

A person is not entitled to recover any costs in respect of assisting a person to make, give, serve, lodge or forward any application or claim for compensation under this Act or the **Accident Compensation Act 1985**.

25 Medical certificate

(1) A medical certificate referred to in section 20 that relates to a claim for compensation that is, or includes, compensation in the form of weekly payments must—

(a) be issued by a medical practitioner; and

(b) be in a form approved by the Authority; and

(c) specify the expected duration of the worker's incapacity and whether the worker has a current work capacity or has no current work capacity.

(2) A certificate issued or purporting to have been issued under subsection (1) is of no effect if it contains a material defect, omission or irregularity.

(3) If a certificate issued or purporting to have been issued under subsection (1) is in respect of a period exceeding 14 days, it is of no effect after the first 14 days, unless the Authority or self-insurer is satisfied that there are special reasons which require an extension of that period.

26 Worker who does not have a medical certificate

S. 26(1) amended by No. 73/2016 s. 21(1)(2).

(1) If a worker is unable to receive compensation in the form of weekly payments because the worker does not have a medical certificate relating to the injury in accordance with section 25, the worker may refer the matter to ACCS by lodging a referral with ACCS in a form approved by the Authority.

S. 26(2) amended by No. 73/2016 s. 21(3).

(2) If ACCS is satisfied that the worker has made all reasonable attempts to obtain a medical certificate, the worker may apply to the County Court or the Magistrates' Court for a determination of the entitlement of the worker to compensation in the form of weekly payments under this Act or the **Accident Compensation Act 1985**.

(3) For the purposes of this Act, a determination of the Magistrates' Court or the County Court under subsection (2) is to be taken to be a medical certificate issued in accordance with section 25.

27 Medical examinations

(1) The Authority or a self-insurer may require a worker who has made a claim for compensation to submit at reasonable intervals to an examination by an independent medical examiner provided and paid for by the Authority or self-insurer.

(2) If a worker unreasonably refuses to have, or unreasonably obstructs, an examination under subsection (1)—

(a) any claim or proceedings commenced by or on behalf of the worker; and

(b) the worker's entitlement—

(i) to compensation under this Act or the **Accident Compensation Act 1985**; or

(ii) to apply to the County Court or Magistrates' Court—

are suspended until the examination takes place.

(3) When the examination takes place any period between the date on which the worker unreasonably refused to have, or unreasonably obstructed, the examination and the date of the examination must be taken into account for the purpose of calculating a period of time for the purposes of this Act or the **Accident Compensation Act 1985**.

(4) Any weekly payments which would otherwise be payable during the period of suspension are forfeited.

(5) In this section, ***independent medical examiner*** means any of the following—

(a) a medical practitioner;

(b) a registered dentist;

(c) a registered physiotherapist;

(d) a registered chiropractor;

(e) a registered osteopath;

(f) a registered psychologist—

approved by the Authority for the purposes of this section.

28 Return to work obligations of employers and workers

If a worker has an incapacity for work, the obligations of the employer under Division 2 of Part 4 and of the worker under Division 3 of Part 4 apply.

Division 2—Claims for compensation that may be lodged with Authority

29 Lodging of claims with Authority in certain circumstances

(1) If a person making a claim for compensation in respect of an injury arising out of or in the course of or due to the nature of employment, becomes aware that the employer—

(a) has not complied, and is not likely to comply, with section 73(1); or

(b) is refusing to receive the claim; or

(c) cannot be identified after the person has taken reasonable steps to identify the relevant employer; or

(d) cannot be found after the person has taken reasonable steps to find the relevant employer; or

(e) is dead, or is an externally-administered body corporate under the Corporations Act or has ceased to exist—

that person may lodge the claim with the Authority.

(2) A claim for weekly payments which purports to be lodged in accordance with subsection (1) when the conditions specified in that subsection do not apply is deemed not to have been made if, within 14 days of the claim being lodged, the Authority returns the claim to the claimant with a notice under subsection (3).

(3) The notice must—

(a) specify that the claim for weekly payments must be given to or served on the employer; and

(b) state that any period within which the claim is to be dealt with does not commence until a claim for weekly payments has been given to or served on the employer.

30 Authority may require further information

(1) The Authority may require a person lodging a claim under section 29 to provide further information to the Authority.

(2) Subject to subsection (3), section 75 applies in respect of a claim under section 29 as if the reference to 28 days were a reference to 35 days.

(3) If the relevant employer is identified or found by the Authority, section 75 applies as if the reference to 28 days of receiving the claim were a reference to 28 days from the time that the employer is identified or found.

31 Claims against certain employers

(1) In this section, ***employer*** means an employer who, in respect of a financial year—

(a) does not pay, and is not liable to pay, rateable remuneration that exceeds the exemption limit; and

(b) does not employ an apprentice.

(2) A claim for compensation against an employer within the meaning of this section must first be given to or served on the employer.

(3) The employer must lodge the claim with the Authority within 5 days of receiving it.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(4) If a person making a claim for compensation under this section becomes aware that the employer—

(a) has not complied with subsection (3); or

(b) is refusing to receive the claim—

that person may lodge the claim with the Authority.

32 Record of employers referred to in section 31

(1) If a worker employed by an employer referred to in section 31 gives to, or serves on, the employer a claim for compensation under this Act, the employer—

(a) must apply to the Authority or an authorised agent, in a form approved by the Authority, to be recorded as an employer referred to in section 31; and

(b) must make the application within 30 days after receiving the claim.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) The Authority must record the applicant as an employer referred to in section 31.

(3) Subsection (1) does not apply to an employer which is already recorded under subsection (2).

33 Application of Parts 2, 3 and 5

Except as provided in this Part, this Part and Parts 3 and 5 apply in relation to the determination and management of claims against employers referred to in section 29 or 31.

34 Recovery by Authority of amount in relation to claim or contribution

(1) The Authority may serve a notice in writing on a person who, in the opinion of the Authority, was at the time of the injury—

(a) an employer of a worker to or in respect of whom compensation was paid or payable under this Act or the **Accident Compensation Act 1985**; and

(b) an employer to which section 430(1) applies—

but was not, at that time, registered as an employer under section 434, requiring that person, within a period specified in the notice, to reimburse to the Authority an amount, not exceeding the amount of compensation paid, specified in the notice.

(2) Subsection (1) does not apply to an employer which has applied to be recorded under section 32.

S. 34(3) amended by No. 44/2014 s. 8.

(3) If a person is liable to pay contribution under section 23B of the **Wrongs Act 1958** or a corresponding provision of an Act of the Commonwealth or another State or a Territory in respect of an injury suffered by, or death of, a worker and, at the time of the injury or death, the person was, in the opinion of the Authority—

(a) the employer of the worker; and

(b) an employer to which section 430(1) applies; and

(c) not registered as an employer under section 434—

the Authority may serve a notice in writing on the person requiring the person to pay to the Authority an amount, not exceeding the amount of contribution paid by the Authority under the

Wrongs Act 1958 or a corresponding provision of an Act of the Commonwealth or another State or a Territory, specified in the notice.

(4) The Authority may, by instrument in writing, waive all or part of the liability of an employer under subsection (1) or (3) to reimburse or pay to the Authority an amount, if the Authority is satisfied that—

(a) the amount is beyond the capacity of the employer to pay; or

(b) the employer could not reasonably have been expected to regard himself or herself as an employer at the relevant time; or

(c) the employer, not being a corporation, is an insolvent under administration and the liability under this section is not provable in the insolvency; or

(d) the employer, being a corporation, is an externally-administered body corporate under the Corporations Act and the liability under this section is not provable in the administration; or

(e) the employer, being a corporation, has ceased to exist; or

(f) it would not be commercially feasible for the Authority to attempt to recover the amount.

(5) In this section, ***compensation*** includes damages.

35 When application may be made to a court

(1) A person on whom a notice has been served under section 34(1) may, within the period specified in the notice, apply to the Magistrates' Court or the County Court for a determination as to the person's liability under this Act or the **Accident Compensation Act 1985**.

(2) If an application has not been made under subsection (1) from the person to whom the notice was given, the Authority may recover an amount specified in a notice served under section 34(1) as a debt in a court of competent jurisdiction.

Note

Penalties apply under Part 10 to employers to which section 430(1) applies and are not registered.

36 Employer ceasing to exist

(1) A worker may make an application to the County Court for a declaration under this section.

(2) The County Court may make a declaration that the employer—

(a) being a natural person, has died, or is permanently resident outside the Commonwealth of Australia and its Territories, or cannot after due inquiry and search be found; or

(b) being a corporation (other than a company which is an externally-administered body corporate under the Corporations Act) has ceased to exist; or

(c) being a company, corporation, society, association or other body (other than a company which is an externally-administered body corporate under the Corporations Act), was, at the time when it commenced to employ the worker, registered as a foreign company under the Corporations Act and is not, at the time of the declaration, so registered; or

(d) being a company, is an externally-administered body corporate under the Corporations Act.

(3) If a declaration under this section is in force on the application of a worker, the Authority is deemed to be the employer in respect of the liability of the employer to the worker under this Act and at common law or otherwise.

Division 3—Entitlement to compensation

37 Entitlement to compensation only if employment connected with Victoria

(1) There is no entitlement to compensation under this Act other than in respect of employment that is connected with this State.

(2) The fact that a worker is outside this State when the injury happens does not prevent an entitlement to compensation arising under this Act in respect of employment that is connected with this State.

(3) A worker's employment is connected with—

(a) the State in which the worker usually works in that employment; or

(b) if no State or no one State is identified under paragraph (a), the State in which the worker is usually based for the purposes of that employment; or

(c) if no State or no one State is identified under paragraph (a) or (b), the State in which the employer's principal place of business in Australia is located.

(4) In the case of a worker working on a ship, if no State or no one State is identified under subsection (3), the worker's employment is, while working on a ship, connected with the State in which the ship is registered or (if the ship is registered in more than one State) the State in which the ship most recently became registered.

(5) If no State is identified under subsection (3) or, if applicable, subsection (4), a worker's employment is connected with this State if—

(a) the worker is in this State when the injury happens; and

(b) there is no place outside Australia under the legislation of which the worker may be entitled to compensation for the same matter.

(6) In deciding whether a worker usually works in a State, regard must be had to the worker's work history with the employer over the preceding 12 months and the intentions of the worker and employer. However, regard must not be had to any temporary arrangement under which the worker works in a State for a period of not longer than 6 months.

(7) Subject to subsection (6), in determining whether a worker usually works in a State or is usually based in a State for the purposes of employment, regard must be had to any period during which a worker works in a State or is in a State for the purposes of employment whether or not under the statutory workers compensation scheme of that State the person is regarded as a worker or as working or employed in that State.

(8) Compensation under this Act does not apply in respect of the employment of a worker on a ship if the Seafarers Rehabilitation and Compensation Act 1992 of the Commonwealth applies to the worker's employment.

(9) In this section—

ship means any kind of vessel used in navigation by water, however propelled or moved, and includes—

(a) a barge, lighter, or other floating vessel; and

(b) an air-cushion vehicle, or other similar craft—

used wholly or primarily in navigation by water;

State includes—

(a) Territory; and

(b) the offshore area, within the meaning of the Offshore Petroleum and Greenhouse Gas Storage Act 2006 of the Commonwealth, of the relevant State or Territory.

38 Application to sailors

(1) This Act applies with the following modifications in respect of an injury that happens on a ship to a sailor working on the ship where the sailor's employment is connected with Victoria—

(a) except where the sailor is the master, the notice of injury and the claim for compensation may be served on the master of the ship as if the master were the employer;

(b) if the injury happens, and the incapacity commences, on board the ship, it is not necessary to give any notice of injury;

(c) a claim for compensation in respect of the death of a sailor must be made within 6 months after notice of the death has been received by the claimant;

(d) if a ship is lost with all hands a claim for compensation in respect of the death of a sailor must be made within 18 months after the date on which the ship is deemed under subsection (2) to have been lost with all hands;

(e) if a sailor dies without leaving any dependants, compensation is not payable if the owner or charterer of the ship is liable to pay the expenses of burial or cremation under any Act in force in Victoria;

(f) weekly payments are not payable for any period during which the owner or charterer of the ship is liable to pay the expenses of maintenance of any injured sailor;

(g) notwithstanding any limitation of liability in any other law, compensation must be paid in full.

(2) Without prejudice to any other means of proof available—

(a) a ship is deemed to have been lost with all hands on board if it is shown by an official return produced out of official custody or other evidence that the ship left a port of departure at least 12 months before the institution of proceedings under this Act and has not been heard of since that departure; and

(b) a duplicate agreement or list of the crew of a ship lost with all hands made out and produced by the proper officer out of official custody is, in the absence of proof to the contrary, sufficient evidence that the sailors named were on board at the time the ship was lost.

(3) In this section—

port includes place or harbour;

sailor means any person working on board a ship;

ship has the same meaning as in section 37.

39 Entitlement to compensation

(1) If there is caused to a worker an injury, other than a mental injury, arising out of or in the course of any employment, the worker is entitled to compensation in accordance with this Act.

S. 39(1) amended by No. 8/2024 s. 5(1).

(1A) If there is caused to a worker a mental injury predominantly arising out of or in the course of any employment, the worker is entitled to compensation in accordance with this Act.

S. 39(1A) inserted by No. 8/2024 s. 5(2).

(2) If there is caused to a worker an injury arising out of or in the course of any employment which results in or materially contributes to the death of the worker, the worker's dependants are entitled, subject to this Act, to compensation in accordance with this Act.

(2A) Despite section 40(1A), a worker is entitled to compensation in accordance with this Act if there is caused to a worker a mental injury predominantly caused by traumatic events experienced by the worker that may be considered usual or typical and reasonably expected to occur in the course of the worker's duties.

S. 39(2A) inserted by No. 8/2024 s. 5(3).

(3) Subject to section 7(1) and section 40(2) and (3), if a worker suffers an injury which occurs by way of a gradual process over time and which is due to the nature of employment in which the worker was employed at any time before notice of the injury was given, the worker or the worker's dependants are entitled to compensation under this Act as if the injury were an injury arising out of or in the course of employment.

(4) If section 40 or 41 operates to prevent a worker or the worker's dependants recovering compensation in respect of an injury, the worker or the worker's dependants cannot rely on this section to claim to be entitled to take any other action or proceedings

in respect of the injury whether under or in accordance with this Act or otherwise.

40 When no entitlement to compensation

(1) There is no entitlement to compensation in respect of an injury to a worker if the injury is a mental injury caused wholly or predominantly by any one or more of the following—

(a) management action taken on reasonable grounds and in a reasonable manner by or on behalf of the worker's employer;

(b) a decision of the worker's employer, on reasonable grounds, to take, or not to take, any management action;

(c) any expectation by the worker that any management action would, or would not, be taken or any decision made to take, or not to take, any management action;

S. 40(1)(d) amended by Nos 9/2020 s. 390(Sch. 1 item 113.1), 30/2022 s. 44.

(d) an application under section 143 or 154 of the **Local Government Act 2020**, or proceedings as a result of such an application, in relation to the conduct of a worker who is a Councillor within the meaning of clause 15 of Schedule 1.

S. 40(1A) inserted by No. 8/2024 s. 6(1).

(1A) There is no entitlement to compensation in respect of an injury to a worker if the injury is a mental injury predominantly caused by work related stress or burnout that has arisen from events that may be considered usual or typical and reasonably expected to occur in the course of the worker's duties.

(2) There is no entitlement to compensation in respect of a heart attack injury or stroke injury that arises in the course of, or that was caused by, a disease, unless the worker's employment was a significant contributing factor to the injury or to the disease.

(2A) There is no entitlement to compensation in respect of a mental injury that is a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing mental injury unless the worker's employment was the predominant cause of the recurrence, aggravation, acceleration, exacerbation or deterioration.

S. 40(2A) inserted by No. 8/2024 s. 6(2).

(3) There is no entitlement to compensation in respect of the following injuries unless the worker's employment was a significant contributing factor to the injury—

(a) a heart attack injury or stroke injury to which subsection (2) does not apply;

(b) a disease contracted by a worker in the course of the worker's employment (whether at, or away from, the place of employment);

(c) a recurrence, aggravation, acceleration, exacerbation or deterioration of any pre-existing injury or disease to which subsection (2A) does not apply.

S. 40(3)(c) amended by No. 8/2024 s. 6(3).

(4) If it is proved that an injury to a worker (whether or not intended to be inflicted) was deliberately or wilfully self-inflicted, there is no entitlement to compensation in respect of that injury.

(5) Subject to sections 42, 43, 43A and 44, if it is proved that an injury to a worker is attributable to the worker's serious and wilful misconduct (including, but not limited to, being under the influence of intoxicating liquor or a drug or both), there is no entitlement to compensation in respect of that injury.

S. 40(5) amended by No. 49/2014 s. 55.

(6) Subsection (5) does not apply if the injury results in death or severe injury.

(7) In this section—

management action, in relation to a worker, includes, but is not limited to, any one or more of the following—

(a) appraisal of the worker's performance;

(b) counselling of the worker;

(c) suspension or stand-down of the worker's employment;

(d) disciplinary action taken in respect of the worker's employment;

(e) transfer of the worker's employment;

(f) demotion, redeployment or retrenchment of the worker;

(g) dismissal of the worker;

(h) promotion of the worker;

(i) reclassification of the worker's employment position;

(j) provision of leave of absence to the worker;

(k) provision to the worker of a benefit connected with the worker's employment;

(l) training a worker in respect of the worker's employment;

(m) investigation by the worker's employer of any alleged misconduct—

(i) of the worker; or

(ii) of any other person relating to the employer's workforce in which the worker was involved or to which the worker was a witness;

(n) communication in connection with an action mentioned in any of the above paragraphs;

permanent blindness means—

(a) a field of vision that is constricted to 10 degrees or less of arc from central fixation in the better eye, irrespective of corrected visual acuity; or

(b) a corrected visual acuity of less than 6/60 on the Snellen Scale in both eyes; or

(c) a combination of visual defects resulting in the same degree of visual loss as referred to in paragraph (a) or (b);

severe injury means any of the following—

(a) a significant acquired permanent brain injury;

(b) permanent paraplegia;

(c) permanent quadriplegia;

(d) amputation of a limb, hand or foot;

(e) full thickness burns that—

(i) cause permanent severe disfigurement to the head or neck or an arm or a lower leg; or

(ii) result in a significant permanent inability to undertake the necessary activities of daily living;

(f) an injury that results in permanent blindness;

(g) a brachial plexus injury that results in the permanent effective loss of the use of a limb;

(h) a physical internal injury that results in a significant permanent inability to undertake the necessary activities of daily living.

41 Pre-existing injury or disease

(1) Subsection (2) applies if it is proved that, before commencing employment with the employer—

(a) a worker had a pre-existing injury or disease of which the worker was aware; and

(b) the employer in writing—

(i) advised the worker as to the nature of the proposed employment; and

(ii) requested the worker to disclose all pre-existing injuries and diseases suffered by the worker of which the worker was aware and could reasonably be expected to foresee could be affected by the nature of the proposed employment; and

(iii) advised the worker that subsection (2) will apply to a failure to make such a disclosure or the making of a false or misleading disclosure; and

(iv) advised the worker as to the effect of subsection (2) on the worker's entitlement to compensation; and

(c) the worker failed to make such a disclosure or made a false or misleading disclosure.

(2) If this subsection applies, any recurrence, aggravation, acceleration, exacerbation or deterioration of the pre-existing injury or disease arising out of or in the course of or due to the nature of employment with the employer does not entitle the worker to compensation under this Act.

42 Circumstances in which weekly payments are reduced because of conviction for drink-driving offence

(1) This section applies if—

(a) a worker's incapacity for work results from, or is materially contributed to by, an injury that—

(i) entitles the worker to compensation in the form of weekly payments; and

(ii) was caused by a transport accident involving a motor vehicle of which the worker was the driver at the time of the accident; and

(b) in respect of such driving, the worker is convicted or found guilty of an offence under section 49(1)(b), (f) or (g) of the **Road Safety Act 1986** or under a law that is declared to be a corresponding law under section 47A(2) of that Act.

(2) In respect of a worker to whom section 52 of the **Road Safety Act 1986** applies, compensation in the form of weekly payments under Part 5 is reduced for a period of 130 weeks (whether or not consecutive) from the date on which notice of the reduction is given to the worker in accordance with section 188—

(a) if the level of alcohol in the worker's blood was more than zero grams and less than 0·12 grams per 100 millilitres of blood or in the worker's breath was more than zero grams and less than 0·12 grams per 210 litres of exhaled air, by one third; or

(b) if the level of alcohol in the worker's blood was not less than 0·12 grams and less than 0·24 grams per 100 millilitres of blood or in the worker's breath not less than 0·12 grams and less than 0·24 grams per 210 litres of exhaled air, by two thirds.

(3) In respect of a worker (other than a worker to whom section 52 of the **Road Safety Act 1986** applies), compensation in the form of weekly payments under Part 5 is reduced for a period of 130 weeks (whether or not consecutive) from the date on which notice of the reduction is given to the worker in accordance with section 188—

(a) if the level of alcohol in the worker's blood was not less than 0·05 grams, and less than 0·12 grams per 100 millilitres of blood or in the worker's breath not less than 0·05 grams and less than 0·12 grams per 210 litres of exhaled air, by one third; or

(b) if the level of alcohol in the worker's blood was not less than 0·12 grams and less than 0·24 grams per 100 millilitres of blood or in the worker's breath not less than 0·12 grams and less than 0·24 grams per 210 litres of exhaled air, by two thirds.

(4) This section does not apply if—

(a) the injury results in death or is a severe injury within the meaning of section 40; or

(b) the worker satisfies the Authority or self-insurer that the concentration of, or presence of, alcohol in the blood or the breath of the worker did not contribute in any way to the injury.

43 Circumstances in which weekly payments are reduced because of conviction for drug-driving offence

(1) This section applies if—

(a) a worker's incapacity for work results from, or is materially contributed to by, an injury that—

(i) entitles the worker to compensation in the form of weekly payments; and

(ii) was caused by a transport accident involving a motor vehicle of which the worker was the driver at the time of the accident; and

(b) in respect of such driving, the worker is convicted or found guilty of an offence under section 49(1)(bb), (h) or (i) of the **Road Safety Act 1986** or under a law of another State or of a Territory that is declared to be a corresponding law under section 47A(2) of that Act.

(2) Compensation in the form of weekly payments under Part 5 is reduced by one third for a period of 130 weeks (whether or not consecutive) from the date on which notice of the reduction was given to the worker in accordance with section 188.

(3) This section does not apply—

(a) if the injury results in death or is a severe injury within the meaning of section 40; or

(b) the worker satisfies the Authority or self-insurer that the concentration of, or presence of, drugs in his or her blood or oral fluid did not contribute in any way to the injury.

S. 43A inserted by No. 49/2014 s. 56.

43A Circumstances in which weekly payments are reduced because of combined drink and drug driving offence

(1) This section applies if—

(a) a worker's incapacity for work results from, or is materially contributed to by, an injury that—

(i) entitles the worker to compensation in the form of weekly payments; and

(ii) was caused by a transport accident involving a motor vehicle of which the worker was the driver at the time of the accident; and

(b) in respect of such driving, the worker is convicted or found guilty of an offence under section 49(1)(bc) or (j) of the **Road Safety Act 1986** or under a law of another State or of a Territory that is declared to be a corresponding law under section 47A(2) of the **Road Safety Act 1986**.

(2) Compensation in the form of weekly payments under Part 5 is reduced for a period of 130 weeks (whether or not consecutive) from the date on which notice of the reduction was given to the worker in accordance with section 188 by—

(a) in any case, one third; and

(b) if the level of alcohol in the worker's blood was not less than 0·12 grams and less than 0·24 grams per 100 millilitres of blood or in the worker's breath not less than 0·12 grams and less than 0·24 grams per 210 litres of exhaled air—by an additional one third.

(3) This section does not apply if—

(a) the injury results in death or is a severe injury within the meaning of section 40; or

(b) the worker satisfies the Authority or self-insurer that the following did not contribute in any way to the injury—

(i) the concentration, or presence, of alcohol in the blood or breath of the worker;

(ii) the concentration, or presence, of drugs in the blood or oral fluid of the worker;

(iii) the combination of matters referred to in subparagraphs (i) and (ii).

44 No entitlement to compensation where conviction for certain serious road traffic offences

(1) A worker is not entitled to compensation under this Act in respect of an injury if—

(a) the injury was caused by a transport accident involving a motor vehicle of which the worker was the driver at the time of the accident; and

(b) in respect of that driving, the worker is convicted or found guilty of an offence under—

(i) section 49(1)(b), (bc), (f), (g) or (j) of the **Road Safety Act 1986** and the level of alcohol in the worker's blood was 0·24 grams or more per 100 millilitres of blood or in the worker's breath was 0·24 grams or more per 210 litres of exhaled air; or

S. 44(1)(b)(i) amended by No. 49/2014 s. 57(1).

(ii) sections 49(1)(a), (ba), (c), (ca), (d), (e), (ea) or (eb), 56(2) or 56(7) of the **Road Safety Act 1986**; or

(iii) section 318 or 319 of the **Crimes Act 1958** or a corresponding law; or

S. 44(1)(b)(iii) amended by No. 73/2016 s. 12(1).

(iv) a law of another State or of a Territory that is declared to be a corresponding law under section 47A(2) of the **Road Safety Act 1986**.

S. 44(1A) inserted by No. 73/2016 s. 12(2).

(1A) For the purposes of this section, the Minister may by Order published in the Government Gazette declare a law of another State or a Territory, including a law that has been repealed or has expired, to be a corresponding law for the purposes of this section.

(2) This section does not apply—

(a) if the injury results in death or is a severe injury within the meaning of section 40; or

S. 44(2)(b) amended by No. 49/2014 s. 57(2).

(b) where the worker is convicted or found guilty of an offence specified in subsection (1)(b)(i) or (iii)(other than an offence under section 49(1)(bc) or (j) of the **Road Safety Act 1986**), the worker satisfies the Authority or self-insurer that the concentration of, or presence of, alcohol in his or her blood or breath, or the concentration of, or presence of, drugs in his or her blood or oral fluid, did not contribute in any way to the injury; or

S. 44(2)(c) inserted by No. 49/2014 s. 57(3).

(c) where the worker is convicted or found guilty of an offence under section 49(1)(bc) or (j) of the **Road Safety Act 1986**, the worker satisfies the Authority or self-insurer that the following did not contribute in any way to the injury—

(i) the concentration, or presence, of alcohol in the blood or breath of the worker;

(ii) the concentration, or presence, of drugs in the blood or oral fluid of the worker;

(iii) the combination of matters referred to in subparagraphs (i) and (ii).

45 If conviction or finding of guilt overturned

(1) This section applies if—

(a) compensation in the form of weekly payments to a worker—

(i) has been reduced in accordance with section 42, 43 or 43A; or

S. 45(1)(a)(i) amended by No. 49/2014 s. 58.

(ii) in accordance with section 44, is not payable—

after the worker has been convicted or found guilty of an offence; and

(b) the conviction or finding is overturned on appeal.

(2) If this section applies, the Authority or self-insurer must pay to the worker, subject to and in accordance with this Act—

(a) the amount by which each weekly payment had been reduced, or the amount that had not been paid, together with interest at the prescribed rate on each such amount, in respect of the period from the date on which the payment was due until the date on which the amount is paid; and

(b) all amounts of compensation not paid in accordance with section 44 and to which, but for the conviction or finding of guilt, the worker would have been entitled.

46 Out of or in the course of employment

(1) An injury to a worker is deemed to arise out of or in the course of employment for the purposes of section 39(1), (1A) and (2) if the injury occurs—

S. 46(1) amended by No. 8/2024 s. 7.

(a) while the worker on any working day that the worker attended at the place of employment having been present at the place of employment is temporarily absent on that day during any authorised recess and does not during that absence voluntarily subject himself or herself to any abnormal risk of injury; or

(b) while the worker is, having regard to the nature of the worker's employment or any specific task which may require the worker to travel, travelling for the purposes of the worker's employment; or

(c) while the worker is in attendance at any school for the purposes of any trade, technical or other training which the worker is required to attend by the terms of his or her employment or as an apprentice or which the worker is expected to attend by the employer; or

(d) while the worker is in attendance at any place for the purpose of obtaining a medical certificate, receiving medical, surgical or hospital advice, attention or treatment, receiving a personal and household service or an occupational rehabilitation service or receiving a payment of compensation in connection with any injury for which the worker is entitled to receive compensation or for the purpose of submitting to a medical examination required by or under this Act.

(2) For the purposes of this section—

(a) ***place of employment***, if there is no fixed place of employment, includes the whole area, scope or ambit of employment;

(b) ***travelling for the purposes of a worker's employment*** does not include travelling to and from the worker's place of employment or the places referred to in subsections (1)(c) and (1)(d);

(c) an injury incurred while travelling for the purposes of a worker's employment is deemed not to have arisen out of or in the course of any employment if the injury occurred during or after any substantial interruption of or substantial deviation from the worker's journey made for a reason unconnected with his or her employment;

(d) an injury is deemed to arise out of or in the course of employment even though at the time that the injury happened the worker was—

(i) acting in contravention of any regulation (whether by or under an Act or otherwise) applicable to the work; or

(ii) acting without instructions from the employer—

if the act was done by the worker for the purposes of and in connection with the employer's trade or business.

47 Compensation for workers injured outside Australia

(1) If an employer who resides, or has a place of business, in Victoria engages a worker in Victoria and an injury is caused to or suffered by the worker outside Australia in circumstances which, had the injury occurred in Victoria, would have entitled the worker or the worker's dependants to compensation—

(a) the worker; or

(b) in the case of the death of the worker, the worker's dependants—

are entitled to compensation in accordance with this Act.

(2) If, outside Australia, an injury is caused to or suffered by a worker to whom this Act applies because of clause 14 of Schedule 1 in circumstances that, had the injury occurred in Victoria, would have entitled the worker or the worker's dependants to compensation—

(a) the worker; or

(b) in the case of the death of the worker, the worker's dependants—

are entitled to compensation in accordance with this Act.

(3) For the purposes of this Act, a worker to whom this Act applies because of clause 14 of Schedule 1 who is directed, as such a worker, to work for, or under the direction of, any other person outside Victoria (whether within or outside Australia), is deemed to continue to be a worker to whom this Act applies.

(4) This section does not apply in respect of an injury caused to or suffered by a worker outside Australia if the worker—

(a) has never resided in Australia; or

(b) had ceased to reside in Australia at the time the injury occurred.

48 Person not to be compensated twice

(1) Compensation under this Act is not payable in respect of an injury to the extent that compensation has been received in respect of the same injury under the laws of a place other than this State (whether within or outside Australia).

(2) If a person receives compensation under this Act in respect of an injury and, in respect of the same injury, subsequently receives compensation under the laws of a place other than this State (whether within or outside Australia), the person from whom compensation under this Act is received may, in a court of competent jurisdiction, sue and recover from the person the amount described in subsection (3).

(3) The amount that is recoverable under subsection (2) is—

(a) the amount of compensation paid under this Act; or

(b) the amount of compensation received under the laws of the place other than this State—

whichever is less.

49 Entitlement to damages outside Victoria

(1) This section applies if an injury is caused to, or suffered by, a worker which gives the worker a right of action under the law of a place outside Victoria (whether within or outside Australia) in circumstances which would otherwise have entitled the worker or the worker's dependants to compensation under this Act.

(2) Subject to subsection (3), if—

(a) damages have not been paid or recovered; and

(b) judgment for damages has not been given or entered—

in respect of the injury under the law of any place outside Victoria (whether within or outside Australia), the worker or, in the case of the death of the worker, the worker's dependants, are entitled to compensation under this Act as if there

were no right of action under the law of any place outside Victoria.

(3) A person who has a right of action in respect of an injury under the law of any place outside Victoria (whether within or outside Australia) is not entitled to claim compensation in respect of the injury under this Act if, in respect of the injury under the law of any place outside Victoria—

(a) the person has been paid or recovered any amount of damages; or

(b) judgment for damages has been given or entered; or

(c) any payment into court has been accepted; or

(d) there has been a settlement or compromise of any claim; or

(e) any action for damages is pending.

(4) If—

(a) damages have been paid or recovered; or

(b) judgment for damages has been given or entered—

in respect of the injury under the law of any place outside Victoria (whether within or outside Australia) the worker or, in the case of the death of the worker, the worker's dependants, are not entitled to compensation under this Act.

(5) The worker or, in the case of the death of the worker, the worker's dependants are not entitled to compensation under this Act if—

(a) a payment into court has been accepted by the worker or the worker's dependants in proceedings; or

(b) a settlement or compromise of a claim has been made—

in respect of the injury under the law of any place outside Victoria (whether within or outside Australia).

(6) If a person—

(a) receives compensation under this Act in respect of any injury; and

(b) subsequently obtains damages or an award of damages, accepts a payment into court or settles or compromises a claim in respect of the injury under the law of any place outside Victoria (whether within or outside Australia)—

the Authority, employer or a self-insurer is entitled to recover from that person the amount of compensation paid under this Act or an amount equal to the damages or payment obtained or made, settled or compromised, whichever is the lesser amount.

(7) Any dispute under subsection (6) must be determined by a court of competent jurisdiction.

(8) Unless a worker produces satisfactory evidence to the contrary, any amount recovered or to be recovered by a worker under the law of any place outside Victoria (whether within or outside Australia) as damages in respect of an injury is presumed to be damages for the same injury in respect of which the worker claims compensation or a right of action under this Act.

50 Compensation for disease due to employment

(1) Subject to section 7(1), section 40(2) and subsection (3) of this section, if—

(a) a worker suffers a disease that results in, or materially contributes to, the worker having either a current work capacity or no current work capacity; or

(b) the death of a worker is caused, or materially contributed to, by a disease—

and the disease is due to the nature of any employment in which the worker was employed at any time on or after 1 July 2014 before notice of an injury relating to the disease is given under section 18, the worker or the worker's dependants are entitled to compensation under this Act as if the disease were an injury arising out of or in the course of employment.

(2) For the purposes of subsection (1), a disease suffered by a worker is to be regarded as due to the nature of employment if, and only if, the nature of the employment gave rise to a significantly greater risk of the worker contracting the disease than had the worker not been employed in employment of that nature.

(3) Despite subsection (1), compensation is not payable in respect of a disease to the extent that the disease consists of, is caused by, results in or is associated with, a heart attack injury or a stroke injury unless the worker's employment was a significant contributing factor to the disease or to the injury.

51 Proclaimed diseases

(1) The Governor in Council, after consultation by the Minister with the Authority, may by proclamation published in the Government Gazette from time to time proclaim diseases in relation to places,

processes or occupations for the purpose of this section.

(2) Without derogating from section 50, if at the time a claim was made, a proclamation under subsection (1) was in force and—

(a) the worker has been employed at any place or in any process or occupation proclaimed under subsection (1); and

(b) has contracted a disease specified in relation to that place, process or occupation—

then the disease is deemed to be due to the nature of the employment at such place or in such process or occupation unless the employer or the Authority or a self-insurer, as the case may be, proves to the contrary.

(3) A disease contracted by a worker is deemed to be a disease specified in a proclamation under subsection (1) in relation to a place, process or occupation if the Authority, a self-insurer, the Magistrates' Court or the County Court (as the case requires) is satisfied that the disease contracted is substantially the same disease as the disease specified in the proclamation.

(4) The **Subordinate Legislation Act 1994** does not apply to the first proclamation made and published under this section.

51A Eligible progressive diseases

S. 51A inserted by No. 10/2022 s. 57.

(1) The Governor in Council, by Order published in the Government Gazette, may declare a disease to be an eligible progressive disease for the purposes of this Act.

(2) An Order under this section—

(a) must only be made on the recommendation of the Minister; and

(b) may relate to a specific disease or a disease of a certain nature; and

(c) may impose any conditions in relation to a disease, including in relation to the date of diagnosis of the disease; and

(d) takes effect on and from the date on which it is published or, if a later date is specified in the Order, that later date.

(3) The Minister must not recommend the making of an Order under this section in respect of a disease unless the Minister is satisfied that the disease is—

(a) serious and potentially life-threatening; and

(b) extremely likely to cause an ongoing deterioration of a person's health, such that the degree of impairment resulting from the disease is unlikely to stabilise for any significant period of time.

(4) A disease is not an eligible progressive disease for the purposes of this Act unless the disease is diagnosed on or after 1 June 2016 or, if a later date is specified in the Order, that later date.

Division 4—Assessment of impairment

Subdivision 1—Preliminary

52 Definitions

In this Division—

compensation law means this Act, the **Workers Compensation Act 1958** or the **Accident Compensation Act 1985** or any other workers compensation law of the Commonwealth or a State or Territory of the Commonwealth;

further EPD injury means an increase in the degree of impairment of a worker who has on one or more occasions suffered a prior EPD injury;

S. 52 def. of *further EPD injury* inserted by No. 10/2022 s. 58(c).

further hearing injury means a further loss of hearing in respect of industrial deafness after a worker has on one or more occasions suffered a prior hearing injury;

S. 52 def. of *further injury* substituted as *further hearing injury* by No. 10/2022 s. 58(a).

prior EPD injury means an eligible progressive disease for which a worker has received or become entitled to receive compensation for impairment;

S. 52 def. of *prior EPD injury* inserted by No. 10/2022 s. 58(c).

prior hearing injury means industrial deafness for which the worker has received or become entitled to receive compensation for loss of hearing.

S. 52 def. of *prior injury* substituted as *prior hearing injury* by No. 10/2022 s. 58(b).

prior hearing loss means a loss of hearing for which a worker has received compensation under a compensation law for loss of hearing;

53 Application of this Division to Divisions 2 and 5 of Part 5 and Part 7

S. 53 (Heading) amended by No. 8/2024 s. 10(1).

(1) For the purposes of Divisions 2 and 5 of Part 5—

S. 53(1) amended by No. 8/2024 s. 10(2).

(a) impairments, other than psychiatric impairments, resulting from injuries which arose out of the same incident or occurred on the same date are to be assessed together using the combination formula in the A.M.A Guides; and

(b) assessments are to specify the whole person values for each chapter of the A.M.A Guides used in the assessment.

S. 53(2) amended by No. 8/2024 s. 10(2).

(2) For the purposes of Divisions 2 and 5 of Part 5 and Part 7—

(a) if a worker presents for assessment in relation to injuries which occurred on different dates, the impairments are to be assessed chronologically by date of injury; and

(b) impairments from unrelated injuries or causes are to be disregarded in making an assessment.

S. 53A inserted by No. 8/2024 s. 11.

53A Assessment under this Division is final assessment of impairment

(1) Subject to subsection (2), if a worker is assessed in accordance with this Division to determine the degree of impairment of the worker arising from one or more injuries, that assessment is the final assessment of the worker's degree of impairment arising from that injury or those injuries for the purposes of this Act.

(2) If a worker is to be assessed in accordance with this Division for the purposes of a claim under section 164A in respect of an injury for which the worker has undergone surgery—

(a) despite subsection (1), the worker may be reassessed in accordance with this Division; and

(b) the reassessment is the final assessment of the worker's degree of impairment arising from that injury for the purposes of this Act.

Subdivision 2—Assessment in accordance with A.M.A Guides

54 Assessment of impairment

(1) In this Act, a reference to the assessment of a degree of impairment in accordance with this Division is a reference to an assessment—

(a) made in accordance with—

(i) the A.M.A Guides as applicable subject to this section, section 55 and the guidelines referred to in Subdivision 4; or

(ii) methods prescribed for the purposes of this section—

and in accordance with operational guidelines (if any) as to the use of those Guides or methods issued by the Minister; and

(b) if the Minister has approved a training course in the application of those Guides or methods, made by a medical practitioner who has successfully completed such a training course.

(2) The A.M.A Guides apply in respect of an assessment under section 3.3d of Chapter 3 of the A.M.A Guides as if the following were omitted—

"with the Injury Model, surgery to treat an impairment does not modify the original impairment estimate, which remains the same in spite of any changes in signs or symptoms that may follow the surgery and irrespective of whether the patient has a favourable or unfavourable response to treatment".

(3) Despite anything to the contrary in the A.M.A Guides, in determining a person's degree of impairment, a number determined under the A.M.A Guides is not to be rounded up or down, except as provided in subsection (4), regardless of whether the number represents an initial, an intermediate, a combined or a final value, unless the rounding is expressly required or permitted by this Act.

(4) A number determined under the A.M.A Guides must be rounded to the nearest whole per cent.

Example

A final degree of impairment of 9·5 per cent must be rounded to 10 per cent. A final degree of impairment of 8·4 per cent must be rounded to 8 per cent.

(5) For the purposes of this Act, the A.M.A Guides may be modified by the regulations.

(6) If a regulation is made for the purposes of subsection (5), the A.M.A Guides as modified by the regulations apply only in respect of an injury occurring on or after the date the modification takes effect.

(7) Any operational guidelines issued by the Minister for the purposes of subsection (1)(a) must be—

(a) published in the Government Gazette and on a Government Internet website; and

(b) available for inspection by members of the public without charge at the office of the Authority during normal business hours.

55 When and how to make an assessment of impairment

Despite anything to the contrary in the A.M.A Guides, an assessment under this Division of the degree of impairment resulting from an injury must be made—

(a) subject to sections 68A and 68D, after the injury has stabilised; and

S. 55(a) amended by No. 10/2022 s. 59.

(b) subject to section 53, based on the worker's current impairment as at the date of the assessment, including any changes in the signs and symptoms following any medical or surgical treatment undergone by the worker in respect of the injury.

56 Injury, impairment or symptoms consequential or secondary to physical injury

In assessing a degree of impairment in accordance with this Division, regard must not be had to any psychiatric or psychological injury, impairment or symptoms arising as a consequence of, or secondary to, a physical injury.

Subdivision 3—Industrial deafness

57 Compensation for industrial deafness

Compensation for industrial deafness must be determined in accordance with this Division and Divisions 2, 4, 5 and 7 of Part 5.

58 Excluded deafness

(1) Impairment from industrial deafness, or a proportion of impairment from industrial deafness, that has occurred in circumstances that do not create any liability to pay compensation under this Act must be excluded from the assessment of deafness for the purposes of assessing the degree of impairment as at the time the assessment is made.

(2) Industrial deafness, or a proportion of industrial deafness, that has occurred in circumstances that do not create any liability to pay compensation under this Act must be excluded from the

assessment of deafness for the purposes of calculating compensation under this Act.

59 Industrial deafness deemed to occur at constant rate

(1) Unless the Authority, a self-insurer, a Medical Panel, the Magistrates' Court or the County Court (as the case requires) determines otherwise, when the assessment of the degree of impairment from industrial deafness is made under this Act, the impairment from industrial deafness is deemed to have occurred at a constant rate within the total number of years of exposure to industrial noise in employment.

(2) Unless the Authority, a self-insurer, a Medical Panel, the Magistrates' Court or the County Court (as the case requires) determines otherwise, industrial deafness is deemed to have occurred at a constant rate within the total number of years of exposure to industrial noise in employment.

60 Assessment of industrial deafness

(1) Despite section 59 and subject to subsection (2), if a worker sustains industrial deafness, the injury is deemed to have been sustained by the worker on the last day on which the worker was—

(a) performing duties; or

(b) exposed to conditions—

by reason of which the injury was due to the nature of the worker's employment or arose out of or in the course of the worker's employment.

(2) Despite section 59, if a worker sustains industrial deafness and on the day on which the worker gives, serves or lodges a claim for compensation in respect of the injury, the worker is still—

(a) performing duties; or

(b) exposed to conditions—

by reason of which the injury is due to the nature of the worker's employment or arises out of or in the course of employment, the injury is deemed to have been sustained on that day.

61 Further diminution of hearing

S. 61(1) amended by No. 10/2022 s. 60(1).

(1) Subject to subsection (3), a worker who suffers a further hearing injury is entitled to receive in respect of the further hearing injury, in addition to any other compensation payable in accordance with this Act, compensation in accordance with section 213, being compensation referrable to a percentage calculated in accordance with subsection (2) of the amount that would have been payable for a total loss of hearing.

(2) The percentage is the difference between—

S. 61(2)(a) amended by No. 10/2022 s. 60(2)(a).

(a) the total percentage of the diminution of hearing in respect of industrial deafness from which the worker was suffering immediately after the further hearing injury in respect of which the claim is made; and

Note

The percentage NAL loss is to be determined in accordance with section 63(4). The percentage NAL loss is then converted in accordance with section 63(1).

S. 61(2)(b) amended by No. 10/2022 s. 60(2)(b).

(b) the total percentage of the diminution of hearing in respect of industrial deafness immediately after the prior hearing injury or prior hearing loss or in the case of more than one prior hearing injury or prior hearing loss the latest of the prior hearing injuries or prior hearing losses.

Note

The percentage NAL loss is to be determined in accordance with subsection (5). The percentage NAL loss is then converted in accordance with section 63(3).

S. 61(3) amended by No. 10/2022 s. 60(3).

(3) Despite anything to the contrary in this Act, a worker who suffers a further hearing injury is not entitled to compensation under this section or Division 5 of Part 5, unless the worker has a diminution of hearing assessed as a binaural loss of hearing of at least 10 per cent NAL resulting from the further hearing injury and any prior hearing injury or prior hearing loss.

(4) The total percentage referred to in subsection (2)(a) is to be determined in accordance with section 63(4).

(5) The total percentage referred to in subsection (2)(b) is to be determined by reference to—

(a) if a percentage has been determined in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 Edition or a later prescribed edition) published by the National Acoustic Laboratory, that percentage; or

(b) in any other case, the percentage which, having regard to the medical evidence available, is determined to be the equivalent of the percentage that (as nearly as can be estimated) would have been determined in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 Edition or a later prescribed edition) published by the National Acoustic Laboratory.

(6) If a worker disputes the total percentage referred to in subsection (2)(b) as determined in accordance with subsection (5), the Authority, self-insurer or a court must refer the question of what is the amount of the total percentage referred to in subsection (2)(b) as a medical question to a Medical Panel for an opinion.

(7) For the purposes of this section the register kept under section 62(5) must be taken into account.

62 Effect of determination for industrial deafness

(1) A determination for the payment of compensation for industrial deafness which is not reviewed is a final determination in respect of the percentage of the diminution of the worker's hearing on the date on which the worker advises the Authority or self-insurer that the worker accepts the determination.

(2) A determination for the payment of compensation must state the percentage of diminution of the worker's hearing in respect of industrial deafness at the date of the determination in relation to which the amount of the compensation is assessed.

(3) A determination for compensation for industrial deafness under this Act fully extinguishes all rights of the worker to compensation for industrial deafness under Division 5 of Part 5 or under section 98, 98C or 98E of the **Accident Compensation Act 1985** or under the **Workers Compensation Act 1958** up to the date of the determination but does not prevent the worker from obtaining compensation under Division 5 of Part 5 for further industrial deafness suffered after that date.

(4) The Authority must be advised of any determination for the payment of compensation for industrial deafness.

(5) The Authority must keep a register of determinations for the payment of compensation for industrial deafness advised under subsection (4).

63 Assessing degree of impairment of whole person

(1) For the purposes of assessing the degree of impairment of the whole person resulting from diminution of hearing, the percentage of the diminution of hearing determined in accordance with subsection (4) is to be converted as follows—

(a) if the diminution of hearing assessed as a binaural loss of hearing is less than 10 per cent NAL, the degree of impairment is zero;

(b) if the diminution of hearing assessed as a binaural loss of hearing is 10 per cent NAL, the degree of impairment is 10 per cent;

(c) if the diminution of hearing assessed as a binaural loss of hearing is more than 10 per cent NAL, the degree of impairment is the percentage equivalent of the number (rounded up to the next whole number) given by the formula—

$$10 + [0{\cdot}278\ (NAL - 10)]$$—

where **NAL** is the percentage of diminution of hearing determined in accordance with subsection (4).

S. 63(2) amended by No. 10/2022 s. 61(1).

(2) In the case of a further hearing injury, for the purposes of assessing the degree of impairment of the whole person resulting from a diminution of hearing assessed as a binaural hearing impairment from which the worker was suffering immediately

after the further hearing injury in respect of which the claim is made, the percentage of the diminution of hearing is to be determined in accordance with subsection (4) and converted in accordance with subsection (1).

S. 63(3) amended by No. 10/2022 s. 61(2).

(3) In the case of a further hearing injury, for the purposes of assessing the degree of impairment of the whole person resulting from a diminution of hearing in respect of prior hearing injury or prior hearing loss, the percentage of the diminution of hearing is to be determined in accordance with section 61(5) and (6) and converted as follows—

(a) if the diminution of hearing assessed as a binaural loss of hearing is less than 10 per cent NAL, the degree of impairment is equal to that per cent (rounded up to the next whole number);

(b) if the diminution of hearing assessed as a binaural loss of hearing is 10 per cent NAL, the degree of impairment is 10 per cent;

(c) if the diminution of hearing assessed as a binaural loss of hearing is more than 10 per cent NAL, the degree of impairment is the percentage equivalent of the number (rounded up to the next whole number) given by the formula—

$$10 + [0{\cdot}278\ (NAL - 10)]$$—

where **NAL** is the percentage of diminution of hearing determined in accordance with section 61(5) and (6).

(4) For the purposes of this section and section 61(2)(a), the percentage of diminution of hearing—

S. 63(4)(a) substituted by No. 27/2025 s. 8(1).

(a) must be assessed as a binaural loss of hearing and determined by a medical practitioner in the manner approved by the Minister; and

(b) must be assessed as a binaural loss of hearing and determined in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 Edition or a later prescribed edition) published by the National Acoustic Laboratory.

S. 63(5) amended by No. 48/2017 s. 27, repealed by No. 27/2025 s. 8(2).

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Subdivision 4—Assessment of psychiatric, asthma and infectious disease impairment

S. 64 amended by No. 8/2024 s. 8 (ILA s. 39B(1)).

64 Psychiatric impairment

(1) For the purposes of assessing the degree of psychiatric impairment, the A.M.A Guides apply—

(a) subject to any regulations made for the purposes of this section; and

(b) as if, for Chapter 14 of those Guides, there were substituted the guidelines entitled "The Guide to the Evaluation of Psychiatric Impairment for Clinicians" in force under section 67.

S. 64(2) inserted by No. 8/2024 s. 8.

(2) To avoid doubt, the definition of ***mental injury*** does not apply for the purposes of assessing the degree of psychiatric impairment.

65 Occupational asthma impairment

(1) For the purposes of assessing the degree of occupational asthma impairment, the A.M.A Guides apply—

(a) subject to any regulations made for the purposes of this section; and

(b) as if for Chapter 5, Tables 8 and 10 of those Guides there were substituted the guidelines entitled "Impairment Assessment in Workers with Occupational Asthma" in force under section 67.

(2) In this section, ***occupational asthma*** has the meaning given by the guidelines referred to in subsection (1)(b).

66 Infectious occupational diseases

(1) For the purposes of assessing the degree of infectious occupational diseases impairment the A.M.A Guides apply—

(a) subject to any regulations made for the purposes of this section; and

(b) subject to the guidelines entitled "Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases" in force under section 67.

(2) In this section, ***infectious occupational disease*** has the meaning given by the guidelines referred to in subsection (1)(b).

67 Guidelines referred to in this Subdivision

(1) Guidelines referred to in section 64, 65 or 66 may be amended, varied or substituted by the Authority with the approval of the Minister and, as so amended, varied or substituted—

(a) must be published by the Authority in the Government Gazette; and

(b) have effect on the day after the day on which they are published in the Government Gazette.

(2) Until amended, varied or substituted in accordance with subsection (1), the guidelines referred to in this Subdivision are—

(a) The Guide to the Evaluation of Psychiatric Impairment for Clinicians;

(b) Impairment Assessment in Workers with Occupational Asthma;

(c) Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases—

published in the Government Gazette dated 27 July 2006.

Subdivision 5—Assessment of spinal impairment

68 Spinal impairment

For the purposes of section 210(2)(a)(ii) and (iii), an assessment of spinal impairment must specify the whole person values derived in accordance with section 3.3 of Chapter 3 of the A.M.A Guides.

Subdivision 6—Eligible progressive diseases

Pt 2 Div. 4 Subdiv. 6 (Heading and ss 68A–68C) inserted by No. 10/2022 s. 62.

68A Assessment of eligible progressive disease

S. 68A inserted by No. 10/2022 s. 62.

An assessment of the degree of impairment resulting from an eligible progressive disease may be made regardless of whether the degree of impairment has stabilised.

68B Claim for compensation—eligible progressive disease

S. 68B inserted by No. 10/2022 s. 62.

(1) Despite section 197(2), the Authority or a self-insurer may receive a claim for compensation under Division 5 of Part 5 for an injury that is an eligible progressive disease at any time after the date of the injury.

(2) For the purposes of subsection (1), the Authority or self-insurer, having regard to any relevant matter including medical evidence, must be satisfied that the degree of impairment resulting from the eligible progressive disease is unlikely to stabilise.

68C Claim for compensation—further impairment

S. 68C inserted by No. 10/2022 s. 62.

(1) Despite section 197(5), a worker who has suffered a prior EPD injury is entitled to make a claim for compensation under Division 5 of Part 5 in respect of a further EPD injury.

(2) For the purposes of subsection (1), the Authority or a self-insurer, having regard to any relevant matter including medical evidence, must be satisfied that—

(a) the worker has suffered further impairment since the date of the claim for the most recent prior EPD injury; and

(b) the further impairment suffered by the worker results from—

(i) the prior EPD injury; or

(ii) an injury directly related to the prior EPD injury.

(3) Compensation referred to in subsection (1) is to be determined in accordance with section 214A, being compensation referrable to a percentage which is the difference between—

(a) the degree of impairment from which the worker is suffering at the time of the claim in respect of the further EPD injury; and

(b) the total degree of impairment from which the worker has suffered as a result of one or more prior EPD injuries.

(4) Compensation payable under section 214A is payable in addition to any other compensation payable in accordance with this Act.

(5) Despite anything to the contrary in this Act, a worker who suffers a further EPD injury is not entitled to compensation under Division 5 of Part 5 unless the worker has a degree of impairment of at least 10 per cent resulting from the further EPD injury and any prior EPD injuries.

Pt 2 Div. 4 Subdiv. 7 (Heading and ss 68D–68G) inserted by No. 10/2022 s. 62.

Subdivision 7—Injuries requiring lung transplant surgery

S. 68D inserted by No. 10/2022 s. 62.

68D Assessment of lung injury

An assessment under this Division of the degree of impairment resulting from either of the following may be made regardless of whether the degree of impairment has stabilised—

(a) a serious lung injury;

(b) an injury that has been treated with lung transplant surgery.

68E Claim for compensation—serious lung injury

S. 68E inserted by No. 10/2022 s. 62.

(1) Despite section 197(2), the Authority or a self-insurer may receive a claim for compensation under Division 5 of Part 5 for a serious lung injury at any time after the date of the injury.

(2) For the purposes of subsection (1), the Authority or self-insurer, having regard to any relevant matter including medical evidence, must be satisfied that—

(a) the degree of impairment from the injury is unlikely to stabilise; and

(b) the injury requires treatment with lung transplant surgery.

68F Claim for compensation—injury treated with lung transplant surgery

S. 68F inserted by No. 10/2022 s. 62.

(1) Despite section 197(2), the Authority or a self-insurer may receive a claim for compensation under Division 5 of Part 5 for an injury that has been treated with lung transplant surgery at any time after the date of the injury.

(2) For the purposes of a claim referred to in subsection (1), the degree of impairment of the worker is taken to be the greater of—

(a) the degree of impairment assessed in accordance with this Division; or

(b) 30 per cent.

(3) For the purposes of subsections (1) and (2), the Authority or self-insurer, having regard to any relevant matter including medical evidence, must be satisfied that lung transplant surgery was required to treat the injury.

S. 68G inserted by No. 10/2022 s. 62.

68G Claim for compensation—further impairment related to lung injury

(1) Despite section 197(5), a worker who has received or become entitled to receive compensation under Division 5 of Part 5 in respect of a serious lung injury may make a further claim for compensation under that Division in respect of the injury after undergoing lung transplant surgery.

(2) Compensation referred to in subsection (1) is to be determined in accordance with section 214A, being compensation referrable to a percentage which is the difference between—

(a) the degree of impairment suffered by the worker after undergoing lung transplant surgery; and

(b) the degree of impairment resulting from the worker's serious lung injury, as assessed for the purposes of the earlier claim.

Note

The deemed minimum level of impairment of a worker who has undergone lung transplant surgery is 30 per cent—see section 68F(2).

(3) Compensation payable under section 214A is payable in addition to any other compensation payable in accordance with this Act.

Part 3—Compensation and claims

Division 1—Preliminary

69 Definitions

In this Part—

claimed employer means an employer that—

(a) considers that section 79(1)(a) or (b) applies to the employer; and

(b) makes an objection under section 79;

lodged objection means an objection made by a claimed employer and received by the Authority under section 79.

Division 2—Liability and indemnity

70 Liability of Authority and employer

(1) The Authority, as well as the employer, is directly liable to a worker and, in the event of the worker's death, to the dependants of the worker, to pay compensation and damages in accordance with this Act or the **Accident Compensation Act 1985** for which the employer is liable as an employer of the worker in respect of injuries arising out of, or in the course of, or due to the nature of, employment.

(2) Without derogating from the generality of subsection (1), the Authority is bound by, and subject to, any judgment, order, decision, award or determination given or made against the employer of a worker in respect of the injury or death for which compensation or damages is payable.

Note

See sections 72 and 93.

71 Authority to indemnify employer

(1) The Authority is liable to indemnify an employer in respect of the employer's liability as an employer of a worker to pay compensation and damages in accordance with this Act or the **Accident Compensation Act 1985**, and liability to make contribution under section 23B of the **Wrongs Act 1958** or a corresponding provision of an Act of the Commonwealth, another State or a Territory, for injuries suffered by the worker arising out of, or in the course of, or due to the nature of employment by the employer.

(2) The indemnity under subsection (1) does not indemnify an employer in respect of any liability of the employer to pay compensation for a matter for which compensation is awarded under Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991**.

(3) Except as provided in this Act, an employer must not—

(a) make or agree to make any payment or settlement in relation to an injury or a claim for compensation in respect of an injury, to a worker or admit liability for any injury or claim; or

(b) without the consent of the Authority, incur any expense or cost in relation to any such injury or claim.

(4) The Authority is subrogated to all rights of action or recovery that an employer has against a person in respect of—

(a) any claim for compensation;

(b) any claim for damages;

(c) any claim for contribution under section 23B of the **Wrongs Act 1958** or a corresponding provision of an Act of the Commonwealth, another State or a Territory—

made by a worker employed by the employer, or the dependants of a worker, including the right—

(d) to undertake the settlement of a claim against the employer; and

(e) to take over during such period as it thinks fit the control of a claim on behalf of the employer in respect of proceedings brought against the employer; and

(f) to defend or conduct any such proceedings brought against the employer in the name of the employer; and

(g) to pursue such form of appellate relief in the name of the employer as the Authority thinks fit; and

(h) to make decisions about the conduct of an application made, or proceedings brought, by the worker against the employer, including decisions relating to determinations of whole person impairment or serious injury, or both, in respect of the worker.

(5) In this section, ***compensation and damages*** does not include—

(a) the excess for which an employer is liable under section 72 of this Act or section 125A of the **Accident Compensation Act 1985** on each claim made by a worker; and

(b) an amount payable by an employer in respect of a liability arising out of, or related to, section 576 or 578 of this Act or section 242AB or 242AD of the **Accident Compensation Act 1985**.

72 Employer's excess

(1) The Authority's indemnity to an employer under this Act is subject to an employer's excess in respect of each claim equal to—

(a) in the case of weekly payments in respect of a full-time worker who—

(i) has no current work capacity; or

(ii) has a current work capacity—

the first 10 days of the period of incapacity resulting from the relevant injury; and

(b) the proportion of the weekly payments in respect of a worker who is not a full-time worker of that employer and who—

(i) has no current work capacity; or

(ii) has a current work capacity—

for the first 10 days of the period of incapacity resulting from the relevant injury; and

(c) payment of the first $642 of the reasonable costs referred to in section 224(1)(a) in relation to the relevant injury.

(2) The proportion for the purposes of subsection (1)(b) is the number of hours per week which the worker works for the employer as a proportion of the total number of hours per week which the worker works for all employers.

(3) A payment made by an employer to a worker to discharge the employer's liability under the employer's excess does not prejudice the determination of the liability of the employer above the employer's excess.

(4) If the Authority has set aside its decision to accept a claim for compensation against a claimed employer under section 84(1)(b), the claimed employer—

(a) is not liable for any excess under subsection (1); and

(b) may request a reimbursement of the excess from the Authority.

(5) In subsection (1), a reference to a relevant injury in relation to a worker does not include a reference to a recurrence of any pre-existing injury or disease in respect of which the worker is entitled to compensation under this Act.

(6) Subject to guidelines made by the Authority in accordance with section 612 and in accordance with the premiums order, an employer may elect to increase, reduce or eliminate the excess under subsection (1) by paying an adjusted premium under Part 10.

(7) A premiums order may specify different rates or levels of premium for the purposes of this section.

(8) Subsection (1) does not apply to the liability to pay compensation in respect of an injury to a student worker.

(9) Subsection (1) does not apply to the liability to pay compensation in respect of an injury—

(a) resulting from a transport accident within the meaning of the **Transport Accident Act 1986**; and

(b) deemed to have arisen out of or in the course of any employment by reason of section 46(1)(a) or (c).

S. 72(9A) inserted by No. 5/2021 s. 6.

(9A) Subsection (1)(c) does not apply in the case of a claim in respect of a mental injury that entitles the worker to provisional payments under Division 10 of Part 5 in relation to that mental injury.

(10) For the purposes of subsection (1), in calculating the first 10 days of the period of incapacity resulting from the relevant injury—

(a) the day on which the incapacity commenced must be included; and

(b) any day on which the worker would not have worked if he or she had not suffered the injury must be excluded.

Note

See Division 4 of Part IV of the **Accident Compensation Act 1985** as to the liability for payment of compensation under that Act. Section 125A of that Act specifies the employer's excess in respect of claims for compensation in respect of an injury arising on or after 4 p.m. on 30 June 1993 but before 1 July 2014.

Division 3—Claims management—General

73 Responsibilities of employer

(1) An employer must forward to the Authority the following—

(a) any claim for compensation in the form of weekly payments under this Act or the **Accident Compensation Act 1985**;

(b) any relevant medical certificate in accordance with section 25 relating to a claim for compensation in the form of weekly payments;

(c) any claim for compensation under Division 4 of Part 5;

(d) any claim for compensation under Division 7 of Part 5 which comes within the employer's liability under the employer's excess under section 72(1) and has not been paid by the employer or which the employer will not pay pending a decision by the Authority;

(e) any claim for compensation under Division 7 of Part 5 which does not come within the employer's liability under the employer's excess under section 72(1);

(f) any claim for compensation under section 235, 236, 237, 237AA, 237A or 241;

S. 73(1)(f) amended by No. 27/2025 s. 9.

(g) any claim for compensation under section 98, 98A, 98C or 98E of the **Accident Compensation Act 1985**;

(h) any claim for compensation under Division 2B of Part IV of the **Accident Compensation Act 1985** which comes within the employer's liability under section 125(1)(a) of that Act or the employer's excess under section 125A(3) of that Act and has not been paid by the employer or which the employer will not pay pending a decision by the Authority;

(i) any claim for compensation under Division 2B of Part IV of the **Accident Compensation Act 1985** which does not come within the employer's liability under section 125(1)(a) of that Act or the employer's excess under section 125A(3) of that Act;

(j) any claim for compensation under section 92, 92A or 92B of the **Accident Compensation Act 1985**—

within 10 days after the employer receives the claim.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) An employer must forward to the Authority at such intervals and dates as are determined by the Authority a return in a form approved by the Authority of claims for compensation under—

(a) Division 7 of Part 5 which do not exceed the employer's liability under the employer's excess under section 72(1); and

(b) Division 2B of Part IV of the **Accident Compensation Act 1985** which do not exceed the employer's liability under section 125(1)(a) of that Act or the employer's excess under section 125A(3) of that Act.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(3) An employer which fails without reasonable cause to forward a claim for compensation in the form of weekly payments or any relevant medical certificate in accordance with section 25, whether with the claim or at a later date, to the Authority as required by this section is liable for weekly payments made by the Authority to the worker during the period—

(a) commencing—

(i) after the employer's liability under the excess under section 72(1)(a) or (b) of this Act or section 125(1)(a) or 125A(3)(a) or (b) of the **Accident Compensation Act 1985** is reached; or

(ii) if the claim was accompanied by a medical certificate in accordance with section 25, on the day on which the claim was given to or served on the employer; or

(iii) if the claim was not accompanied by a medical certificate in accordance with section 25, on the day on which the employer received the medical certificate—

whichever is later, and ending on the later of—

(iv) the day on which the claim for compensation in the form of weekly payments is received by the Authority; or

(v) the day on which the medical certificate is received by the Authority; or

(b) if section 72(6) of this Act or section 125A(6) of the **Accident Compensation Act 1985** applies, commencing—

(i) immediately after the employer's liability under section 72(1)(a) or (b) of this Act or section 125A(3)(a) or (b) of the **Accident Compensation Act 1985** has been met by the Authority; or

(ii) if the claim was accompanied by a medical certificate in accordance with section 25, on the day on which the claim was given to or served on the employer; or

(iii) if the claim is not accompanied by a medical certificate in accordance with section 25, on the day on which the employer received the medical certificate—

whichever is later, and ending on the later of—

(iv) the day on which the claim for compensation in the form of weekly payments is received by the Authority; or

(v) the day on which the medical certificate is received by the Authority.

(4) The Authority may impose on an employer to whom subsection (3) applies a penalty for the failure referred to in that subsection in respect of the relevant period referred to in that subsection calculated in accordance with the method determined under subsection (8).

(5) Subsections (3) and (4)—

(a) impose a liability and penalty which is in addition to any other liability or penalty under this Act;

S. 73(5)(b) amended by No. 44/2014 s. 24(3).

(b) do not apply to an employer which is an employer to whom section 31 applies;

(c) do not apply to an employer in relation to the employment of a student worker.

(6) If an employer neglects, refuses or is unable to reimburse the Authority in respect of the liability imposed under subsection (3) or (4), the Authority may recover an amount equal to that liability in a court of competent jurisdiction as a debt due to the Authority.

(7) If the employer fails without reasonable cause to forward a claim to the Authority as required by this section, the Authority may—

(a) impose on the employer a penalty calculated in accordance with the method determined under subsection (8); or

(b) recover as a debt due to the Authority in any court of competent jurisdiction an amount equivalent to any cost or expense incurred by the Authority solely as a result of the failure to forward the claim as required.

(8) The Governor in Council, by Order published in the Government Gazette, may determine the method for calculating the penalty payable by an employer who fails without reasonable cause to forward a claim to the Authority as required by this section.

(9) The Authority may recover a penalty imposed under subsection (7)(a) in a court of competent jurisdiction as a debt due to the Authority.

(10) This section does not apply to an employer who is a self-insurer or an eligible subsidiary of a self-insurer except in relation to the employment of a student worker.

73A Responsibilities of employer—mental injuries

S. 73A inserted by No. 5/2021 s. 7(1).

(1) In addition to any requirement to forward a claim or medical certificate under section 73(1), an employer, within 3 business days after the employer receives a claim for compensation in

respect of a mental injury, must notify the Authority of that claim.

(2) This section does not apply to an employer who is a self-insurer or an eligible subsidiary of a self-insurer except in relation to the employment of a student worker.

(3) A notification under subsection (1) does not of itself affect any period referred to in section 75 within which a claim is required to be dealt with.

(4) In this section—

business day means a day other than a Saturday, Sunday or public holiday.

S. 73A(5) inserted by No. 5/2021 s. 7(2).

(5) An employer must not contravene subsection (1).

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

S. 74 amended by No. 5/2021 s. 8 (ILA s. 39B(1)).

74 Guidelines

(1) The Minister may make guidelines in accordance with section 611 for the purposes of section 73 specifying the manner in which a claim for compensation may be forwarded by an employer to the Authority.

S. 74(2) inserted by No. 5/2021 s. 8.

(2) The Authority may make guidelines in accordance with section 612 for the purpose of section 73A specifying the manner in which an employer may notify the Authority of a claim for compensation in respect of a mental injury.

75 Responsibilities of self-insurers and the Authority

S. 75(1) amended by No. 44/2014 s. 9.

(1) If the Authority or a self-insurer does not give written notice of a decision to accept or reject a claim for compensation in the form of weekly payments—

(a) if the claim was accompanied by a medical certificate in accordance with section 25, within 28 days after receiving the claim; or

(b) if the claim was not accompanied by a medical certificate in accordance with section 25, within 28 days after receiving such a medical certificate—

the claim is deemed to have been accepted and the Authority or self-insurer must pay compensation in the form of weekly payments to the worker subject to and in accordance with this Act or the **Accident Compensation Act 1985**.

(2) The Authority or a self-insurer must give written notice of a decision to accept or reject a claim for compensation for medical or like services under Division 7 of Part 5 of this Act or Division 2B of Part IV of the **Accident Compensation Act 1985** within 28 days after receiving the claim.

(3) The written notice of a decision to accept or reject a claim for compensation in the form of weekly payments or for compensation for medical or like services under Division 7 of Part 5 or Division 2B of Part IV of the **Accident Compensation Act 1985** must, in the case of a decision to reject the claim, include a statement of the reasons for the decision.

S. 75(4) amended by No. 44/2014 s. 9.

(4) If—

(a) a worker notifies the Authority of a claim given to or served on the employer under section 21(2); and

(b) the Authority receives from the employer, within the period referred to in section 73(1), the claim and the relevant medical certificate in accordance with section 25, and does not give notice of a decision to accept or reject

the claim within 28 days after the Authority receives the claim and medical certificate—

the claim is deemed to have been accepted by the Authority and the Authority must pay compensation in the form of weekly payments to the worker, subject to and in accordance with this Act or the **Accident Compensation Act 1985**.

S. 75(5) amended by No. 44/2014 s. 9.

(5) If—

(a) a worker notifies the Authority of a claim given to or served on the employer under section 21(2) that is accompanied by a medical certificate in accordance with section 25; and

(b) the Authority does not receive the claim from the employer within the period referred to in section 73(1); and

(c) the Authority does not give notice of a decision to accept or reject the claim within 39 days after the Authority receives notice of the claim—

the claim is deemed to have been accepted by the Authority and the Authority must pay compensation in the form of weekly payments to the worker, subject to and in accordance with this Act or the **Accident Compensation Act 1985**.

(6) If the Authority receives a claim in accordance with section 20(2) (not being a claim that has been rejected under this section) for compensation in the form of weekly payments that is accompanied by the relevant medical certificate in accordance with section 25 from the employer more than 28 days after the expiry of the period of 10 days referred to in section 73(1)—

(a) the claim is deemed to have been accepted; and

(b) the Authority must pay compensation in the form of weekly payments to the worker, subject to and in accordance with this Act or the **Accident Compensation Act 1985**.

(7) A decision or deemed decision under this section is binding on the employer in respect of the employer's liability under the employer's excess.

(8) If subsection (6) applies—

(a) a deemed decision under that subsection is binding on the employer;

(b) the employer is liable for all weekly payments made to the worker by the Authority after—

(i) the day on which the claim was given to or served on the employer; or

(ii) if the claim was not accompanied by a medical certificate in accordance with section 25, the day on which the certificate is given to the employer—

whichever is the later, until the day on which the claim and the medical certificate have been received by the Authority from the employer.

75A Responsibilities of self-insurers and the Authority—mental injuries

S. 75A inserted by No. 5/2021 s. 9.

(1) Subject to subsection (4), the Authority must give written notice to a worker of a determination as to the worker's entitlement to provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985** within 2 business days after—

(a) being notified of a claim under section 73A; or

(b) receiving a claim under section 29 in respect of a mental injury; or

(c) being otherwise notified by the worker of the existence of a mental injury in connection with a claim forwarded under section 29 or 73.

(2) Subject to subsection (4), a self-insurer must give written notice to a worker of a determination as to the worker's entitlement to receive provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985** within 5 business days after—

(a) receiving a claim for compensation in respect of a mental injury under section 20; or

(b) being otherwise notified by the worker of the existence of a mental injury in connection with a claim received under section 20.

(3) If the Authority or a self-insurer is unable to determine whether a worker is entitled to provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985** because the notification or claim does not contain enough relevant information, the Authority or self-insurer must make reasonable attempts to request the information from the employer or worker.

(4) If subsection (3) applies, written notice of a determination as to the worker's entitlement to receive provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985** must be given to the worker within 10 business days after—

(a) the claim for compensation was—

(i) received by the employer or self-insurer under section 20; or

(ii) lodged with the Authority under section 29; or

(b) the Authority was notified under subsection (1)(c).

(5) In this section—

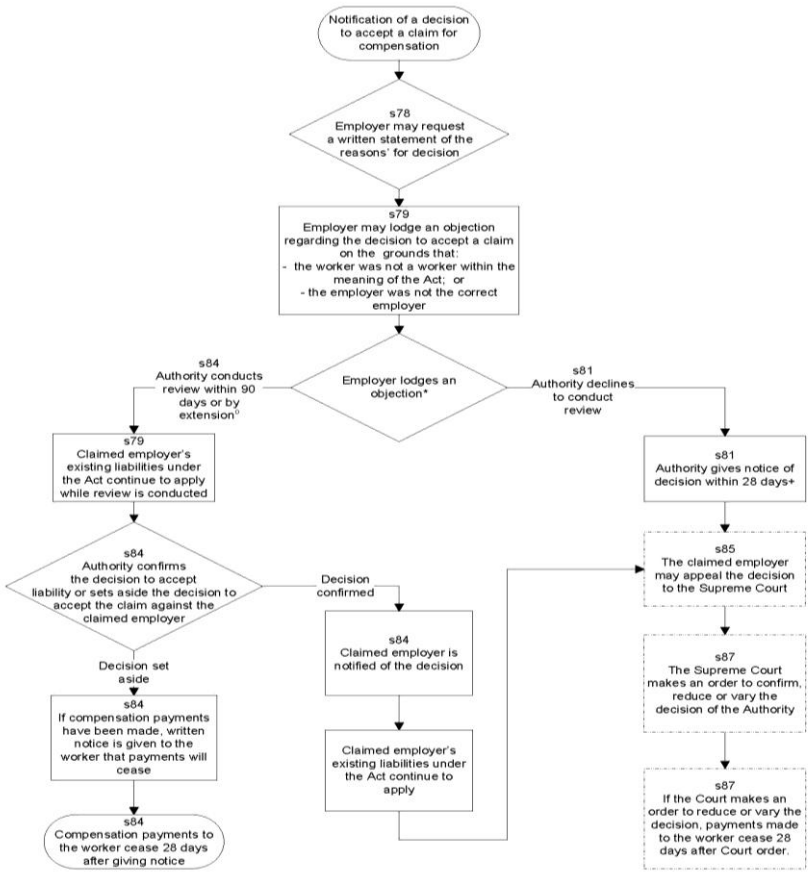
business day means a day other than a Saturday, Sunday or public holiday.

76 Notice to include statement of right of review

If the Authority or a self-insurer gives a notice under this Act to a worker or claimant, the notice must include a statement of any right of the worker or claimant to apply for conciliation or review of any decision to which the notice relates.

Division 4—Claims management—Employer objection

77 Flow chart 3—employer objection process



*Employer may withdraw lodged objection at any time prior to determination.
◊Authority may suspend review if employer fails to provide information requested by the Authority within specified timeframe
+Employer may appeal to the Supreme Court within 60 days of receiving notice of the decision

78 Employer may request reasons for decision on a claim

(1) If the Authority has given notice to a worker or claimant of its decision to accept, or to reject a claim for compensation—

(a) in the form of weekly payments; or

(b) under Division 5 of Part 5 of this Act or section 98C or 98E of the **Accident Compensation Act 1985**; or

(c) in respect of the death of a worker—

the employer may, in writing, request the Authority to provide a written statement of the reasons for its decision.

(2) The Authority must, within 28 days after receiving a request under subsection (1), comply with the request.

(3) No proceedings may be brought against the Authority in respect of any question or other matter arising under this section.

79 Objection by employer in respect of liability

(1) If the Authority, by written notice, accepts a claim for compensation in respect of an injury or death under this Act or the **Accident Compensation Act 1985**, the employer may lodge an objection with the Authority in respect of the decision to accept the claim if the employer considers that—

(a) the alleged worker is not a worker within the meaning of this Act or the **Accident Compensation Act 1985**; or

(b) the employer was not the correct employer of the worker at the time of the injury or death.

(2) An objection lodged by an employer under subsection (1) must—

(a) be in writing in a form approved by the Authority; and

(b) state the grounds on which the objection is made and review by the Authority is sought; and

(c) attach any document relevant to the objection and review; and

(d) unless section 80 applies, be lodged within 60 days of receipt by the employer of the decision of the Authority to accept the claim for compensation in respect of which the employer is making the objection.

(3) An objection is taken to be lodged with the Authority when the objection is received by the Authority.

(4) An objection made by a claimed employer under this Division in respect of a claim does not affect existing liabilities the employer may have under this Act or the **Accident Compensation Act 1985**.

80 Objection lodged out of time

(1) The Authority may permit an employer to lodge an objection with the Authority after the period specified in section 79(2)(d).

(2) The employer seeking to lodge an objection out of time must state, in writing, the circumstances concerning, and the reasons for, the failure to lodge the objection within the 60 day period.

(3) The Authority may grant permission to lodge an objection out of time unconditionally or subject to conditions.

(4) Proceedings to seek review of a decision made by the Authority under this section to not grant permission to lodge an objection out of time or to only grant permission to lodge out of time subject to conditions, must not be brought, whether against the Authority or otherwise.

81 Authority may refuse to review a decision to which a claimed employer has objected

(1) The Authority may decline to conduct a review if—

(a) the lodged objection is in respect of a decision to accept a claim for compensation that has been reviewed by the Authority on a prior occasion and the claimed employer—

(i) has been provided with the Authority's written reasons for the decision following that review; and

(ii) has not provided the Authority with any new relevant information in, or with, the lodged objection; or

(b) the Authority considers that the lodged objection is misconceived or lacking in substance.

(2) If the Authority declines to conduct a review of a decision under subsection (1), the Authority must notify the claimed employer of the Authority's decision, in writing, within 28 days of receiving the lodged objection.

82 Withdrawal of lodged objection

A claimed employer may, in writing, withdraw a lodged objection at any time before the Authority has made a decision under section 84.

83 Request for information and suspension of review

(1) The Authority may, by written notice given to a claimed employer, request the claimed employer to provide information relevant to the review of the lodged objection within the period specified in the notice, not being less than 28 days after the notice is given.

(2) If a claimed employer fails to comply with a notice given under subsection (1), the Authority may suspend consideration of the lodged objection and review.

(3) If the Authority suspends consideration of a lodged objection and review under subsection (2), the Authority must give the claimed employer written notice of the suspension which states the following—

(a) that the suspension takes effect on service of the notice;

(b) that the review has been suspended pending the provision of the information relevant to the review that the Authority has requested;

(c) the details of the requested information;

(d) that the review will remain suspended until the earlier of—

(i) the period of suspension specified in the notice is complete; or

(ii) the claimed employer provides the Authority with the requested information.

(4) If the claimed employer does not provide the Authority with the information requested by the Authority by the completion of the stated period of suspension in the notice of suspension, the claimed employer is deemed to have withdrawn the lodged objection.

(5) If a claimed employer is deemed to have had a lodged objection withdrawn under subsection (4), the claimed employer may again lodge an objection in respect of the same decision that was the subject of the deemed withdrawn lodged objection.

(6) An objection lodged under subsection (5) will not be accepted by the Authority unless the objection—

(a) is made within 28 days of the date the lodged objection was deemed to be withdrawn under subsection (4); and

(b) is accompanied by the information specified in the notice of suspension.

(7) If—

(a) the objection of a claimed employer is deemed to be withdrawn under subsection (4); and

(b) the claimed employer fails to lodge the objection again in accordance with subsection (6)—

the decision of the Authority to accept the claim for compensation against the claimed employer is deemed to be confirmed.

(8) Proceedings to seek review of a deemed confirmation under subsection (7) must not be brought, whether against the Authority or otherwise.

84 Decision following review

(1) The Authority must, after reviewing an objection lodged under section 79—

(a) confirm the decision of the Authority to accept the claim for compensation against the claimed employer; or

(b) set aside the decision of the Authority to accept the claim for compensation against the claimed employer and, subject to subsection (4), cease any payments of compensation being made arising from the Authority's original decision to accept the claim.

(2) A decision made under subsection (1) must—

(a) be in writing and set out the Authority's reasons for the decision; and

(b) be provided to the claimed employer—

(i) within 90 days of the Authority receiving the lodged objection; or

(ii) more than 90 days after the Authority receives the objection if the Authority gives the claimed employer written notice within the period specified in subparagraph (i) specifying—

(A) that the Authority is extending the period to provide the Authority's decision to a day specified in the notice; and

(B) the reasons for the extension.

(3) If the Authority fails to provide the claimed employer with its decision under subsection (1) within the period set out in subsection (2)(b), the Authority is deemed to have confirmed the decision to accept the claim for compensation against the claimed employer.

(4) If the worker has been receiving payments of compensation under a claim before the Authority sets aside the decision to accept the claim under subsection (1)(b), the Authority must give the worker 28 days written notice before ceasing to make payments.

(5) If the Authority sets aside the decision to accept the claim under subsection (1)(b) and the worker subsequently makes a claim against an employer that is not the claimed employer in respect of the injury that was the subject of the set aside claim—

(a) the first entitlement period and the second entitlement period within the meaning of section 152; and

(b) the enhancement period within the meaning of section 157—

must be calculated from the date of the first claim the worker made in respect of the injury the subject of the claim which was set aside.

85 Appeals

(1) Despite anything to the contrary in section 264(1), if a claimed employer—

(a) has received notice that the Authority has declined to consider the objection and conduct a review under section 81; or

(b) is not satisfied with the decision made by the Authority under section 84 (including a deemed decision under that section)—

the claimed employer may appeal against that decision to the Supreme Court.

(2) An appeal under subsection (1), other than an appeal in respect of a deemed decision, must be made within 60 days of the claimed employer receiving notice of the Authority's decision.

(3) An appeal made in respect of a deemed decision under section 84(3) must be made within 60 days of the decision being deemed.

86 Grounds of appeal

On an appeal—

(a) the claimed employer's case is limited to the grounds of the objection under section 79; and

(b) the Authority's case is limited to the grounds on which the Authority made a decision under section 84—

unless the Supreme Court otherwise orders.

87 Hearing of appeal by Supreme Court

(1) On the hearing of an appeal by the Supreme Court, the Court may—

(a) make any order the Court thinks fit; and

(b) by order confirm, reduce or vary the decision of the Authority under section 84.

(2) If the Supreme Court determines—

(a) the alleged worker is not a worker within the meaning of this Act or the **Accident Compensation Act 1985**; or

(b) the claimed employer was not the correct employer of the worker at the time of the relevant injury or death—

payments of compensation being made to the alleged worker must cease on the earlier of—

(c) 28 days after the date of the Court's determination; or

(d) a date, after the date of the Court's determination, determined by the Authority.

88 Costs of worker

If the worker is joined as a party to proceedings commenced by the claimed employer under section 85, unless the Supreme Court otherwise determines, the Authority is liable for any reasonable legal costs incurred by the worker consequent on the worker being joined to those proceedings.

89 Position of worker following decision under section 84

(1) If the Authority sets aside its decision under section 84(1)(b) to accept a claim made by a worker for compensation against the claimed employer—

(a) for the purposes of the worker accessing dispute resolution procedures under Part 6, the Authority's decision under section 84(1)(b) is taken to be a rejection of the worker's claim; and

(b) subject to the workers' rights to dispute resolution procedures under Part 6, the worker is not entitled to lodge another claim in respect of the same injury the subject of the set aside claim under section 84(1)(b) against the first claimed employer.

(2) Despite the Authority's decision under section 84(1)(b) to set aside its original decision to accept a claim made by a worker for compensation against the claimed employer, the claimed employer is not entitled to recover any compensation payments made to the worker before the decision under section 84(1)(b) was made.

90 Recovery of payments

(1) The Authority or a self-insurer may recover from a worker, an employer or any other person any payment of compensation or other amount to which the worker, employer or other person is not entitled.

S. 90(1A) inserted by No. 5/2021 s. 10.

(1A) Subsection (1) does not apply in respect of provisional payments made under Division 10 of Part 5, except in the case of a payment obtained fraudulently.

(2) If the Authority recovers from a worker any amount paid as compensation to the worker by the worker's employer to which the worker is not entitled, the Authority may reimburse that amount to the employer.

(3) The Authority may recover from an employer the amount of any penalty or cost incurred by the Authority as a result of the employer failing to pay compensation as required by this Act or the **Accident Compensation Act 1985**.

(4) If—

(a) an amount of compensation under this Act or the **Accident Compensation Act 1985** has been paid to a person in consequence of a false or misleading statement or representation or in consequence of a failure or omission to comply with a provision of this Act or the **Accident Compensation Act 1985**; or

(b) a person is liable to pay an amount to the Authority or a self-insurer under this Act or the **Accident Compensation Act 1985**—

the amount concerned is recoverable by the Authority or a self-insurer from a person in a court of competent jurisdiction as a debt due to the Authority or self-insurer.

(5) If—

(a) an amount is recoverable from a person under subsection (4); and

(b) an amount is payable under this Act or the **Accident Compensation Act 1985** to or for the benefit of that person—

the recoverable amount may be deducted from the amount so payable, despite anything to the contrary in section 176(1) of this Act or section 97(4) of the **Accident Compensation Act 1985**.

Division 5—Liability for payment of compensation

91 Application of Division

This Division does not apply to an employer who is a self-insurer or an eligible subsidiary of a self-insurer except in relation to the employment of a student worker.

92 Liability to pay compensation in respect of an injury arising out of or in the course of any employment on or after 1 July 2014

If a worker or a worker's dependants are entitled to compensation in respect of an injury arising out of or in the course of any employment on or after 1 July 2014, the liability to pay compensation is to be assumed in all cases by the worker's employer.

93 Provisions to apply where employer does not meet liabilities

(1) If the employer of the worker neglects, refuses or is unable to pay compensation in discharge of the employer's liability under section 72(1) within 21 days of receiving the claim for payment of compensation, the liability becomes a liability of the Authority.

(2) If the liability has become a liability of the Authority under subsection (1), the Authority may impose on the employer a penalty calculated in accordance with the method determined under subsection (3).

(3) The Governor in Council, by Order published in the Government Gazette, may determine the method for calculating the penalty payable by an employer if the liability has become a liability of the Authority under subsection (1).

(4) The Authority may recover a penalty imposed under subsection (2) in a court of competent jurisdiction as a debt due to the Authority.

94 Provisions relating to payment of compensation

(1) If, in any proceedings under this Act for the payment of weekly payments or of compensation under Division 5, 7 or 8 of Part 5, a court is of the opinion that the employer, the Authority or a self-insurer is responsible for any unreasonable delay—

(a) the court may direct the amount of compensation determined and payable under this Act to be increased by an amount specified by the court; and

(b) the Authority or self-insurer must pay the person entitled to compensation the amount of the increase.

(2) If the court made a direction increasing the amount of compensation payable under subsection (1)(a) as a result of forming the opinion that the employer was responsible for any unreasonable delay, the Authority may require the employer to pay an amount equivalent to the increase paid by the Authority as if it were premium payable under Part 10.

(3) The amount of the increase must not exceed—

(a) in the case of weekly payments, one-tenth of the total amount of the weekly payments accrued due at the date of the assessment of compensation; or

(b) in the case of compensation under Division 5 of Part 5, one-tenth of the lump sum calculated under that Division; or

(c) in the case of compensation under section 236, 237, 237AA or 237A, one-tenth of the total amount of the compensation; or

S. 94(3)(c) amended by No. 27/2025 s. 10.

(d) in the case of weekly pensions under section 241, one-tenth of the total amount of the weekly pensions accrued due at the date of the assessment of compensation.

95 Interim payment—weekly payments

(1) If, in respect of a claim, the Magistrates' Court or the County Court determines that—

(a) compensation in the form of weekly payments is, or may be, payable under this Act; and

(b) it is unable to ascertain the relevant rate of weekly payments—

the Court may make an interim determination for payment of the whole or any part of the compensation.

(2) The making of a determination under subsection (1)—

(a) does not preclude the Court from making, in respect of the same claim, a further interim determination or a final determination; and

(b) does not prejudice the rights of the parties in respect of any such further interim or final determination.

Part 4—Return to work

Division 1—Preliminary

96 Definitions

(1) In this Part—

compliance code means a code approved by the Minister under section 121;

employment obligation period means, subject to section 103(2) and (3), an aggregate period of 52 weeks, whether or not consecutive, in respect of which a worker has an incapacity for work resulting from, or materially contributed to, by the injury to which the medical certificate or claim relates, beginning on the date on which the employer—

(a) receives from the worker a medical certificate issued in accordance with section 25(1); or

(b) receives a claim for compensation from the worker in the form of weekly payments; or

(c) is notified by the Authority that the worker has made a claim for compensation in the form of weekly payments; or

(d) is notified by the Authority that the worker has provided the Authority with a medical certificate issued in accordance with section 25(1)—

whichever is earliest;

host has the meaning given by section 109(1)(a);

inspector means an officer or employee of the Authority who is appointed as an inspector under section 126 for the purposes of this Part;

labour hire employer has the meaning given by section 109(1)(a);

preceding premium period means the premium period preceding the premium period in respect of which a premiums order made under Division 4 of Part 10 is currently in force;

pre-injury employment means the employment of a worker in a position which is the same as or equivalent to the position in which the worker was employed before receiving the injury;

representative, in relation to a worker, does not include a legal practitioner;

Return to Work improvement notice means a Return to Work improvement notice issued under Division 7;

treating health practitioner means—

(a) a medical practitioner who has issued a medical certificate referred to in section 25; or

(b) a medical practitioner, registered physiotherapist, registered chiropractor or registered osteopath who has issued a certificate of capacity referred to in section 167(2);

workplace means a place, whether or not in a building or structure—

(a) where a worker works; or

(b) from where an employer conducts business; or

(c) where records relating to the business of an employer are kept.

(2) In section 28 and this Part, a reference to a worker who has an incapacity for work, is a reference to a worker—

(a) who has no current work capacity; or

(b) who has a current work capacity.

97 Purpose

The purpose of this Part is to provide the following—

(a) that employers, workers and other persons involved in the return to work process co-operate to ensure that workers successfully return to work;

(b) that employers are responsible for providing pre-injury employment or suitable employment to enable workers to return to work;

(c) that workers are responsible for participating in the return to work process consistently with their capacity for work;

(d) for workers to be represented, assisted and supported in the return to work process;

(e) for effective occupational rehabilitation for workers to facilitate their early and sustainable return to work.

98 Application of Part

This Part applies to, and in respect of, the return to work of a worker.

99 Obligations of employers and workers

(1) The obligations of employers are specified in Division 2.

(2) The obligations of workers are specified in section 28 and Division 3.

100 Section 28 and this Part do not derogate from other provisions

Nothing in section 28 or this Part limits or otherwise affects the operation of other provisions of this Act or the **Accident Compensation Act 1985** unless this Part specifically provides otherwise.

101 Part not to apply in certain circumstances

(1) This Part does not apply to an employer of a worker who—

(a) at the time of the injury is a student at a school within the meaning of Part 5.4 of the **Education and Training Reform Act 2006**; and

(b) is employed under a work experience arrangement under that Part.

(2) The following classes of employers, to the extent indicated, are not required to comply with any obligation under this Part other than the obligation specified in section 103—

(a) employers (including owners corporations within the meaning of the **Owners Corporations Act 2006**) who employ domestic or similar workers otherwise than for the purposes of the employer's trade or business (but only to the extent that such workers are concerned);

S. 101(2)(b) amended by No. 48/2017 s. 28.

(b) employers who hold certificates of consent under the **Building Act 1993** (but only to the extent that the workers employed for the purposes of the work to which the certificates relate are concerned);

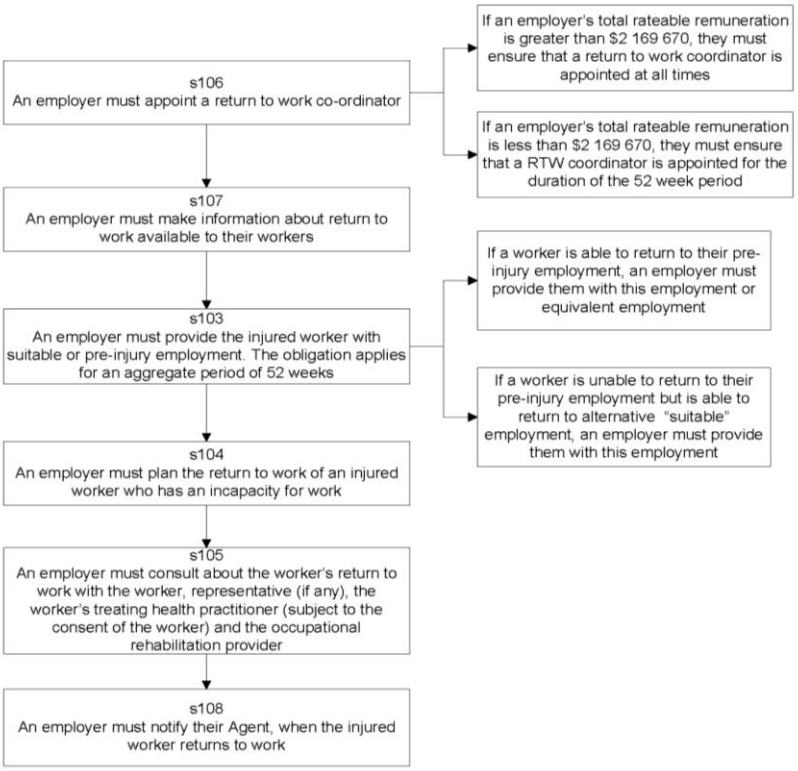
(c) employers (being corporations) who only employ workers who are directors of the corporation;

(d) employers who only employ workers who are members of the employer's family;

(e) employers who only employ workers who only perform work while outside Victoria.

Division 2—Obligations of employers

102 Flow chart 4—return to work obligation of employers



103 Provide employment

(1) An employer must, to the extent that it is reasonable to do so, provide to a worker until the expiration of the employment obligation period—

(a) suitable employment, while the worker has a current work capacity; and

(b) pre-injury employment, while the worker no longer has an incapacity for work.

Penalty: In the case of a natural person, 180 penalty units;

In the case of a body corporate, 900 penalty units.

(2) For the purposes of this section, the employment obligation period includes any period specified in subsection (3)(a), (b), (c) or (d) if the employer provides suitable employment to the worker during that period.

(3) For the purposes of this section, except as provided in subsection (2), the employment obligation period does not include—

(a) the period commencing on the date of a decision made by the Authority or self-insurer to reject the worker's claim for weekly payments and ending on the date on which—

S. 103(3)(a)(i) amended by No. 73/2016 s. 21(2).

(i) ACCS gives a direction that weekly payments are to be paid in relation to the claim; or

S. 103(3)(a)(ii) amended by No. 73/2016 s. 21(2).

(ii) ACCS makes a recommendation that weekly payments are to be paid in relation to the claim and the recommendation is accepted by the employer or the Authority or self-insurer; or

(iii) the claim is determined by a court in favour of the worker; or

(b) the period commencing on the date the Authority sets aside a decision to accept a claim for compensation against an employer under section 84(1)(b) and ending on a date

specified in paragraph (a)(i), (ii) or (iii) of this subsection; or

(c) the period commencing on the date a direction given by ACCS that weekly payments are to be made is revoked and ending on the date that the payment of weekly payments is resumed; or

S. 103(3)(c) amended by No. 73/2016 s. 21(2).

(d) any period during which a Return to Work improvement notice issued to the employer is stayed by the Authority under section 150 or by VCAT on an application made under section 151.

104 Plan return to work

(1) An employer must, to the extent that it is reasonable to do so, plan the return to work of a worker from the date on which the employer knows or ought reasonably to have known of the worker's incapacity for work, whichever is the earlier date.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(2) An employer must, when planning the return to work of a worker, undertake the tasks specified in subsection (3) as often as is necessary to enable the worker to return to work in employment which is consistent with the worker's capacity for work.

(3) Planning the return to work of a worker includes—

(a) obtaining relevant information about the worker's capacity for work; and

(b) considering reasonable workplace support, aids or modifications to assist in the worker's return to work; and

(c) assessing and proposing options for suitable employment or pre-injury employment; and

(d) engaging in consultation in accordance with section 105; and

(e) providing the worker with clear, accurate and current details of the worker's return to work arrangements; and

(f) monitoring the worker's progress.

(4) For the purposes of this section, an employer knows or ought reasonably to have known of the worker's incapacity for work from the date of the commencement of the employment obligation period.

105 Consult about the return to work of a worker

(1) An employer must, to the extent that it is reasonable to do so, consult about the return to work of a worker with—

(a) the worker; and

(b) subject to the consent of the worker, the worker's treating health practitioner; and

(c) a provider of occupational rehabilitation services that provides those services to the worker in accordance with Divisions 6 and 7 of Part 5 of this Act or Divisions 2B or 2C of Part IV of the **Accident Compensation Act 1985**.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(2) The employer must consult with the persons specified in subsection (1) by—

(a) sharing information about the worker's return to work; and

(b) providing a reasonable opportunity for those persons to consider and express their views about the worker's return to work; and

(c) taking those views into account.

(3) For the purposes of this section, an employer's consultation with a worker about the return to work of the worker must involve the employer consulting directly with the worker.

(4) A worker may be assisted by a representative during a consultation under subsection (3).

106 Return to work co-ordinator to be appointed

(1) An employer who has certified, or in respect of whom there has been assessed, total rateable remuneration of $2 169 670 or more for all workplaces of the employer in respect of the preceding premium period must ensure that, at all times, an appropriate person is appointed to act as the return to work co-ordinator for the employer.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(2) An employer who has certified, or in respect of whom there has been assessed, total rateable remuneration of less than $2 169 670 for all workplaces of the employer in respect of the preceding premium period must ensure that, for the duration of the employer's obligations under

this Part to a worker who has an incapacity for work, an appropriate person is appointed to act as the return to work co-ordinator for the employer.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(3) A return to work co-ordinator is not personally liable for an act or omission done or omitted to be done in good faith in the course of acting as a return to work co-ordinator.

(4) Any liability resulting from an act or omission that, but for subsection (3), would attach to a return to work co-ordinator, instead attaches to the employer.

(5) An amount specified in subsection (1) or (2) must be varied, in respect of the financial year beginning on 1 July 2014 and each subsequent financial year, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount specified in subsection (1) or (2) or, if that amount has been varied in accordance with this section, that amount as last so varied.

B is the all groups consumer price index for Melbourne in original terms published by the Australian Bureau of Statistics as at 15 June in the preceding financial year in respect of the most recent reference period ending on or before 31 December in that financial year.

C is the all groups consumer price index for Melbourne in original terms for the corresponding reference period one year earlier than the reference period referred to in B published by the Australian Bureau of Statistics as at 15 June referred to in B.

(6) In this section, ***appropriate person*** means a person who has an appropriate level of seniority and is competent to assist an employer to meet the obligations of the employer under this Part.

S. 106(6) amended by No. 44/2014 s. 24(4).

(7) A person is competent to assist an employer to meet the obligations of the employer under this Part if the person has knowledge, skills or experience relevant to planning for return to work including—

(a) knowledge of the obligations of employers and workers under this Part; and

(b) knowledge of the compensation scheme provided for under this Act and the **Accident Compensation Act 1985** and the functions of the Authority and, if relevant, self-insurers under this Part.

107 Make return to work information available

(1) An employer must make information available to the employer's workers about—

(a) the obligations of the employer under this Part and how the employer is meeting the obligations; and

(b) the rights and obligations of workers under section 28 and this Part and how workers can obtain further information about the rights and obligations; and

(c) the name and contact details of the authorised agent selected by the employer; and

(d) the name and contact details of the return to work co-ordinator, if applicable; and

(e) the procedure for resolving return to work issues as specified in section 118.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(2) An employer must consult with the employer's workers as to how the information is to be made available under this section.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

108 Employer to notify Authority of return to work of worker

(1) When—

(a) a worker who has been receiving weekly payments for no current work capacity returns to work with the employer in whose employment the injury occurred or an employer who knows that the worker has been receiving payments; or

(b) there is a change in the weekly earnings of a worker who has been receiving weekly payments for current work capacity—

the employer must notify the Authority.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) Subsection (1) does not apply to a self-insurer or an eligible subsidiary of a self-insurer except in relation to the employment of a student worker.

109 Host to co-operate with labour hire employer

(1) This section applies if—

(a) the services of a worker are let on hire to another person (***host***) by the employer (***labour hire employer***) with whom the worker had entered into a contract of employment; and

(b) there is caused to the worker an incapacity for work resulting from or materially contributed to by an injury arising out of or in the course of employment with the labour hire employer whilst the worker is let on hire to the host.

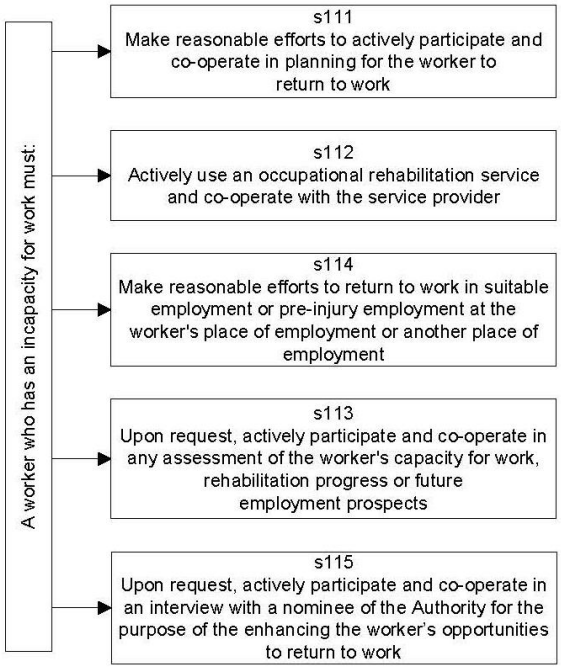
(2) A host must, to the extent that it is reasonable to do so, co-operate with the labour hire employer, in respect of action taken by the labour hire employer in order to comply with sections 103, 104 and 105 to facilitate the worker's return to work.

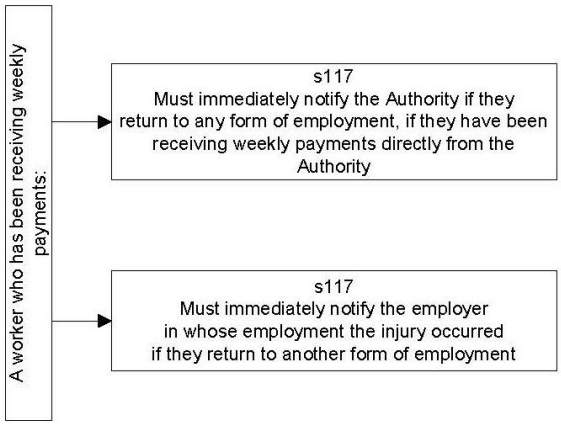
Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

Division 3—Obligations of workers

110 Flow chart 5—return to work obligation of workers





111 Participate in planning for return to work

A worker who has an incapacity for work must, in co-operation with the employer, Authority or self-insurer make reasonable efforts to actively participate and co-operate in planning for the worker to return to work.

112 Use occupational rehabilitation services

A worker who has an incapacity for work must, to the extent it is reasonable to do so, actively use an occupational rehabilitation service provided in accordance with Divisions 6 and 7 of Part 5 of this Act or Divisions 2B and 2C of Part IV of the **Accident Compensation Act 1985** and co-operate with the provider of that service.

113 Participate in assessments

A worker who has an incapacity for work must, when requested to do so by the employer, Authority or self-insurer, and to the extent it is reasonable to do so, actively participate and co-operate in any assessment of the worker's—

(a) capacity for work; and

(b) rehabilitation progress; and

(c) future employment prospects.

114 Return to work

(1) A worker who has an incapacity for work must, in co-operation with the employer, Authority or self-insurer make reasonable efforts in accordance with this Division to return to work in suitable employment or pre-injury employment at the worker's place of employment or at another place of employment.

(2) For the purposes of subsection (1), a worker is to be treated as making a reasonable effort to return to work in suitable employment or pre-injury employment during any period in which—

(a) the worker is waiting for the commencement of an occupational rehabilitation service after approval has been given; or

(b) the worker is waiting for a response to a request for suitable employment or pre-injury employment made by the worker and received by the employer; or

(c) if the employer's response is that suitable employment or pre-injury employment may, or will, be provided at some time, the worker is waiting for suitable employment or pre-injury employment to commence; or

(d) if the employer's response is that suitable employment or pre-injury employment cannot be provided at some time, the worker is waiting for a response to a request for suitable employment or pre-injury employment from another employer.

(3) For the purposes of subsection (1), a worker is not to be treated as making reasonable efforts to return to work in suitable employment or pre-injury employment during any period in which the worker has refused or failed to meet any obligation under this Division.

115 Participate in an interview

(1) A worker who has an incapacity for work must, as required by the Authority or self-insurer and to the extent it is reasonable to do so—

(a) participate in an interview with a nominee of the Authority or self-insurer for the purpose of enhancing the worker's opportunities to return to work; and

(b) actively participate and co-operate in the interview referred to in paragraph (a) in order to comply with his or her obligations under this Division.

(2) In arranging an interview under this section, the Authority or self-insurer must, by notice in writing given to the worker, specify—

(a) the time and place of the interview; and

(b) that the worker must participate in an interview and may be accompanied by a representative.

Division 4—Termination of compensation

116 Failure to comply with Division 3

(1) This section applies if a worker does not comply with an obligation of the worker imposed under Division 3.

(2) If this section applies, the Authority or self-insurer may, in accordance with this section—

(a) suspend the payment of compensation in the form of weekly payments to the worker; or

(b) terminate the payment of compensation in the form of weekly payments to the worker; or

(c) cease and determine the entitlement of the worker to compensation in the form of weekly payments.

(3) If the Authority or self-insurer seeks to suspend payments of compensation under subsection (2)(a), the Authority or self-insurer must give written notice to the worker stating—

(a) the reason for the giving of the notice; and

(b) that unless the worker complies with the obligation under Division 3 specified in the notice, weekly payments to the worker will be suspended from the date specified in the notice which must be a date at least 14 days, but no more than 60 days, after notice is given; and

(c) the consequences of failing to comply as specified in the notice.

(4) If the worker fails to comply with a written notice under subsection (3), the Authority or self-insurer may suspend the payment of weekly payments to the worker for a period of 28 days after the date specified in the notice referred to in subsection (3)(b).

(5) If the worker complies with the obligation specified in the notice under subsection (3) during the period that weekly payments are suspended under subsection (4), the Authority or self-insurer must, subject to and in accordance with this Act or the **Accident Compensation Act 1985**, resume the payment of weekly payments with effect from the date on which the worker complied with the obligation.

(6) If subsection (5) applies—

(a) the worker forfeits any compensation in the form of weekly payments that would otherwise have been made during the period of suspension until the worker complied with the obligation; and

(b) that period is included in determining the first entitlement period or the second entitlement period under this Act or the **Accident Compensation Act 1985**.

(7) If the worker does not comply with the obligation specified in the notice under subsection (3) for the entire period that weekly payments are suspended under subsection (4)—

(a) the worker forfeits any compensation in the form of weekly payments that would otherwise have been made during the period of suspension; and

(b) that period is included in determining the first entitlement period or the second entitlement period under this Act or the **Accident Compensation Act 1985**; and

(c) the Authority or self-insurer may terminate the payment of compensation in the form of weekly payments to the worker by written notice stating the reasons for giving the notice.

(8) If the worker—

(a) does not comply with the obligation specified in the notice under subsection (3) for the entire period that weekly payments are suspended under subsection (4); and

(b) has within the last 12 months prior to the giving of the notice referred to in paragraph (a)—

(i) been given 2 notices under subsection (3) without a subsequent suspension of weekly payments; or

(ii) had compensation in the form of weekly payments suspended once under subsection (4)—

the Authority or self-insurer may cease and determine the entitlement to compensation in the form of weekly payments by written notice given

to the worker stating the reasons for giving the notice.

(9) Division 3 of Part 5 of this Act and section 114 of the **Accident Compensation Act 1985** do not apply to a notice given under this section.

(10) This section does not derogate from any other provision of this Act or the **Accident Compensation Act 1985**.

117 Notification of return to work

(1) If a worker who has been receiving weekly payments directly from the Authority returns to any work (whether as a worker or otherwise), the worker must immediately notify the Authority of the return to work.

(2) If a worker who has been receiving weekly payments returns to any work, whether as a self-employed person or in employment, and whether in receipt of current weekly earnings or not, with an employer other than the employer in whose employment the injury occurred, the worker must immediately notify the employer in whose employment the injury occurred of the return to work.

Division 5—General provisions

118 Resolution of return to work issues

If an issue about a worker's return to work arises, the employer and the worker must attempt to resolve the issue in accordance with—

(a) the relevant agreed procedure; or

(b) if there is no relevant agreed procedure, in accordance with the relevant procedure specified in directions given by the Minister in accordance with section 609 for the purposes of this section.

119 Information about the employment obligation period

(1) As soon as practicable after accepting a claim for compensation from a worker who has an incapacity for work, the Authority or self-insurer must inform the worker—

(a) of the obligation of the employer to provide suitable employment or pre-injury employment until the expiration of the employment obligation period; and

(b) as to how the employment obligation period is to be calculated.

(2) Subject to, and in accordance with, any directions given under subsection (3), if the Authority or self-insurer estimates that at least 30 weeks of the employment obligation period have expired, the Authority or self-insurer must advise the worker in writing, no later than the date on which the Authority or self-insurer estimates that 36 weeks of the employment obligation period expire—

(a) as to the number of weeks of the employment obligation period which, in the opinion of the Authority or self-insurer, have expired; and

(b) that the worker may request the Authority or self-insurer to provide more information in respect of return to work.

(3) The Minister may give directions in accordance with section 609 in respect of—

(a) the information to be provided under this section; and

(b) the type of circumstances that do not require written advice to be given under subsection (2).

(4) This section does not affect the obligations of the Authority or an employer under this Part.

120 Authority may give direction

(1) The Authority may direct an employer to use the services of an approved provider of occupational rehabilitation services to advise and assist the employer in relation to the employer's return to work obligations.

(2) An employer who is given a direction under subsection (1) must comply with the direction.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(3) A direction given under subsection (1) does not derogate from any matter referred to in Division 7 of Part 5 of this Act or Division 2B of Part IV of the **Accident Compensation Act 1985**.

121 Compliance code

(1) For the purpose of providing practical guidance to persons who have obligations under this Part, the Minister may make an order approving a compliance code.

(2) A compliance code may apply, adopt or incorporate any matter contained in a document formulated, issued or published by a person or body whether—

(a) with or without modification; or

(b) as in force at a particular time or from time to time.

(3) The Minister may make an order approving the variation of a compliance code or revoking the approval of a compliance code.

(4) An order approving a compliance code, or a variation or revocation order, takes effect when notice of it is published in the Government Gazette or on such later date as is specified in the order.

(5) As soon as practicable after making an order approving a compliance code, or a variation or revocation order, the Minister must ensure that notice of the making of the order is published in the Government Gazette and on a Government Internet website.

(6) The Minister must ensure that a copy of—

(a) each compliance code that is currently approved; and

(b) each document applied, adopted or incorporated (to any extent) by a compliance code—

is available for inspection by members of the public without charge at the office of the Authority during normal business hours.

122 Disallowance of certain compliance code orders

(1) The Minister's power to make an order approving a compliance code, or a variation order, under this Part is subject to the order being disallowed by the Parliament.

(2) A copy of every order made under section 121 must be laid before both Houses of Parliament on or before the 6th sitting day after the notice of the order is published in accordance with section 121.

(3) Subject to subsection (4), Parts 3A and 5A of the **Subordinate Legislation Act 1994** apply to an order made under section 121 as if the order were a legislative instrument within the meaning of that Act laid before each House of the Parliament under section 16B of that Act.

(4) The **Subordinate Legislation Act 1994** does not apply to the first order made under section 121 containing compliance code provisions in respect of each of the following—

(a) providing employment, planning and consulting about return to work;

(b) return to work co-ordinators;

(c) return to work information;

(d) co-operating with labour hire employers about return to work.

123 Effect of compliance codes

A failure to comply with a compliance code does not of itself give rise to any civil or criminal liability.

124 Effect of compliance with compliance codes

If a compliance code makes provision for or with respect to an obligation imposed by this Part and a person complies with the compliance code to the extent that it makes that provision, the person is, for the purposes of this Act taken to have complied with this Act in relation to that obligation.

125 Functions of Authority in respect of compliance codes

(1) The Authority may make recommendations to the Minister with respect to compliance codes that the Minister or the Authority propose should be made under this Act.

(2) Subject to subsection (4), before the Authority makes a recommendation to the Minister under subsection (1) concerning a proposed compliance code, it must issue the proposed compliance code for public review and comment.

(3) However, the Authority need not comply with subsection (2) if the Authority is notified by the Minister that the Minister considers that it is in the public interest that the proposed compliance code be made as soon as practicable.

(4) Subsection (2) does not apply to a proposed compliance code to which section 122(4) applies.

Division 6—Return to Work Inspectorate

126 Appointment of inspectors

(1) The Authority may, by instrument in writing, appoint an officer or employee of the Authority to be an inspector for the purposes of this Part.

(2) The Authority must give each inspector a certificate of appointment signed by the chief executive of the Authority.

(3) A certificate of appointment given to an inspector in accordance with subsection (2) is conclusive proof of the valid appointment of the inspector under this section.

127 Identity cards

(1) The Authority must issue an identity card to each inspector containing a photograph of the inspector and his or her signature.

(2) An inspector must produce his or her identity card for inspection if asked to do so when performing a function or exercising a power under this Part.

(3) If a person to whom an identity card has been issued ceases to be an inspector, the person must return the identity card to the Authority as soon as possible.

Division 7—Functions and powers of inspectors

128 Interpretation

In this Division and Division 9, a reference to an employer includes a reference to a host unless the contrary intention appears.

129 Inspectors subject to Authority's directions

(1) An inspector is subject to the Authority's directions in the performance of his or her functions or exercise of his or her powers under this Division.

(2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

130 Power to enter

(1) Subject to subsection (2), an inspector may, without force, enter a place that the inspector reasonably believes is a workplace at any time during the work hours of the workplace.

(2) The powers of an inspector under this Division in relation to entering a place that is a workplace are not exercisable in respect of any part of that workplace that is used only for residential purposes except with the consent of the occupier for the time being of that part.

131 Announcement on entry

Immediately on entering a workplace under this Division, an inspector must take reasonable steps to notify the occupier or apparent occupier of the entry and to produce his or her identity card for inspection by that person.

132 Report to be given about entry

(1) An inspector who enters a workplace under this Division must give a report concerning the entry when, or as soon as practicable after, the inspector leaves the workplace to the occupier or apparent occupier for the time being of the workplace.

(2) If the purpose of the entry into a workplace by an inspector relates to the return to work of a worker, the inspector may give a copy of the report concerning the entry to the worker and any authorised agent selected by the employer to assist in the management of the worker's claim for compensation.

(3) The report must be in writing and include the following—

(a) the time of the entry and departure;

(b) the purpose of the entry;

(c) a description of things done while at the workplace;

(d) a summary of the inspector's observations while at the workplace;

(e) the procedure for contacting the Authority and the inspector for further details of the entry;

(f) the procedure for seeking review of any decision made by the inspector during the entry.

(4) If the inspector takes photographs or makes sketches or recordings under section 133(e), the report must also include a statement that—

(a) the photographs have been taken or sketches or recordings have been made; and

(b) they are or will be available for inspection at a specified place.

S. 132(5) inserted by No. 36/2021 s. 27.

(5) The report may be given in a manner specified in section 139(1) or (1AA).

S. 132(6) inserted by No. 36/2021 s. 27.

(6) Section 8(1) and (2) of the **Electronic Transactions (Victoria) Act 2000** do not apply to the giving of a report by electronic communication in a manner specified in section 139(1) or (1AA).

133 General powers on entry

An inspector who enters a workplace under this Division may do any of the following—

(a) inspect, examine and make enquiries at the workplace;

(b) inspect and examine any thing (including a document) at the workplace;

(c) bring any equipment or materials to the workplace that may be required;

(d) seize any thing (including a document) at the workplace that may afford evidence of the commission of an offence against this Act or the **Accident Compensation Act 1985**;

(e) take photographs or measurements or make sketches or recordings;

(f) exercise any other power conferred on the inspector by this Division;

(g) do any other thing that is reasonably necessary for the purpose of the inspector performing his or her functions or exercising his or her powers under this Division.

Note

This section does not affect legal professional privilege or client legal privilege (see section 598) or, in the case of a requirement to answer questions, the privilege against self-incrimination (see section 597).

134 Power to require production of documents and answers to questions

S. 134 (Heading) substituted by No. 49/2018 s. 31(1).

(1) An inspector who enters a workplace under this Division may do any or all of the following—

S. 134(1) amended by No. 49/2018 s. 31(2).

(a) require a person to produce a document or part of a document; and

S. 134(1)(a) amended by No. 49/2018 s. 31(3).

(b) examine that document or part; and

(c) require a person to answer any questions put by the inspector.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement under subsection (1).

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(3) Before requiring a person to produce a document or part of a document or to answer questions under subsection (1), an inspector must—

(a) produce his or her identity card for inspection by the person and warn the person that a refusal or failure to comply with the requirement, without reasonable excuse, is an offence; and

(b) inform the person that he or she may refuse or fail to answer any question if answering the question would tend to incriminate him or her.

(4) A person is not liable to be prosecuted for an offence against subsection (2) if the inspector concerned failed to comply with subsection (3).

S. 134(5) inserted by No. 49/2018 s. 31(4).

(5) Despite section 7 of the **Criminal Procedure Act 2009**, a proceeding for an offence against this section must be commenced within 12 months after the date on which the Authority becomes aware that an offence has been committed.

Note

This section does not affect legal professional privilege or client legal privilege (see section 598) or, in the case of a requirement to answer questions, the privilege against self-incrimination (see section 597).

S. 135 amended by No. 36/2021 s. 35(2) (ILA s. 39B(1)).

135 Return of seized things

(1) As soon as possible after an inspector seizes any thing (including a document) under this Division the Authority must return the thing to the owner unless—

(a) the Authority considers it necessary to retain the thing because it may afford evidence in proceedings, that have been or may be commenced, for an offence against this Act or the **Accident Compensation Act 1985**; or

S. 135(1)(ab) inserted by No. 36/2021 s. 35(1).

(ab) the owner of the thing notifies the Authority in writing that the owner transfers ownership of the thing to the Authority; or

S. 135(1)(ac) inserted by No. 36/2021 s. 35(1).

(ac) the thing is a copy made under section 145 of a document or part of a document; or

(b) the Authority is otherwise authorised (by a law or court order) to retain, destroy or dispose of the thing.

S. 135(2) inserted by No. 36/2021 s. 35(2).

(2) The Authority may destroy or dispose of a thing without giving notice to any person of the destruction or disposal if—

(a) the owner of the thing has notified the Authority under section 135(1)(ab) that the owner transfers ownership of the thing to the Authority; or

(b) the thing is a copy made under section 145 of a document or part of a document; or

(c) the Authority is otherwise authorised (by a law or court order) to destroy or dispose of the thing without giving notice to any person.

136 Power to issue Return to Work improvement notice

(1) If an inspector reasonably believes that an employer—

(a) is contravening a provision of this Part; or

(b) has contravened such a provision in circumstances that make it likely that the contravention will continue or be repeated—

the inspector may issue to the employer a Return to Work improvement notice requiring the employer to remedy the contravention or likely contravention.

(2) A Return to Work improvement notice must—

(a) state the basis for the inspector's belief on which the issue of the notice is based; and

(b) specify the provision of this Part that the inspector considers has been or is likely to be contravened; and

(c) specify a date (with or without a time) by which the employer is required to remedy the contravention or likely contravention; and

(d) set out the penalty for contravening the notice; and

(e) state how the employer may seek review of the issue of the notice; and

(f) include a statement of the effect of section 141 (proceedings for offence not affected by Return to Work improvement notice).

(3) A Return to Work improvement notice may include directions concerning the measures to be taken to remedy the contravention or likely contravention to which the notice relates and may, in particular, include—

(a) a direction that if the person has not remedied the contravention, likely contravention, matters or activities (as the case may be) by the date and time (if any) specified in the notice, an activity to which the notice relates is to cease until an inspector has certified in writing that the contravention, likely contravention, matters or activities have been remedied; and

(b) interim directions, or interim conditions on the carrying on of any activities to which the notice relates, that the inspector considers necessary to enable the worker's early, safe and sustainable return to work.

(4) An employer to whom a Return to Work improvement notice is issued must comply with the Return to Work improvement notice.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(5) If an application for review of a decision under this section has been made under Division 9, an inspector must not give a certificate under

subsection (3)(a) in relation to the Return to Work improvement notice.

137 Directions or conditions in a Return to Work improvement notice

A direction or condition included in a Return to Work improvement notice may—

(a) refer to a compliance code or a Ministerial direction; and

(b) offer the employer to whom it is issued a choice of ways in which to remedy the contravention or likely contravention.

138 Variation or cancellation of Return to Work improvement notice

A Return to Work improvement notice issued by an inspector may be varied or cancelled by the Authority.

139 Issue of Return to Work improvement notice

(1) A Return to Work improvement notice may be issued to an employer by—

(a) delivering it personally to the employer or sending it by post or facsimile to the usual or last known place of business of the employer; or

(ab) if the employer to whom the notice is to be issued is not a body corporate, by sending it by electronic communication to the employer at the employer's usual or last known electronic address; or

S. 139(1)(ab) inserted by No. 49/2018 s. 32(1), amended by No. 36/2021 s. 28(1).

(ac) if the employer is registered under section 434, by sending it by post or electronic communication to the last address for service shown on a communication from the employer to the Authority; or

S. 139(1)(ac) inserted by No. 49/2018 s. 32(1).

(b) leaving it for the employer at the usual or last known place of business of the employer with a person who apparently has authority to receive correspondence or communications with the employer.

S. 139(1AA) inserted by No. 36/2021 s. 28(2).

(1AA) In addition to subsection (1), if the employer to whom a notice is to be issued is a body corporate, the notice may be issued by—

(a) delivering it personally to the head office, registered office or principal place of business of the body corporate; or

(b) sending it by post to the head office, registered office or principal place of business of the body corporate; or

(c) sending it by electronic communication to an employee, agent or officer of the body corporate.

S. 139(1A) inserted by No. 49/2018 s. 32(2).

(1A) Subject to subsection (1B), this section is in addition to, and not in derogation from, the **Interpretation of Legislation Act 1984**, the **Electronic Transactions (Victoria) Act 2000** and sections 109X and 601CX of the Corporations Act.

S. 139(1B) inserted by No. 49/2018 s. 32(2), amended by No. 36/2021 s. 28(3).

(1B) Section 8(1) and (2) of the **Electronic Transactions (Victoria) Act 2000** do not apply to the issue of a notice by electronic communication under this section.

(2) An employer to whom a Return to Work improvement notice is issued must as soon as possible, if the Return to Work improvement notice relates to the obligation of the employer under section 106 or 107, display a copy of the notice in a prominent place at or near the workplace.

Penalty: In the case of a natural person, 5 penalty units;

In the case of a body corporate, 25 penalty units.

(3) If the Return to Work improvement notice relates to the return to work of a worker, the inspector must provide a copy of the notice to the worker.

(4) If a Return to Work improvement notice is issued—

(a) to a labour hire employer and the Return to Work improvement notice relates to a worker who received an injury arising out of or in the course of employment with the labour hire employer whilst let on hire to a host, the inspector may provide a copy of the Return to Work improvement notice to the host; or

(b) to a host and the Return to Work improvement notice relates to the obligation to co-operate with the labour hire employer, in respect of action taken by the labour hire employer in order to comply with sections 103, 104 and 105, to facilitate the worker's return to work, the inspector may provide a copy of the Return to Work improvement notice to the labour hire employer.

(5) If a Return to Work improvement notice relates to an obligation of an employer in respect of the return to work of a worker, the inspector may provide a copy of the Return to Work improvement notice to the authorised agent selected by the employer for the purpose of assisting in the management of the claim for compensation by the worker.

140 Formal irregularity or defect in Return to Work improvement notice

A Return to Work improvement notice is not invalid merely because of—

(a) a formal defect or irregularity in the Return to Work improvement notice unless the defect or irregularity causes or is likely to cause substantial injustice; or

(b) a failure to use the correct name of the employer to whom the Return to Work improvement notice is issued if the Return to Work improvement notice sufficiently identifies the employer and is issued to the employer in accordance with section 139.

141 Proceedings for offence not affected by Return to Work improvement notice

The issue, variation or cancellation of a Return to Work improvement notice does not affect any proceedings for an offence against this Act or the **Accident Compensation Act 1985** in connection with any matter in respect of which the Return to Work improvement notice was issued.

142 Persons must assist inspector

A person must not, without reasonable excuse, refuse or fail to provide such assistance as an inspector may reasonably require for the performance of his or her functions or exercise of his or her powers under this Division.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

143 Other assistance in exercising powers

(1) For the purpose of exercising a power under this Division, an inspector may seek the assistance of any person.

S. 143(2) amended by No. 44/2014 s. 24(5).

(2) If the power being exercised involves entry to premises, the person assisting must be allowed access to those premises by the employer or apparent employer or occupier or apparent occupier.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(3) If an inspector uses the assistance of an interpreter—

(a) any enquiry or request made by the interpreter on the inspector's behalf is taken to have been made by the inspector; and

(b) any answer given to the interpreter is taken to have been given to the inspector.

144 Inspector may take affidavits and statutory declarations

An inspector is authorised to take affidavits and statutory declarations for any purpose relating or incidental to the performance of his or her functions or exercise of his or her powers under this Division.

145 Inspector may copy documents

An inspector may make copies of, or take extracts from, a document or part of a document given to the inspector in accordance with a requirement under this Part.

Division 8—Offences

146 Offences in relation to inspections

A person must not—

(a) intentionally hinder or obstruct an inspector in the performance of his or her functions or exercise of his or her powers under Division 7 or induce or attempt to induce any other person to do so; or

(b) intentionally conceal from an inspector the location or existence of any other person or thing; or

(c) intentionally prevent or attempt to prevent any other person from assisting an inspector.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

147 Protection of inspectors

A person must not assault, directly or indirectly intimidate or threaten, or attempt to intimidate or threaten, an inspector or a person assisting an inspector.

Penalty: In the case of a natural person, 240 penalty units or imprisonment for 2 years or both;

In the case of a body corporate, 1200 penalty units.

148 Offence to impersonate inspector

A person who is not an inspector must not, in any way, hold himself or herself out to be an inspector.

Penalty: 60 penalty units.

Division 9—Review of decisions

149 Which decisions are reviewable

(1) The following Table sets out—

(a) decisions made under Division 7 that are reviewable in accordance with this Division (***reviewable decisions***); and

(b) who is eligible to apply for review of a reviewable decision (the ***eligible person*** in relation to the reviewable decision).

(2) To avoid doubt, sections 4 and 5 of the **Victorian Civil and Administrative Tribunal Act 1998** apply for the purposes of this Division.

Note

Under section 4 of the **Victorian Civil and Administrative Tribunal Act 1998**, a person makes a decision if the person refuses to make a decision or an instrument, imposes a condition or restriction or does or refuses to do any other act or thing. Section 5 of that Act sets out when a person's interests are affected by a decision.

Item	*Provision under which reviewable decision is made*	*Eligible person in relation to reviewable decision*
1	Section 136(1) (issue of a Return to Work improvement notice)	(1) The employer to whom the Return to Work improvement notice is issued. (2) A worker whose interests are directly affected by the decision. (3) An employer whose interests are affected by the decision.
2	Section 136(3)(a) (certification that matters the subject of a Return to Work improvement notice have been remedied)	(1) The employer to whom the Return to Work improvement notice was issued. (2) A worker whose interests are directly affected by the decision. (3) An employer whose interests are affected by the decision.

Item	*Provision under which reviewable decision is made*	*Eligible person in relation to reviewable decision*
3	Section 138 (variation or cancellation of a Return to Work improvement notice)	(1) The employer to whom the Return to Work improvement notice concerned was issued. (2) A worker whose interests are directly affected by the decision. (3) An employer whose interests are affected by the decision.

150 Internal review

(1) An eligible person in relation to a reviewable decision, other than a decision made by the Authority under section 138, may apply to the Authority for review of the decision within—

(a) 14 days after the day on which the decision first came to the eligible person's notice; or

(b) such longer period as the Authority allows.

(2) The application must be in the form approved by the Authority.

(3) If an application is made to the Authority in accordance with this section, the Authority must make a decision—

(a) to affirm or vary the reviewable decision; or

(b) to set aside the reviewable decision and substitute another decision that the Authority considers appropriate.

(4) The Authority must give a written notice to the applicant setting out—

(a) the Authority's decision under subsection (3) and the reasons for the decision; and

(b) the findings on material questions of fact that led to the decision, referring to the evidence or other material on which those findings were based—

and must do so within 21 days after the application is made or, if the reviewable decision was made under section 136(3)(a), within 7 days after the application is made.

(5) If the Authority has not notified an applicant of a decision in accordance with subsection (4), the Authority is taken to have made a decision to affirm the reviewable decision.

(6) An application under this section does not affect the operation of the reviewable decision or prevent the taking of any action to implement it unless the Authority, on its own initiative or on the application of the applicant for review, stays the operation of the decision pending the determination of the review.

(7) The Authority must make a decision on an application for a stay within 24 hours after the making of the application.

(8) If the Authority has not made a decision in accordance with subsection (7), the Authority is taken to have made a decision to grant a stay.

(9) The Authority may attach any conditions to a stay of the operation of a reviewable decision that it considers appropriate.

151 Review by VCAT

(1) A person may apply to VCAT for review of—

(a) a reviewable decision made by the Authority under section 138; or

(b) a decision made, or taken to have been made, by the Authority under section 150 in respect of a reviewable decision (including a decision concerning a stay of the operation of the reviewable decision)—

if the person is an eligible person in relation to the reviewable decision.

(2) The application must be made—

(a) within 14 days after the day on which the decision first came to the applicant's notice; or

(b) if the Authority is required by the **Victorian Civil and Administrative Tribunal Act 1998** to give the applicant a statement of reasons, within 14 days after the day on which the applicant is given the statement—

whichever period ends later.

Part 5—Benefits

Division 1—Preliminary

152 Definitions

In this Part—

compensable injury, of a worker, means an injury in respect of which—

S. 152 def. of *compensable injury* inserted by No. 8/2024 s. 12.

(a) liability has been accepted or established; and

(b) the worker is, or has been, entitled to compensation in the form of weekly payments during the second entitlement period;

current weekly earnings of a worker in relation to a week means—

(a) if the worker's base rate of pay is calculated on the basis of ordinary hours worked, the sum of—

(i) the worker's earnings so calculated for the ordinary hours worked during that week; and

(ii) amounts paid or payable for overtime or shift allowances in respect of that week; and

(iii) amounts paid or payable as piece rates or commissions in respect of that week; and

(iv) other amounts referred to in section 155(1)(c); or

(b) if paragraph (a) does not apply, the worker's actual earnings (other than an amount of a kind referred to in section 155(1)(d) or 156(1)(a), (b), (c) or (f)) in respect of that week;

deductible amount means the sum of the value, in respect of a week, of each non-pecuniary benefit referred to in section 155(1)(d) that is provided by the employer to a worker in respect of that week (whether or not received by the worker during the relevant period), being a non-pecuniary benefit that—

(a) was provided by the employer to the worker for the performance of work by the worker before the worker sustained the relevant injury and continues after the injury to be provided by the employer for the benefit of the worker or a member of the family of the worker; or

(b) was not provided by the employer before the worker sustained the relevant injury but is provided by the employer after the injury for the benefit of the worker or a member of the family of the worker;

first entitlement period*,* in relation to a claim for compensation in the form of weekly payments made by a worker, means an aggregate period not exceeding 13 weeks (whether or not consecutive) in respect of which a weekly payment has been paid or is payable to the worker;

S. 152 def. of *impairment determination* inserted by No. 8/2024 s. 12.

impairment determination means a determination under section 167A(1);

interim determination means a determination under section 167D(1);

S. 152 def. of *interim determination* inserted by No. 8/2024 s. 12.

ongoing eligibility determination means a determination under section 163(1), 164A(2), 165(4) or 175(1) or (2A) of this Act or section 93C(1), 93CAB(2), 93CD(4) or 97(2) or (2AAB) of the **Accident Compensation Act 1985**;

S. 152 def. of *ongoing eligibility determination* inserted by No. 8/2024 s. 12.

second entitlement period, in relation to a claim for compensation in the form of weekly payments made by a worker, means an aggregate period of 117 weeks (whether or not consecutive) after the expiry of the first entitlement period in respect of which a weekly payment has been paid or is payable to the worker;

week, for the purposes of the following—

(a) the definition of ***first entitlement period***;

(b) the definition of ***second entitlement period***;

(c) the definition of ***enhancement period***;

(d) calculating a period of weeks referred to in section 42, 43, 168, 189 (other than subsection (3)(e) and (g)), 241 or 244—

means a week in respect of which any amount of compensation in the form of weekly payments or weekly payments of pension or superannuation contributions is paid or payable, whether for all or any part of that week.

153 Definition—pre-injury average weekly earnings

(1) In this Act, ***pre-injury average weekly earnings***, in respect of a relevant period in relation to a worker, means, subject to this section, the sum of—

(a) the average of the worker's ordinary earnings during the relevant period (excluding from that period any week during which the worker did not actually work and—

S. 153(1)(a)(i) amended by No. 44/2014 s. 10.

(i) was not on paid leave; or

(ii) was on paid leave at a rate less than the base rate of pay)—

expressed as a weekly sum; and

(b) the worker's earnings enhancement (if any) in the relevant enhancement period.

(2) If a worker has been continuously employed by the same employer for less than 4 weeks before the injury, ***pre-injury average weekly earnings***, in relation to that worker, may be calculated having regard to—

(a) the average of the worker's ordinary earnings that the worker could reasonably have been expected to have earned in that employment, but for the injury, during the period of 52 weeks after the injury expressed as a weekly sum; and

(b) the worker's earnings enhancement (if any) in the relevant enhancement period.

(3) If a worker—

(a) was not a full-time worker immediately before the injury; and

(b) at the time of the injury was seeking full-time employment; and

(c) had been predominantly a full-time worker during the period of 78 weeks immediately before the injury—

pre-injury average weekly earnings, in relation to that worker, means the sum of—

(d) the average of the worker's ordinary earnings while employed during the period of 78 weeks immediately before the injury (excluding from that period any week during which the worker did not actually work and—

(i) was on unpaid leave; or

(ii) was on paid leave at a rate less than the base rate of pay)—

whether or not the employer is the same employer as at the time of the injury, expressed as a weekly sum; and

(e) the worker's earnings enhancement (if any) in the relevant enhancement period.

(4) If a worker is a person engaged by an employer to participate as a contestant in a sporting or athletic activity within the meaning of clause 17(1) of Schedule 1 and the injury is not received while the person is—

(a) participating, or training for or preparing to participate, as a contestant in a sporting or athletic activity; or

(b) travelling between a place of residence and a place where the activity, training or preparation is held—

any remuneration paid or payable in respect of such participation, training, preparation or travel is not to be taken into account in calculating the worker's pre-injury average weekly earnings.

(5) In relation to a worker of a class referred to in column 2 of an item in Schedule 2, ***pre-injury average weekly earnings*** means the amount determined in accordance with column 3 of that item, expressed as a weekly sum.

(6) In relation to a worker to whom clause 7 or 8 of Schedule 1 applies, the worker's pre-injury average weekly earnings must be calculated with reference to the amounts payable to the worker and deemed to be remuneration under that clause, expressed as a weekly sum.

(7) In relation to a worker to whom clause 6 or 9 of Schedule 1 applies, the worker's pre-injury average weekly earnings must be calculated with reference to the amounts payable to the contractor and deemed to be remuneration under that clause, expressed as a weekly sum.

154 Definition applying to pre-injury average weekly earnings—relevant period

(1) Subject to this section, a reference to the ***relevant period*** in relation to pre-injury average weekly earnings of a worker is a reference to—

(a) in the case of a worker who has been continuously employed by the same employer for the period of 52 weeks immediately before the injury, that period of 52 weeks; or

(b) in the case of a worker who has been continuously employed by the same employer for less than 52 weeks immediately before the injury, the period of continuous employment by that employer.

S. 154(2) amended by No. 35/2020 s. 53(1).

(2) Subject to subsection (4), the relevant period, in relation to pre-injury average weekly earnings of a worker who, during the 52 weeks immediately before the injury, voluntarily (otherwise than by reason of an incapacity for work resulting from, or materially contributed to by, an injury which entitles the worker to compensation under this Act)—

(a) alters the ordinary hours of work; or

(b) alters the nature of the work performed by the worker—

and, as a result, the worker's ordinary earnings are reduced, does not include the period before the reduction takes effect.

(3) If, during the period of 52 weeks immediately before the injury, a worker—

(a) is promoted; or

(b) is appointed to a different position—

(otherwise than on a temporary basis) and, as a result, the worker's ordinary earnings are increased, the relevant period in relation to the worker begins on the day on which the promotion or appointment takes effect.

S. 154(4) inserted by No. 35/2020 s. 53(2).

(4) If the relevant period, in relation to the pre-injury average weekly earnings of a worker during the 52 weeks immediately before the worker's injury would otherwise include a period of time during the prescribed period and the worker's earnings during the period occurring in the prescribed period are reduced for a COVID-19 reason, the

relevant period in relation to the worker does not include the period occurring in the prescribed period.

S. 154(5) inserted by No. 35/2020 s. 53(2).

(5) In this section—

COVID-19 reason means, in relation to the reduction of earnings of a worker, that the reduction is a consequence of one or more of the following occurring during the prescribed period because of the COVID-19 pandemic—

(a) the ordinary hours of work of the worker are reduced;

(b) the nature of the work performed by the worker is altered;

(c) the earnings of the worker are reduced;

prescribed period means the period starting on 1 March 2020 and ending on 31 December 2020.

155 Definition applying to pre-injury average weekly earnings—*ordinary earnings*

(1) Subject to this section, in relation to pre-injury average weekly earnings, the ***ordinary earnings*** of a worker in relation to a week during the relevant period are—

(a) if the worker's base rate of pay is calculated on the basis of ordinary hours worked, the sum of—

(i) the worker's earnings calculated at that rate for ordinary hours in that week during which the worker worked or was on paid leave at the base rate of pay; and

(ii) if the worker receives a piece rate payment or a commission or both a piece rate payment and a commission, the amount of piece rate payments and commissions the worker receives in respect of that week; or

(b) if paragraph (a) does not apply, the actual earnings (other than an amount of a kind referred to in section 156(1)(a), (b), (c), (e) or (f)) paid or payable to the worker in respect of that week—

and include—

(c) any other amount (other than an amount of a kind referred to in section 156(1)(a), (b), (c), (e) or (f)) for the performance of work by the worker, that, under the worker's terms of employment, the employer is required to apply or deal with on behalf of the worker in accordance with the worker's instructions, in respect of that week; and

(d) the monetary value of—

(i) residential accommodation; and

(ii) use of a motor vehicle; and

(iii) health insurance; and

(iv) education fees—

provided in respect of that week to the worker by the employer for the performance of work by the worker (***non-pecuniary benefit***).

(2) For the purposes of subsection (1)(d), the monetary value of a non-pecuniary benefit is—

(a) the value that would be the value as a fringe benefit for the purposes of the Fringe Benefits Tax Assessment Act 1986 of the

Commonwealth, calculated in accordance with clause 21 of Schedule 1 to this Act, divided by 52; or

(b) in the case of residential accommodation that is not a fringe benefit or is otherwise not subject to fringe benefits tax, the amount that would reasonably be payable for that accommodation, or equivalent accommodation in the same area, in respect of that week if it were let on commercial terms.

(3) A reference to ordinary earnings does not include, and is deemed never to have included, a reference to any employer superannuation contribution.

156 Definition applying to pre-injury average weekly earnings and current weekly earnings—base rate of pay

S. 156(1) amended by No. 48/2017 s. 29(1).

(1) In relation to pre-injury average weekly earnings and current weekly earnings, a reference to a ***base rate of pay*** is a reference to the rate of pay payable to a worker for his or her ordinary hours of work (including any casual loadings) but does not include the following—

(a) incentive-based payments or bonuses;

S. 156(1)(b) amended by No. 48/2017 s. 29(2).

(b) loadings (excluding any casual loadings);

(c) monetary allowances;

(d) piece rates or commissions;

(e) overtime or shift allowances;

(f) any separately identifiable amount not referred to in paragraphs (a) to (e).

(2) In relation to pre-injury average weekly earnings and current weekly earnings, if, at the time of the injury—

(a) a worker's base rate of pay is prescribed by an industrial award that applies to the worker; and

(b) the worker's actual rate of pay for ordinary hours is higher than that rate of pay—

the worker's actual rate of pay is to be taken to be the worker's base rate of pay.

157 Definitions applying to pre-injury average weekly earnings—earnings enhancement and enhancement period

In relation to pre-injury average weekly earnings—

earnings enhancement, in relation to a worker who—

(a) during the relevant period, worked paid overtime or carried out work that attracted a shift allowance; and

(b) but for the worker's injury or death, would have been likely, at any time during the enhancement period, to have worked paid overtime or carried out work that attracted a shift allowance—

means the amount calculated in accordance with the formula—

$$\frac{\mathbf{A}}{\mathbf{B}}$$

where—

A is the total amount paid or payable to the worker for paid overtime and shift allowances in respect of the relevant period;

B is the number of weeks during the relevant period during which the worker worked or was on paid annual leave at the base rate of pay;

enhancement period means—

(a) in relation to compensation in the form of weekly payments to the worker under section 161 or 162, the first 52 weeks in respect of which such compensation is paid or payable to the worker; or

(b) in relation to compensation in the form of weekly payments of pension under section 241, the first 52 weeks after the death of the worker.

158 Definition applying to pre-injury average weekly earnings and current weekly earnings—ordinary hours of work

In relation to pre-injury average weekly earnings and current weekly earnings, the ***ordinary hours of work***—

(a) in the case of a worker to whom an industrial award applies are—

(i) if the ordinary hours of work in relation to a week are agreed or determined in accordance with an industrial award between the worker and the employer, those hours; or

(ii) in any other case, the worker's average weekly hours during the relevant period (excluding from that period any week during which the worker did not actually work and was not on paid leave at the base rate of pay); or

(b) in the case of a worker to whom an industrial award does not apply—

(i) if the ordinary hours of work are agreed between the worker and the employer, those hours; or

(ii) in any other case, the worker's average weekly hours during the relevant period (excluding from that period any week during which the worker did not actually work and was not on paid leave at the base rate of pay).

159 Twice the State average weekly earnings

(1) Where, under this Part—

(a) a person is entitled, in relation to a financial year, to an amount at the rate of the whole or a part of twice the State average weekly earnings; and

(b) continues to be so entitled; and

(c) the amount of State average weekly earnings is reduced in respect of a subsequent financial year—

the person's entitlement, in respect of that subsequent financial year, is to be calculated as if the reduction had not taken effect, except for the purposes of this section.

(2) If the amount of State average weekly earnings—

(a) is reduced in respect of a financial year; and

(b) is increased in respect of a subsequent financial year—

that increase has effect in relation to a person to whom subsection (1) applies only to the extent (if any) to which the amount of the increase exceeds the amount of the reduction in respect of the previous financial year, or that part of the

reduction that has not been set off against a previous increase.

(3) For the purposes of this Act, a reference to ***twice the State average weekly earnings*** is a reference to that amount calculated—

(a) if that amount is less than $1000, to the nearest whole dollar; or

(b) if that amount is $1000 or more, to the nearest $10.

S. 159(4) inserted by No. 41/2016 s. 3.

(4) For the purposes of this section—

(a) a person who becomes entitled, in relation to a financial year, to an amount at the rate of the whole or a part of twice the State average weekly earnings; and

(b) in that financial year, the amount of State average weekly earnings is reduced in respect of the previous financial year—

the person's entitlement, in respect of that financial year, is to be calculated using the amount of State average weekly earnings in the last preceding financial year in which the State average weekly earnings was not reduced.

Division 2—Weekly payments

Subdivision 1—General

160 Compensation in weekly payments [s. 93]

If a worker's incapacity for work results from, or is materially contributed to by, an injury which entitles the worker to compensation, the compensation must be in the form of weekly payments, subject to and in accordance with this Act.

161 Weekly payments in first entitlement period

In relation to a claim by a worker for compensation in the form of weekly payments, the worker is entitled, subject to and in accordance with this Act, while incapacitated for work during the first entitlement period, to weekly payments—

(a) if the worker has no current work capacity and no current weekly earnings, at the rate of—

(i) 95 per cent of the worker's pre-injury average weekly earnings, less the deductible amount; or

(ii) twice the State average weekly earnings—

whichever is the lesser; or

(b) if the worker has a current work capacity, or has no current work capacity but has current weekly earnings, at the rate of—

(i) the difference between 95 per cent of the worker's pre-injury average weekly earnings, less the deductible amount and the worker's current weekly earnings; or

(ii) the difference between twice the State average weekly earnings and the worker's current weekly earnings—

whichever is the lesser.

162 Weekly payments in second entitlement period

In relation to a claim by a worker for compensation in the form of weekly payments, the worker is entitled, subject to and in accordance with this Act, while incapacitated for work during the second entitlement period, to weekly payments—

(a) if the worker has no current work capacity and no current weekly earnings, at the rate of—

(i) 80 per cent of the worker's pre-injury average weekly earnings, less the deductible amount; or

(ii) twice the State average weekly earnings—

whichever is the lesser; or

(b) if the worker has a current work capacity, or has no current work capacity but has current weekly earnings, at the rate of—

(i) the difference between 80 per cent of the worker's pre-injury average weekly earnings, less the deductible amount and 80 per cent of the worker's current weekly earnings; or

(ii) the difference between twice the State average weekly earnings and 80 per cent of the worker's current weekly earnings—

whichever is the lesser.

163 Weekly payments after the second entitlement period

S. 163(1) substituted by No. 8/2024 s. 13(1).

(1) Subject to section 165, a worker's entitlement to compensation in the form of weekly payments under this Part ceases upon the expiry of the second entitlement period unless the Authority or self-insurer determines that the worker—

(a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and

(b) has a whole person impairment of more than 20 per cent resulting from one or more compensable injuries.

(2) A worker to whom subsection (1) applies is entitled, subject to and in accordance with this Act, to compensation in the form of weekly payments, at the rate of—

(a) the difference between 80 per cent of the worker's pre-injury average weekly earnings, less the deductible amount and, if the worker has current weekly earnings, 80 per cent of those current weekly earnings; or

(b) the difference between twice the State average weekly earnings, less, if the worker has current weekly earnings, 80 per cent of those current weekly earnings—

whichever is the lesser.

S. 163(3) substituted by No. 8/2024 s. 13(2).

(3) If a worker is receiving compensation under subsection (2), the Authority or self-insurer—

(a) may review the work capacity of the worker at any time; and

(b) must review the work capacity of the worker as often as reasonably necessary and not less than once every 2 years.

164 Compensation for incapacity arising from surgery after second entitlement period

(1) Subject to subsection (2), this section applies to a worker who—

(a) suffers an injury arising out of or in the course of employment; and

(b) makes a claim for compensation in respect of that injury under section 20 and received weekly payments in respect of that injury; and

(c) has returned to work for a period of not less than 15 hours per week and is in receipt of current weekly earnings, or current weekly earnings together with a deductible amount, of at least $177 per week; and

(d) either, in respect of the injury—

(i) is not entitled to compensation in the form of weekly payments because of section 163; or

(ii) is entitled under section 165 to compensation in the form of weekly payments; and

(e) for at least 13 consecutive weeks immediately after the expiry of the second entitlement period, has not received compensation in the form of weekly payments other than weekly payments under section 165; and

(f) requires surgery for that injury (***the subsequent surgery***) for which the Authority or self-insurer has accepted liability under section 224(1); and

(g) suffers incapacity resulting from or materially contributed to by the subsequent surgery; and

(h) has not attained retirement age.

(2) This section does not apply to a worker whose entitlement to compensation in the form of weekly payments has ceased (otherwise than under section 163) or been terminated in accordance with this Act.

(3) A worker to whom this section applies may apply, in a form approved by the Authority, to the Authority or self-insurer for compensation in the form of weekly payments in respect of an incapacity resulting from or materially contributed to by the subsequent surgery.

(4) Unless the worker to whom this section applies is receiving weekly payments under section 165—

(a) the worker is not entitled to compensation in the form of weekly payments under this section in respect of the first 13 consecutive weeks after the expiry of the second entitlement period; and

(b) an application under subsection (3) must not be made during the period of 13 consecutive weeks immediately after the expiry of the second entitlement period.

(5) Compensation in the form of weekly payments under this section is payable at the rate that would have been applicable under section 162 if the second entitlement period had not expired—

(a) in respect of the period of incapacity resulting from or materially contributed to by the subsequent surgery; or

(b) if the worker has an incapacity resulting from, or materially contributed to, by the subsequent surgery, for the period of 13 consecutive weeks commencing on the day on which the subsequent surgery is performed—

whichever is the shorter.

(6) Within 14 days after receiving an application in accordance with this section, the Authority or self-insurer must—

(a) approve or reject the application; and

(b) give the worker written notice of its decision including, in the case of rejection, a statement of the reasons for the decision.

S. 164A inserted by No. 8/2024 s. 14.

164A Review of impairment arising from surgery after second entitlement period

(1) A worker may apply, in a form approved by the Authority, to the Authority or self-insurer for compensation in the form of weekly payments in respect of incapacity and whole person impairment if the worker—

(a) has a compensable injury; and

(b) either, in respect of the injury—

(i) is not entitled to compensation in the form of weekly payments because of section 163; or

(ii) is entitled under section 165 to compensation in the form of weekly payments; and

(c) for at least 13 consecutive weeks immediately after the expiry of the second entitlement period, has not received compensation in the form of weekly

payments other than weekly payments under section 165; and

(d) requires surgery for that injury (***the subsequent surgery***) for which the Authority or self-insurer has accepted liability under section 224(1); and

(e) suffers incapacity and whole person impairment resulting from or materially contributed to by the subsequent surgery; and

(f) has not attained retirement age.

(2) A worker who applies under this section is entitled to compensation in the form of weekly payments under section 163(2) if the Authority or self-insurer determines that the worker, as a result of the subsequent surgery—

(a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and

(b) has a whole person impairment of more than 20 per cent.

(3) Compensation payable under this section is payable from—

(a) if the worker receives compensation under section 164 as a result of the subsequent surgery, the date that is 13 consecutive weeks after the day on which the subsequent surgery was performed; or

(b) in any other case, the date on which the ongoing eligibility determination is made under this section.

165 Continuation of weekly payments after second entitlement period

(1) A worker who has a current work capacity and is, or has been, entitled to compensation in the form of weekly payments under this Division, may make an application at any time, in accordance with this section, to the Authority or self-insurer, in a form approved by the Authority, for a determination that the worker's entitlement to weekly payments does not, or will not, cease by reason only of the expiry of the second entitlement period.

(2) An application must be made—

(a) if liability to pay the weekly payments lies with the employer (not being a self-insurer or an eligible subsidiary of a self-insurer) or the Authority, to the Authority; or

(b) if liability to pay the weekly payments lies with a self-insurer, to the self-insurer.

(3) If the Authority or self-insurer receives an application under subsection (1), the Authority or self-insurer must, within 28 days after receiving the application—

(a) approve or reject the application; and

(b) advise the worker in writing of its determination; and

(c) if the Authority or self-insurer rejects the application, give the worker a statement of the reasons for its determination.

(4) The Authority or self-insurer must not approve an application under subsection (1) unless it is satisfied that—

(a) the worker has returned to work (whether in self-employment or other employment) for a period of not less than 15 hours per week and

is in receipt of current weekly earnings, or current weekly earnings together with non-pecuniary benefits within the meaning of section 155(1)(d), of at least $177 per week; and

(b) because of the injury, the worker is, and is likely to continue indefinitely to be, incapable of undertaking further additional employment or work which would increase the worker's current weekly earnings; and

S. 165(4)(b) amended by No. 8/2024 s. 15(a).

(c) the worker has a whole person impairment of more than 20 per cent resulting from one or more compensable injuries.

S. 165(4)(c) inserted by No. 8/2024 s. 15(b).

(5) If the Authority or self-insurer approves an application made under subsection (1), the worker's entitlement to compensation in the form of weekly payments commences on the date the Authority or self-insurer received the application and, subject to and in accordance with this Act, the worker is entitled to weekly payments at the rate of—

(a) the difference between 80 per cent of the worker's pre-injury average weekly earnings, less the deductible amount and 80 per cent of the worker's current weekly earnings; or

(b) the difference between twice the State average weekly earnings and 80 per cent of the worker's current weekly earnings—

whichever is the lesser.

(6) A worker continues to be entitled to compensation in the form of weekly payments under subsection (5) until—

(a) subject to section 166, the Authority or self-insurer ceases to be satisfied as to the matters referred to in subsection (4); or

(b) the worker otherwise ceases to be entitled to compensation in the form of weekly payments.

166 Entitlement under section 165 not affected by certain circumstances

(1) A worker who receives weekly payments under section 165 does not cease to be entitled to weekly payments under that section by reason only that the worker occasionally, but not during more than 4 weeks in the first period of 12 consecutive weeks immediately after the worker first received weekly payments under that section, or in any subsequent consecutive period of 12 weeks—

(a) has worked more hours during a week; or

(b) has worked fewer hours during a week (even if the number of hours worked is less than 15); or

(c) has received higher current weekly earnings; or

(d) has received lower current weekly earnings (even if the earnings are less than $177 per week)—

than the hours worked, or the current weekly earnings received, at the time of making the application for payments under section 165.

(2) A reference in subsection (1) to hours of work does not include hours of leave approved by the employer.

167 Certificates of capacity for work

(1) Subject to subsection (5), a worker must provide to the Authority or self-insurer—

S. 167(1) amended by No. 44/2014 s. 24(6)(a).

(a) certificates of capacity in accordance with this section in respect of the period in respect of which the worker is entitled to weekly payments; and

(b) a declaration in the form approved by the Authority as to whether or not the worker is engaged—

S. 167(1)(b) amended by No. 44/2014 s. 24(6)(b).

(i) in voluntary work; or

(ii) in any form of employment or in self-employment for which he or she receives or is entitled to receive payment in money or otherwise—

or has been so engaged at any time since last providing a certificate under this section or section 25.

(2) A certificate of capacity must be—

(a) a certificate under section 25; or

(b) a certificate in a form approved by the Authority given by a medical practitioner, registered physiotherapist, registered chiropractor or registered osteopath—

and must—

(c) certify as to the worker's incapacity for work and whether the worker has a current work capacity or has no current work capacity during the period, not exceeding 28 days, stated in the certificate; and

(d) specify the expected duration of the worker's incapacity.

(3) Despite subsection (2)(c), a certificate of capacity covering a period exceeding 28 days is in accordance with this section if—

(a) the person giving the certificate states in the certificate the special reasons why the certificate covers the longer period; and

(b) the Authority or self-insurer is satisfied that, for the special reasons stated, the certificate should be accepted.

(4) A certificate of capacity is of no effect to the extent that it relates to a period of time more than 90 days before the date on which the certificate is provided.

S. 167(4A) inserted by No. 15/2021 s. 6.

(4A) Despite subsection (4), a certificate of capacity that relates to a period of time more than 90 days before the date on which the certificate is provided is in accordance with this section if—

(a) the person giving the certificate states in the certificate the special reasons why the certificate relates to that period of time; and

(b) the Authority or self-insurer is satisfied that, for the special reasons stated, the certificate should be accepted.

(5) If a decision to reject a claim for weekly payments or to terminate weekly payments is set aside, a worker is not required to comply with subsection (1) in respect of any period from the date that the decision took effect until the day on which the decision is set aside.

Subdivision 1A—Determination of eligibility for compensation after second entitlement period

Pt 5 Div. 2 Subdiv. 1A (Heading and ss 167A–167K) inserted by No. 8/2024 s. 16.

167A Authority or self-insurer to determine degree of impairment

S. 167A inserted by No. 8/2024 s. 16.

(1) For the purposes of section 163(1)(b), 164A(2)(b), 165(4)(c) or 175(1)(b) or (2A)(b) of this Act or section 93C(1)(c), 93CAB(2)(b), 93CD(4)(c) or 97(2)(b) or (2AAB)(b) of the **Accident Compensation Act 1985**, the Authority or self-insurer may determine the degree of impairment of a worker arising from one or more compensable injuries, having regard to—

(a) an assessment in accordance with Division 4 of Part 2 of the degree of impairment of the worker arising from the injury or injuries; and

(b) any medical reports, correspondence and other documents provided to the Authority or self-insurer for the purposes of determining the worker's entitlement to compensation; and

(c) the A.M.A. Guides and any guidelines referred to in section 54.

(2) The degree of impairment of a worker is the greater of the worker's—

(a) degree of impairment resulting from one or more compensable injuries that are physical injuries; or

(b) degree of impairment resulting from one or more compensable injuries that are psychiatric or psychological injuries.

(3) An impairment determination must not relate to more than one compensable injury unless those injuries arise out of the same event or circumstance.

(4) The Authority or self-insurer must not make an impairment determination in respect of a worker's injury until the worker attains the age of 18 years.

(5) To avoid doubt, in making an impairment determination, the Authority or self-insurer is not bound by an assessment in accordance with Division 4 of Part 2 of the degree of impairment of the worker.

S. 167B inserted by No. 8/2024 s. 16.

167B Assessment of worker's degree of impairment

(1) The Authority or self-insurer may request a worker to attend an assessment in accordance with Division 4 of Part 2 for the purposes of an impairment determination.

(2) On the request of the Authority or self-insurer under subsection (1), the worker must attend the assessment.

(3) The Authority or self-insurer must give the worker a written statement of each injury included in the assessment.

S. 167C inserted by No. 8/2024 s. 16.

167C Determination that it is not necessary or practicable to obtain an assessment

(1) The Authority or self-insurer may determine that it is not necessary or practicable to assess a worker in accordance with Division 4 of Part 2 for the purposes of an impairment determination.

(2) The Authority or self-insurer may make a determination under subsection (1) if satisfied of any of the following—

(a) there is no reasonable prospect of the worker having a whole person impairment of more than 20 per cent;

(b) there is no reasonable prospect of the worker having a whole person impairment of 20 per cent or less and this is likely to be the case permanently;

(c) the worker resides overseas;

(d) it is not reasonable or practicable for the worker to attend an assessment.

(3) For the purposes of making a determination under subsection (1), the Authority or self-insurer must have regard to the following matters—

(a) the medical evidence available to the Authority or self-insurer;

(b) whether the worker's degree of impairment is likely to be permanent;

(c) any practical barriers to the worker being assessed in accordance with Division 4 of Part 2;

(d) whether determining the degree of impairment of the worker without assessing the worker in accordance with Division 4 of Part 2 is likely to disadvantage the worker.

(4) The Authority or self-insurer must give a worker written notice of a determination made under this section in respect of the worker.

(5) A notice under subsection (1) must include a written statement of each injury to which the determination relates.

167D Interim determination of eligibility

S. 167D inserted by No. 8/2024 s. 16.

(1) For the purposes of section 163(1), 165(4) or 175(1) or (2A) of this Act or section 93C(1)(c), 93CD(4) or 97(2) or (2AAB) of the **Accident Compensation Act 1985**, the Authority or self-insurer may make an interim determination that—

(a) the worker is eligible to receive weekly payments after the expiry of the second entitlement period in respect of one or more compensable injuries; or

(b) the worker is not eligible to receive weekly payments after the expiry of the second entitlement period in respect of one or more compensable injuries.

(2) The Authority or self-insurer may make an interim determination if an impairment determination cannot be made because—

(a) the worker's injury has not stabilised; or

(b) the worker has been diagnosed with an eligible progressive disease which is unlikely to stabilise; or

(c) the worker is under the age of 18 years; or

(d) information required to make the impairment determination is not available for any reason.

(3) For the purposes of subsection (1)(a), the Authority or self-insurer must be satisfied that—

(a) the worker's impairment arising from the injury is likely to be permanent; and

(b) if the worker's degree of impairment were able to be assessed, it would likely be assessed as a whole person impairment of more than 20 per cent; and

(c) the worker has no current work capacity and is likely to continue indefinitely to have no work capacity.

(4) For the purposes of subsection (1)(b), the Authority or self-insurer must be satisfied of any of the following—

(a) the worker's impairment arising from the injury is not likely to be permanent;

(b) if the worker's degree of impairment were able to be assessed, it would likely be a whole person impairment of 20 per cent or less;

(c) the worker has a current work capacity.

(5) In making an interim determination under this section, the Authority or a self-insurer may have regard to any medical evidence available to the Authority or self-insurer about the work capacity and degree of impairment of the worker.

167E Notice of interim determination of eligibility

S. 167E inserted by No. 8/2024 s. 16.

(1) The Authority or self-insurer must give a worker written notice of an interim determination made in respect of the worker.

(2) A notice under subsection (1) must include a written statement of each injury to which the interim determination relates.

(3) An interim determination in respect of a worker applies until the Authority or a self-insurer makes—

(a) a further interim determination in respect of the worker; or

(b) an ongoing eligibility determination in respect of the worker.

(4) At any time, the Authority or self-insurer may review an interim determination.

167F Notice of ongoing eligibility determination

S. 167F inserted by No. 8/2024 s. 16.

(1) The Authority or self-insurer must give a worker written notice of an ongoing eligibility determination made in respect of the worker.

(2) If the worker advises the Authority or self-insurer that the worker disputes the ongoing eligibility determination, the worker must not commence a

proceeding in relation to the claim, except as provided in section 273(1) or (2).

S. 167G inserted by No. 8/2024 s. 16.

167G Effect of ongoing eligibility determination made after interim determination

(1) If the Authority or self-insurer makes an interim determination under section 167D(1)(a) that a worker is entitled to compensation after the expiry of the second entitlement period and subsequently makes an ongoing eligibility determination that the worker is not entitled to compensation after the expiry of the second entitlement period, the Authority or self-insurer must give the worker 13 weeks of notice for the purposes of section 191(1)(b) before terminating the worker's weekly payments.

(2) If the Authority or self-insurer makes an interim determination under section 167D(1)(b) that a worker is not entitled to compensation after the expiry of the second entitlement period and subsequently confirms in an ongoing eligibility determination that the worker is not entitled to compensation after the expiry of the second entitlement period, the Authority or self-insurer is taken to have given the worker 13 weeks of notice for the purposes of section 191(1)(b).

(3) If the Authority or self-insurer makes an interim determination under section 167D(1)(b) that a worker is not entitled to compensation after the expiry of the second entitlement period and subsequently makes an ongoing eligibility determination that the worker is entitled to compensation after the expiry of the second entitlement period, the worker is entitled to compensation from the date that the interim determination took effect.

(4) No interest is payable to the worker on payments made to the worker in the circumstances described in subsection (3).

167H Referral of dispute to Medical Panel

S. 167H inserted by No. 8/2024 s. 16.

(1) The Authority or self-insurer must refer the medical question as to the degree of impairment of a worker to a Medical Panel for its opinion under section 302 if—

(a) the worker advises the Authority or self-insurer that the worker disputes an ongoing eligibility determination; and

(b) the dispute does not require the resolution of any issue other than the degree of impairment arising from the compensable injury or injuries to which the ongoing eligibility determination relates.

(2) The Authority or self-insurer must refer the medical question under subsection (1) within 14 days of being advised by the worker that the worker disputes the ongoing eligibility determination.

(3) Within 60 days of obtaining the opinion of the Medical Panel under section 302, the Authority or self-insurer must advise the worker of—

(a) the opinion of the Medical Panel; and

(b) the worker's entitlement, if any, to compensation in the form of weekly payments after the expiry of the second entitlement period.

(4) Within 60 days of being advised by the Authority or self-insurer of the entitlement of the worker to compensation in accordance with subsection (3), the worker must advise the Authority or self-insurer whether the worker accepts or disputes the entitlement to compensation.

(5) Within 14 days of being advised by the worker that the worker accepts the entitlement to compensation, the Authority or self-insurer must pay the compensation in accordance with this Division.

S. 167I inserted by No. 8/2024 s. 16.

167I Ongoing eligibility determination does not give rise to issue estoppel

An ongoing eligibility determination made by the Authority or a self-insurer in respect of a compensable injury does not give rise to an issue estoppel in any proceeding under this Act in respect of the injury.

S. 167J inserted by No. 8/2024 s. 16.

167J No appeal from certain determinations and opinions

For the purposes of this Subdivision, section 208 applies to an impairment determination or any other determination or opinion as to the degree of impairment of a worker resulting from an injury.

S. 167K inserted by No. 8/2024 s. 16.

167K Minister may give directions

(1) For the purposes of this Division, the Minister may give directions in accordance with section 609 for or with respect to procedures for making any of the following—

(a) an impairment determination;

(b) an interim determination;

(c) an ongoing eligibility determination.

(2) Directions under subsection (1) may include directions requiring that information specified in the direction must be provided by affidavit.

Subdivision 2—Superannuation contributions

168 Compensation in the form of superannuation contributions

(1) If—

(a) there is caused to a worker an injury arising out of, or in the course of employment; and

(b) compensation in the form of weekly payments—

(i) has been paid or is payable to the worker in respect of that injury for an aggregate period of 52 weeks (whether or not consecutive); and

(ii) has not ceased to be paid or payable in respect of that injury; and

(c) the worker has not attained retirement age—

S. 168(1)(c) amended by No. 73/2016 s. 13.

the Authority or self-insurer must, subject to the worker nominating a complying fund to the Authority or self-insurer and providing details of his or her tax file number to the trustee of the nominated complying fund within 3 months of receipt of a notice under subsection (4), pay, in accordance with this section, for the benefit of the worker, compensation in the form of superannuation contributions to the nominated complying fund.

(2) Subsection (1) does not apply in respect of a worker in relation to any period in respect of which—

(a) the worker's employer makes contributions for the benefit of the worker to any scheme or fund for the payment of superannuation, retirement benefits or death benefits

(other than under a salary sacrifice agreement or arrangement); and

(b) those contributions—

(i) exceed the contributions (if any) necessary for the employer to avoid an individual superannuation guarantee shortfall under the Superannuation Act in respect of a worker; and

(ii) are made for the purpose of discharging an obligation of the employer to the worker that arises because of the worker's injury under any public sector superannuation scheme, agreement or arrangement or any law of the Commonwealth or a State or Territory relating to superannuation or an industrial award.

(3) The amount that the Authority or self-insurer is liable to pay, subject to and in accordance with this section, as compensation in the form of superannuation contributions for the benefit of a worker is the amount equal to the charge percentage of the compensation in the form of weekly payments payable to the worker under this Part after the expiry of the period referred to in subsection (1)(b)(i) other than—

(a) compensation under section 164, unless the worker is receiving compensation under section 165; and

(b) compensation under section 170.

(4) Subject to subsection (1), the Authority or self-insurer must, within 28 days after becoming aware that it is liable to pay to a worker compensation in the form of superannuation contributions subject to and in accordance with this section, notify the worker in writing—

(a) that the Authority or self-insurer is so liable and of the date on which it became so liable; and

(b) of the amount of its liability, expressed as the charge percentage of the weekly amount that the worker receives as compensation in the form of weekly payments in respect of the injury; and

(c) that the Authority or self-insurer is required to pay the contributions to a complying fund nominated by the worker; and

(d) that the worker is required to nominate a complying fund to the Authority or self-insurer; and

(e) that contributions cannot be paid to the nominated complying fund unless the worker, or the worker's employer on behalf of the worker, has provided details of the worker's tax file number to the trustee of the nominated complying fund; and

(f) that the worker is entitled to nominate a different complying fund, but not more than once in any period of 12 months; and

(g) that, if the worker does not nominate a complying fund, or does not provide sufficient details to enable contributions to be paid to a complying fund, within 3 months after the date on which the notice under this subsection is given to the worker, the Authority or self-insurer is not liable to pay compensation in the form of superannuation contributions in respect of any period before it receives those details.

(5) Subject to subsection (1), payment under this section must be made to the worker's nominated complying fund—

(a) in the case of the Authority, within—

(i) 30 days after it is informed by the worker's employer that compensation in the form of weekly payments has been paid; or

(ii) 120 days after compensation in the form of weekly payments has been paid—

whichever first occurs;

(b) in the case of a self-insurer, at least quarterly.

(6) Despite anything to the contrary in section 92, the Authority is liable to pay compensation in the form of superannuation contributions in accordance with this section.

(7) Where the liability of the Authority under this section is discharged, the discharge is to be treated as if a liability of the employer is discharged.

(8) In this section—

charge percentage means the percentage applicable for the time being under section 19(2) of the Superannuation Act;

complying fund means a complying superannuation fund or scheme within the meaning of section 7 of the Superannuation Act but does not include—

(a) a defined benefit superannuation scheme within the meaning of section 6A(1) of that Act; or

(b) a scheme that is a defined benefit superannuation scheme because of section 6A(2) of that Act;

Superannuation Act means the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth.

Subdivision 3—Compensation after retirement

169 Injury after retirement

If a worker is injured within the period of 130 weeks before attaining retirement age or after attaining retirement age, the worker is entitled to weekly payments under this Act for not more than the first 130 weeks (whether consecutive or not) of incapacity for work.

170 Compensation for incapacity arising after retirement age

(1) This section applies to a worker, not being a worker to whom section 169 applies, if the worker—

(a) before retirement age—

(i) suffered an injury arising out of or in the course of employment; and

(ii) made a claim for compensation in respect of that injury under section 20; and

(b) received a weekly payment of compensation in respect of that injury within the period of 10 years before the worker attained retirement age; and

(c) after retirement age, became incapacitated for work and the incapacity is a consequence of treatment received after retirement age as an inpatient at a hospital for that injury; and

(d) is not entitled to weekly payments only because section 171 applies.

(2) If this section applies to a worker, the worker may apply in writing to the Authority or self-insurer for weekly payments in respect of the incapacity payable at the rate specified in section 162(a) or (b).

(3) The maximum period of weekly payments payable under this section is 13 weeks.

(4) A worker who makes an application in accordance with subsection (2) is entitled to receive weekly payments under this section if—

(a) the worker was a worker at the time the incapacity arose; and

(b) the incapacity is in respect of the work that the worker was performing immediately before the incapacity arose; and

(c) the worker has not ceased to become entitled to weekly payments due to the application of this Part or Part 4 or section 261(1) or 347(1); and

(d) the worker has not previously received payment of compensation in respect of the injury under this section.

(5) An application under subsection (2) must—

(a) specify the reason for the application; and

(b) be provided with supporting evidence.

(6) Within 28 days of receiving the application, the Authority or self-insurer must—

(a) approve or reject the application; and

(b) give the worker written notice of its decision, including in the case of rejection, a statement of the reasons for the decision.

171 Compensation after retirement

Subject to sections 169 and 170, a worker is not entitled to weekly payments under this Act after attaining retirement age.

Subdivision 4—Effect of certain pensions on weekly payments

172 Effect of disability or other pensions and lump sums on weekly payments

(1) The amount of any weekly payment payable to a worker under this Part must be reduced by the weekly amount of any retirement or superannuation pension received by the worker that relates to the worker's retirement from, or the cessation or termination of, the employment out of, or in the course of which, or due to the nature of which, the injury arose.

(2) If a worker—

(a) receives a superannuation or retirement benefit lump sum that—

(i) relates to the worker's retirement from, or cessation or termination of, the employment out of, or in the course of which, the injury arose; and

(ii) has not been deposited with a complying superannuation fund or a complying approved deposit fund; or

(b) withdraws or redeems any part of, or withdraws or redeems any interest, or part of any interest on, such a superannuation or retirement benefit lump sum that has been deposited with a complying superannuation fund or a complying approved deposit fund—

the worker is not entitled to weekly payments under this Part during the specified period after the date on which he or she received the lump sum or made the withdrawal or redemption, as the case requires, or became eligible to receive weekly payments, whichever is the later.

(3) The specified period for the purposes of subsection (2) is the number of weeks determined by dividing the amount received, withdrawn or redeemed by the worker's pre-injury average weekly earnings as varied in accordance with Division 1 of Part 13.

(4) If a worker withdraws or redeems any part of the amount deposited or used under subsection (2) which represents the worker's own contributions for the purpose of an approved capital expenditure within the meaning of subsection (5), subsection (2) does not apply in respect of that withdrawal or redemption.

(5) For the purposes of subsection (4), ***approved capital expenditure*** means capital expenditure approved by the Authority or by a self-insurer in accordance with guidelines made by the Authority.

(6) The Authority must ensure that guidelines made under subsection (5) are published and generally available.

(7) The amount of compensation in the form of weekly payments payable to a worker under this Part must be reduced by the amount (if any) by which the sum of—

(a) the weekly payment that would be payable but for this subsection; and

(b) the weekly rate of any disability pension received by or for the benefit of the worker and which relates to an injury in respect of which compensation in the form of weekly payments is payable to the worker; and

(c) the worker's current weekly earnings—

exceeds the supplemental pension limit.

(8) In this section—

disability pension, in relation to a worker, means an amount payable under an insurance policy or by a trustee acting as a trustee that—

(a) relates to an injury in respect of which compensation in the form of weekly payments is payable under this Part; and

(b) is payable in the form of periodic payments to or for the benefit of the worker—

but does not include a retirement or superannuation pension;

supplemental pension limit, in relation to a worker, means the worker's pre-injury average weekly earnings in respect of the relevant period as calculated under section 153 as indexed in accordance with Division 1 of Part 13 and calculated as if the enhancement period within the meaning of section 157 had not expired.

173 Notification of entitlement to certain payments

(1) If a worker who is claiming weekly payments under this Part receives a pension specified in section 172(1) or a lump sum amount specified in section 172(2), the worker must within 14 days of first receiving the pension or lump sum amount give notice in writing to the person from whom weekly payments are being claimed of the nature, source and amount of the pension or lump sum amount.

(2) If a worker—

(a) has received or is receiving a pension specified in section 172(1) or a lump sum amount specified in section 172(2); or

(b) has withdrawn or redeemed any part of the amount deposited or used under section 172(2)—

at the time that the worker makes a claim for the payment of weekly payments under this Part, the worker must give notice in writing of the nature, source and amount of the pension or lump sum amount or of the withdrawal or redemption at the same time that the claim is given, served or lodged.

(3) A worker required to give notice in writing under subsection (1) or (2) must within 14 days give notice in writing to the person from whom weekly payments are being claimed if—

(a) there is any change in the amount of the pension or lump sum amount; or

(b) he or she withdraws or redeems any part of the amount deposited or used under section 172(2).

(4) If an employer (not being a self-insurer or a subsidiary of a self-insurer) against whom a worker is claiming weekly payments under this Part becomes aware that the worker is, or may be, entitled to—

(a) a pension specified in section 172(1); or

(b) a lump sum amount specified in section 172(2)—

the employer must within 28 days of becoming so aware give notice in writing to the Authority, of the entitlement.

(5) If an employer (not being a self-insurer or an eligible subsidiary of a self-insurer) against whom a worker makes a claim for the payment of weekly payments under this Part is at the time that the worker makes the claim aware that the worker is, or may be, entitled to—

(a) a pension specified in section 172(1); or

(b) a lump sum amount specified in section 172(2)—

the employer must within 28 days of the making of the claim give notice in writing to the Authority, of the entitlement.

(6) A reference in this section to claiming weekly payments includes—

(a) making a claim; or

(b) claiming to be entitled to weekly payments; or

(c) receiving weekly payments.

(7) A person who fails to comply with this section is guilty of an offence.

Penalty: 60 penalty units.

Subdivision 5—Provisions relating to the payment of compensation

174 Regard not to be had to certain contracts etc.

Except as provided in section 172, regard must not be had, in respect of the entitlement to, or amount of, compensation under this Part, to any sum paid or payable—

(a) under any contract of assurance or insurance (including a contract made with any friendly or other benefit society or association or any trade union); or

(b) out of any relief or sustentation fund or other fund (whether statutory or otherwise) of a like nature; or

(c) by way of accident make-up pay under any industrial award; or

(d) in lieu of accrued annual leave or long service leave.

175 Absence from Australia

S. 175(1) amended by No. 8/2024 s. 17(1).

(1) If a worker who is receiving weekly payments ceases to reside in Australia, his or her entitlement to weekly payments ceases unless the worker has, before leaving Australia, satisfied the Authority or self-insurer that the worker—

S. 175(1)(a) inserted by No. 8/2024 s. 17(1).

(a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and

S. 175(1)(b) inserted by No. 8/2024 s. 17(1).

(b) in the case of a worker receiving weekly payments after the second entitlement period, has a whole person impairment of more than 20 per cent resulting from one or more compensable injuries.

(2) If a worker ceases to reside in Australia and subsequently claims to be entitled to the payment of weekly payments, the worker must, in addition to establishing his or her entitlement, satisfy the Authority or self-insurer that the worker has no current work capacity and is likely to continue indefinitely to have no current work capacity.

S. 175(2A) inserted by No. 8/2024 s. 17(2).

(2A) If a worker who ceases to reside in Australia is receiving weekly payments, the worker's entitlement to weekly payments ceases upon the expiry of the second entitlement period unless the Authority or self-insurer determines that the worker—

(a) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and

(b) has a whole person impairment of more than 20 per cent resulting from one or more compensable injuries.

(3) If a worker who is receiving weekly payments is temporarily absent from Australia, his or her entitlement to weekly payments is limited to a maximum aggregate period of 28 days in respect of any certificate or certificates provided by a medical practitioner outside Australia unless the Authority or self-insurer is satisfied that there are special circumstances which justify the extension of that period for a further period as is specified in the certificate.

S. 175(4) amended by No. 10/2022 s. 79, substituted by No. 8/2024 s. 17(3).

(4) If a worker who does not reside in Australia is receiving weekly payments because of subsection (1), (2) or (2A), the worker is entitled to receive the weekly payments if the worker proves in the prescribed manner and at the prescribed intervals to the satisfaction of the Authority or self-insurer—

(a) the worker's identity; and

(b) that the worker continues to have no current work capacity.

S. 175(5) inserted by No. 8/2024 s. 17(3).

(5) If a worker who does not reside in Australia is receiving weekly payments after the second entitlement period, the Authority or self-insurer—

(a) may review the work capacity of the worker at any time; and

(b) must review the work capacity of the worker as often as reasonably necessary and not less than once every 2 years.

176 Further provisions concerning compensation

(1) Compensation under this Act is absolutely inalienable whether by way of, or in consequence of, any sale, assignment, charge, execution, bankruptcy, attachment, legal process or by operation of law or any other means and no claim may be set off against compensation under this Act.

(2) Despite subsection (1), the Authority or self-insurer is entitled to set off against any weekly payments to which a worker is entitled any amount of compensation in the form of weekly payments previously paid to the worker if the worker—

(a) was not entitled to receive that amount of compensation by virtue of section 172(1) or (2); and

(b) has failed to give any notice in writing required under section 173.

(3) Despite subsection (1), the Authority or self-insurer is entitled to set off against any weekly payments to which a worker is entitled, the amount awarded to the Authority or self-insurer by an order made by a court under this

Act or section 86 of the **Sentencing Act 1991** after the worker is convicted, or found guilty, of an offence under this Act or the **Crimes Act 1958**, in connection with a claim for compensation under this Act.

177 Sentences of imprisonment

A person is not entitled to weekly payments under this Act in respect of any period during which the person serves a sentence of imprisonment (whether imposed under the law of this State or of any other place) in a prison within the meaning of the **Corrections Act 1986** or in a prison or similar institution outside Victoria.

178 Time for payment

(1) If ACCS directs, or the Magistrates' Court or the County Court determines, that weekly payments are payable by the Authority or a self-insurer, the Authority or self-insurer must commence payment, including amounts payable under section 193, no later than 7 days after the direction or determination.

S. 178(1) amended by No. 73/2016 s. 21(2).

(2) On the commencement of payment under subsection (1), the Authority or self-insurer must pay an amount equal to any outstanding weekly payments to the worker.

(3) If the Authority, a self-insurer or an employer accepts a claim for weekly payments, payments, including amounts payable under section 193, must commence to be paid within 7 days after the claim is accepted.

(4) If ACCS directs, or the Magistrates' Court or the County Court determines, that weekly payments be made, section 193 applies and the entitlement of the worker to weekly payments commences on the date specified by ACCS or by the Magistrates' Court or the County Court.

S. 178(4) amended by No. 73/2016 s. 21(2)(3).

179 Payment of weekly payments

(1) A weekly payment must be made to a worker—

(a) before the expiry of 7 days after the end of the week in respect of which it is payable; or

(b) if the worker would be paid less frequently if the worker were at work, at such time or at such intervals as he or she would be paid if at work.

(2) The liability to a worker is not satisfied until the worker receives the weekly payment.

(3) If—

(a) an employer is notified by the Authority that a worker is entitled to weekly payments; or

(b) a self-insurer determines that a worker is entitled to weekly payments—

the employer or self-insurer, as the case may be, must make weekly payments to the worker in accordance with subsection (1).

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(4) A self-insurer—

(a) to which a direction or determination under section 178(1) to pay weekly payments applies, must commence payment within 7 days after the direction or determination is made; or

(b) which accepts a claim under section 178(3) to make weekly payments to a worker and there are any outstanding payments of weekly payments, must pay those outstanding weekly payments to the worker within 7 days after accepting the claim.

S. 179(4)(b) amended by No. 44/2014 s. 24(7).

Penalty: 300 penalty units.

(5) If an employer is required to make a payment of weekly payments before the employer receives the payment from the Authority, the employer must be reimbursed by the Authority.

(6) If an employer to whom subsection (5) applies does not apply within 3 months after making the payment of weekly payments to a worker for reimbursement by the Authority, the Authority is not required to reimburse the employer but may do so if satisfied that the employer's delay in making the application was reasonable.

(7) If the Authority does not reimburse the employer in respect of a payment referred to in subsection (5) within the prescribed period, the Authority is liable to pay the employer interest at the prescribed rate on the amount of the payment until the Authority reimburses the employer in respect of the payment.

(8) In this section, ***employer*** includes, in relation to the employment of a student worker, a self-insurer or an eligible subsidiary of a self-insurer.

Division 3—Alteration or termination of weekly payments and superannuation contributions

180 Application of Division

This Division, except sections 182 and 185, applies only if the worker is currently receiving weekly payments as at the date of the change in the entitlement of the worker to weekly payments.

181 Application by worker to alter amount of weekly payments

(1) A worker who is receiving weekly payments may apply in writing to the Authority or self-insurer for an increase or reduction in the amount of the payments.

(2) An application under subsection (1) must—

(a) specify the reasons for so applying; and

(b) be accompanied by any supporting evidence.

(3) Within 28 days after receiving an application, the Authority or self-insurer must—

(a) approve or reject the application; and

(b) give the worker and the employer written notice of its decision, including, in the case of rejection, a statement of the reasons for the decision.

182 Authority or self-insurer may terminate or alter weekly payments

The Authority or self-insurer may, in accordance with this Act—

(a) terminate a worker's entitlement to weekly payments; or

(b) alter the basis on which the amount of the weekly payment is to be calculated—

whether or not the worker is currently receiving weekly payments.

183 Grounds for alteration or termination of weekly payments

(1) In addition to other grounds under this Act for termination or alteration of weekly payments, the Authority or a self-insurer—

(a) may increase or reduce weekly payments on the ground that there is not, or is no longer, an entitlement to weekly payments of the existing amount; or

(b) may terminate weekly payments on the ground that—

(i) the worker is not entitled to compensation under Division 3 of Part 2 or Division 2 of this Part; or

(ii) the worker is not, or is no longer, entitled to weekly payments; or

(c) may terminate or alter weekly payments on the ground that—

(i) the worker has returned to any work whether as a self-employed person or in employment; or

(ii) in the case of a worker who has current weekly earnings, the amount of the worker's current weekly earnings alters; or

(iii) payments for regular overtime or shift allowances are no longer included in the worker's pre-injury average weekly earnings; or

(iv) a non-pecuniary benefit within the meaning of section 155(1)(d) or 156(1)(b) is varied or no longer paid; or

(v) a non-pecuniary benefit provided by an employer in the circumstances referred to in paragraph (b) of the definition of ***deductible amount*** is varied or no longer paid.

(2) A termination or alteration of weekly payments on a ground specified in subsection (1)(a) or (b) has effect—

(a) only if written notice in accordance with section 188 is given; and

(b) after the expiry of the required notice period.

(3) A termination or alteration of weekly payments on a ground specified in subsection (1)(c) has effect—

(a) without the giving of notice; and

(b) as from the day on which the circumstances establishing the ground first arise.

(4) The Authority or a self-insurer may terminate weekly payments if it considers that payments were obtained fraudulently.

(5) A termination of weekly payments on the ground specified in subsection (4) has effect—

(a) if written notice in accordance with section 188 is given; and

(b) as from the day (whether before, on or after the giving of the notice) on which the Authority or self-insurer makes the decision.

184 Grounds for alteration or termination of superannuation contributions

The Authority or a self-insurer is not required to give written notice to the worker of—

(a) an alteration of compensation in the form of superannuation contributions where the alteration is because of an alteration in the compensation in the form of weekly payments paid or payable to the worker; or

(b) the termination of compensation in the form of superannuation contributions where the termination is because the worker is not, or has ceased to be, entitled to compensation in the form of weekly payments.

185 Where worker's weekly payments are reduced

(1) If the current weekly earnings of a worker who—

(a) has an incapacity for work resulting from, or materially contributed to by, an injury; and

(b) is receiving, or but for the worker's current weekly earnings, would have been entitled to receive, compensation in the form of weekly payments—

are reduced because—

(c) the worker no longer resides in Victoria; or

(d) the worker's employment was terminated because of the worker's misconduct; or

(e) the worker—

(i) has resigned; or

(ii) reduced the hours worked otherwise than in the circumstances referred in section 166—

for reasons unrelated to the worker's incapacity—

the Authority or a self-insurer may determine—

(f) not to alter the amount of compensation in the form of weekly payments paid to the worker; or

(g) not to pay compensation in the form of weekly payments.

(2) If the Authority or a self-insurer makes a determination under subsection (1)—

(a) the Authority or self-insurer must give written notice to the worker of the determination and the reasons for it; and

(b) the worker's entitlement to compensation in the form of weekly payments is adjusted in accordance with the determination.

(3) A determination under subsection (1) takes effect—

(a) from the day on which the current weekly earnings were reduced; or

(b) if the Authority or self-insurer specifies a later date in the determination, on that later date.

(4) If the current weekly earnings of a worker are reduced because the worker is on paid annual leave or long service leave, the Authority or self-insurer must not, by reason only of that reduction, alter the amount of compensation in the form of weekly payments.

186 Termination or alteration of weekly payments under certain provisions

(1) A termination of weekly payments payable under section 164 has effect—

(a) without the giving of notice; and

(b) as from—

(i) the day on which the worker ceases to suffer incapacity resulting from, or materially contributed to by, the subsequent surgery; or

(ii) the expiry of the period of 13 weeks commencing on the day on which the relevant surgery is performed—

whichever first occurs.

(2) A termination or alteration of weekly payments on the grounds specified in section 169, 171, 172, 175(1), 177 or 347(1) has effect—

(a) without the giving of notice; and

(b) as from the day on which the circumstances establishing the relevant ground first arise.

(3) A termination of weekly payments under section 170 has effect—

(a) without the giving of notice; and

(b) as from the expiry of the period not exceeding 13 weeks for which the payment is granted under that section.

(4) A reduction of weekly payments solely on the ground of the expiry of the first entitlement period has effect if—

(a) written notice in accordance with section 188 is given; and

(b) section 190 has been complied with.

(5) A termination of weekly payments solely on the ground of the expiry of the second entitlement period has effect if—

(a) written notice in accordance with section 188 is given; and

(b) section 191 has been complied with.

187 When termination of compensation in the form of superannuation contributions has effect

(1) Subject to this section, the Authority or a self-insurer may terminate the payment of compensation in the form of superannuation contributions in respect of a worker on the ground that the worker—

(a) is not, or has ceased to be, entitled to such compensation; or

(b) is not, or has ceased to be, entitled to compensation in the form of weekly payments.

(2) The Authority or self-insurer must not terminate payments in the form of superannuation contributions (otherwise than because the worker is not, or has ceased to be, entitled to compensation in the form of weekly payments) unless the Authority or self-insurer gives a notice in writing to the worker in accordance with section 188.

188 Notices

A notice in accordance with this section must—

(a) be given to the worker; and

(b) state the reasons for giving the notice; and

(c) state—

(i) in the case of termination, when weekly payments will cease; or

(ii) in the case of alteration, the new level of weekly payments and when payments at the new level will commence; or

(iii) in the case of termination of payments in the form of superannuation contributions under section 187(2), when payments will cease.

189 When a required period of notice must be given

(1) If a worker—

(a) has received weekly payments of compensation for a continuous period of at least 12 weeks; and

(b) has provided the worker's employer, or where applicable, the Authority or self-insurer with a certificate of capacity in accordance with section 167—

the Authority or self-insurer must not terminate or reduce weekly payments during the period of incapacity so specified without giving the worker the required period of notice of intention to do so.

(2) If weekly payments are terminated or reduced in contravention of subsection (1), the worker may recover from the Authority or self-insurer an amount of compensation that—

(a) if no period of notice has been given, is equal to the amount of compensation or additional compensation, that would have been payable during the required period of notice if weekly payments had not been terminated or reduced; or

(b) if less than the required period of notice has been given, is equal to the amount of compensation that would have been payable during the balance of the required period of notice if weekly payments had not been terminated or reduced.

(3) The required period of notice, unless expressly otherwise provided in this Act is—

(a) if the worker has been receiving weekly payments of compensation for a continuous period of at least 12 weeks but less than one year, 14 days; or

(b) if compensation in the form of superannuation contributions has been paid in respect of a worker for a continuous period of at least 12 weeks but less than one year, 14 days; or

(c) if the worker has been receiving weekly payments of compensation for a continuous period of one year or more, 28 days; or

(d) if compensation in the form of superannuation contributions has been paid in respect of a worker for a continuous period of one year or more, 28 days; or

(e) if the termination of weekly payments is solely on the ground of the expiry of the second entitlement period, 13 weeks;

(f) if the worker has been receiving compensation in the form of weekly payments under section 165 and ceases to be entitled to receive such compensation, 28 days; or

(g) if the worker has been receiving compensation in the form of weekly payments under section 165 and the termination is because the employer has withdrawn the employment, 13 weeks commencing on the day on which the employer informs the worker of the withdrawal of employment.

190 Reduction of weekly payments after the first entitlement period

(1) Weekly payments must not be reduced under section 186(4)—

(a) unless the Authority or self-insurer has made a determination of the worker's entitlement under section 162; and

(b) until the Authority or self-insurer has given at least 14 days notice under section 189 of the decision following that determination.

(2) The notice is not invalid only because the date specified in the notice as the date on which the reduction is to take effect is not a date immediately after the expiry of the first entitlement period but has effect—

(a) on the date immediately after the completion of the first entitlement period; or

(b) if the date specified in the notice is a later date, the later date.

(3) Despite anything to the contrary in section 162, until notice is given to a worker and the date specified in the notice has expired, the worker is deemed to be entitled to weekly payments in respect of any period after the expiry of the first entitlement period under section 162(a) or (b) provided that the worker is, but for the expiry of 13 weeks, otherwise entitled to weekly payments.

(4) Subsections (1)(b), (2) and (3) do not apply if the claim for weekly payments is made within the period of 42 days before the expiry of the first entitlement period.

(5) If subsection (4) applies and weekly payments are commenced, the entitlement to weekly payments in respect of any period after the expiry of the first entitlement period must be determined in accordance with section 162.

191 Termination of weekly payments after expiry of second entitlement period

(1) Weekly payments must not be terminated under section 186(5)—

(a) unless the Authority or self-insurer has made a determination of the worker's entitlement to weekly payments after the expiry of the second entitlement period; and

(b) until the Authority or self-insurer has given at least 13 weeks notice under section 189 of the determination following the making of the determination.

(2) A determination under subsection (1) may be made before, on or after the expiry of the second entitlement period so as to terminate payments at or after the expiry of that entitlement period.

(3) The notice is not invalid only because the date specified in the notice as the date on which the termination is to take effect is not a date immediately after the expiry of the second entitlement period but has effect—

(a) on the date immediately after the completion of the second entitlement period; or

(b) if the date specified in the notice is a later date, the later date.

(4) If subsection (1) applies and notwithstanding anything to the contrary in section 163(1), until notice is given to a worker and the date specified in the notice has expired, the worker is deemed to be entitled to weekly payments under section 162

in respect of any period after the expiry of the second entitlement period provided that the worker is, but for the expiry of the entitlement period, otherwise entitled to weekly payments.

(5) Subsections (1)(b), (3) and (4) do not apply if the claim for weekly payments is made within the period of 119 days before the expiry of the second entitlement period.

(6) If subsection (5) applies and weekly payments are commenced, the entitlement to weekly payments in respect of any period after the expiry of the second entitlement period must be determined in accordance with section 163(1).

192 Notice of reduction of weekly payments

(1) On becoming aware that section 42, 43 or 44 applies to a worker who is receiving, or is entitled to receive, compensation in the form of weekly payments under this Part—

(a) the Authority or self-insurer must give written notice to the worker in accordance with section 188 of the reduction in the amount of the worker's weekly payments; and

(b) weekly payments must not be reduced before the notice has been given.

(2) Section 189(3) does not apply to a notice given under subsection (1) of this section.

193 Outstanding weekly payments

(1) The amount of outstanding weekly payments and interest at the prescribed rate on each outstanding weekly payment are payable to the worker in the following circumstances and in respect of the periods specified in relation thereto—

S. 193(1)(a) amended by No. 73/2016 s. 21(2).

(a) if ACCS directs that weekly payments be commenced or continued to be paid at the current rate or increased, from the day—

(i) on which incapacity commenced; or

(ii) on which weekly payments were terminated or altered; or

(iii) on which the worker's application to increase the amount of weekly payments was received by the Authority or self-insurer—

until the day on which the direction is revoked or payments are commenced, continued or increased, whichever is the earlier; or

(b) subject to subsection (2), if a decision to reject a claim for weekly payments is set aside by the Magistrates' Court or the County Court, from the day on which the incapacity commenced until the day on which the decision is set aside; or

(c) subject to subsection (2), if a decision to terminate or reduce weekly payments is set aside by the Magistrates' Court or the County Court, from the day on which the decision took effect until the day on which the decision is set aside; or

(d) subject to subsection (2), if a decision to reject an application by a worker to increase the amount of weekly payments is set aside by the Magistrates' Court or the County Court, from a day determined by the Magistrates' Court or the County Court until the day on which the decision is set aside; or

(e) if an employer, the Authority or a self-insurer fails to make any weekly payment as and when required by this Act to be made to a worker, from the day after the payment was required to be made until the day before the payment is made.

(2) If, within a year after being notified under section 298(1) that an application concerning weekly payments may be made to the Magistrates' Court or the County Court, the worker has not made such an application, interest is not payable under subsection (1) in respect of the period beginning on the expiry of one year after that notification and ending on the day on which an application is made.

(3) If an employer is responsible for making weekly payments to a worker, the Authority must pay the employer the amount of any outstanding weekly payments payable under subsection (1).

(4) Subsection (3) does not apply to a self-insurer or an eligible subsidiary of a self-insurer except in relation to the employment of a student worker.

194 Outstanding superannuation contributions

(1) Subject to subsection (2)—

(a) outstanding payments of compensation in the form of superannuation contributions under section 168; and

(b) interest at the prescribed rate on each outstanding payment from the last date on which such a payment should have been paid until the date on which the payment is paid—

are payable to the superannuation fund nominated by the worker under section 168 for the benefit of the worker if a decision to terminate

superannuation contributions under section 187 is set aside by the court.

S. 194(2) amended by No. 73/2016 s. 21(2).

(2) If a worker has not made an application to the court within one year after being notified by ACCS—

S. 194(2)(a) amended by No. 73/2016 s. 21(3).

(a) that ACCS is satisfied that there is a dispute with respect to liability to make or continue to make payments of compensation in the form of superannuation contributions under section 168; and

(b) that an application may be made to the court to determine the matter—

interest is not payable under subsection (1) in respect of the period beginning after the expiry of one year after that date and ending on the day on which the application is made.

(3) If, under section 193, outstanding payments of compensation in the form of weekly payments are payable in the circumstances referred to in section 193(1)(b), (c) or (d), then, subject to section 168—

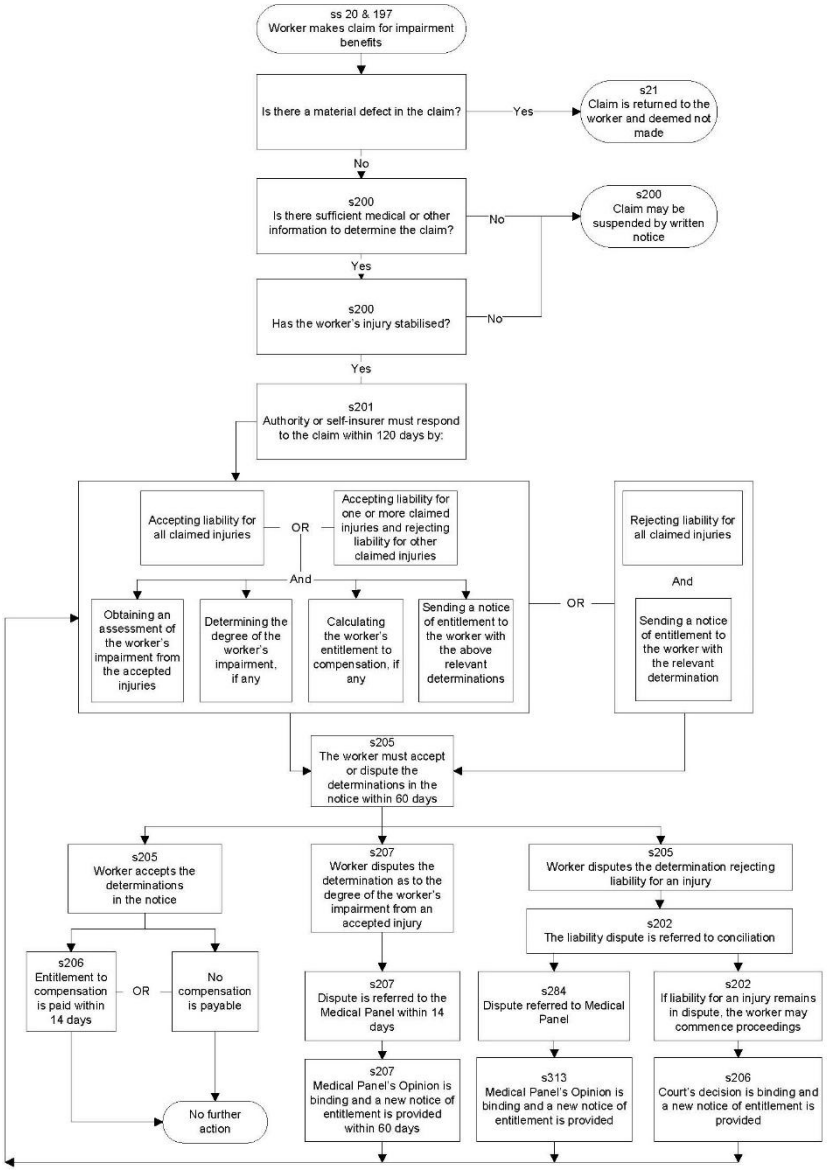
(a) compensation in the form of superannuation contributions under that section in respect of those outstanding payments; and

(b) interest at the prescribed rate on each such payment—

are also payable.

Division 4—Claims for compensation for non-economic loss

195 Flow chart 6—impairment benefits process



196 Definitions

(1) In this Division—

Division 5 claim means a claim by a worker for compensation under Division 5, including a claim under that Division in respect of additional injuries made in accordance with section 204(2)(a);

relevant date, in relation to a Division 5 claim, means—

(a) if the worker makes the claim in accordance with section 204(2)(a), the day on which the claim is received by the Authority or self-insurer; or

(b) if the worker advises the Authority or self-insurer that he or she disputes the written statement of the injury or injuries under section 204(1), the day on which the dispute is resolved; or

(c) if the worker does not make a claim or dispute the written statement of the injury or injuries under section 204(1) within the period specified under section 204(2), the day on which that period expires; or

(d) if the worker accepts the written statement of the injury or injuries under section 204(1), the day on which the Authority or self-insurer receives the advice of the worker that he or she accepts the written statement of the injury or injuries.

(2) For the purposes of this Division, liability in relation to a claim does not include a question as to—

(a) the degree of permanent impairment of a worker; or

(b) whether a worker has an injury which is a total loss mentioned in the Table in Schedule 4.

197 Claims for compensation under Division 5

(1) In addition to the requirements under section 20, this Division applies to a Division 5 claim.

S. 197(2) amended by No. 10/2022 s. 63(1).

(2) Subject to subsection (3), a Division 5 claim (other than a claim for compensation for industrial deafness, an eligible progressive disease, a further EPD injury, a serious lung injury or an injury that has been treated with lung transplant surgery) cannot be made before the expiry of the period of 12 months after the date of the relevant injury.

(3) Despite subsection (2), the Authority or a self-insurer may receive a Division 5 claim before the expiry of the period of 12 months after the date of the relevant injury if the relevant injury has stabilised.

(4) A worker must include all injuries arising out of the same event or circumstance in a Division 5 claim.

(5) A worker can make only one Division 5 claim in respect of injuries arising out of the same event or circumstance.

(6) Subject to section 204(2)(a), if a Division 5 claim is initiated in respect of a worker by the Authority or self-insurer under section 199, the worker cannot make a Division 5 claim in respect of injuries arising out of the same event or circumstance.

Note to s. 197 inserted by No. 10/2022 s. 63(2).

Note

For matters relating to industrial deafness, an eligible progressive disease, a further EPD injury, serious lung injury and an injury that has been treated with lung transplant surgery, see Subdivisions 3, 6 and 7 of Division 4 of Part 2.

198 Division 5 claim cannot be made unless all proceedings under section 328(2)(b) have been determined

If a worker has commenced an application under section 328(2)(b) in respect of an injury, the worker cannot make a Division 5 claim in respect of that injury unless all proceedings under or in accordance with Division 2 of Part 7 in respect of that application have been finally determined or withdrawn.

199 Initiation of claim by Authority or self-insurer

S. 199(1) substituted by No. 8/2024 s. 18.

(1) The Authority or a self-insurer may request a worker to attend an independent examination under section 203(1) in respect of an injury if—

(a) liability has been accepted or determined in respect of a prior claim for compensation for the injury; and

(b) either—

(i) it has been at least 18 months since the date of the injury; or

(ii) the degree of impairment of the worker is being assessed under Subdivision 1A of Division 2; and

(c) the worker has not made a Division 5 claim in respect of the injury.

(2) For the purposes of this section, a request under subsection (1) has the effect of initiating a Division 5 claim in respect of the worker by the Authority or self-insurer.

200 Authority may suspend a claim

(1) The Authority or self-insurer, within 90 days after receiving a Division 5 claim from a worker, may, by notice in writing to the worker, suspend the claim if—

(a) the Authority or self-insurer has insufficient medical information to determine the matters specified in section 201(1); or

(b) the Authority or self-insurer cannot make a determination under section 201(1) because the condition of the injury of the worker is not stable.

S. 200(1A) inserted by No. 8/2024 s. 19(1).

(1A) The Authority or self-insurer, by notice in writing to the worker, may suspend a Division 5 claim from a worker within 14 days of the date on which the Authority or self-insurer has—

(a) received the Division 5 claim; and

(b) either—

(i) made a request under section 167B(1) for the worker to attend an assessment; or

(ii) given the worker a statement of injuries under section 167B(3).

(2) The Authority or self-insurer must, within 14 days—

(a) if subsection (1)(a) applies, of having sufficient medical information to determine the matters specified in section 201(1); or

S. 200(2)(b) amended by No. 8/2024 s. 19(2)(a).

(b) if subsection (1)(b) applies, of being able to make a determination under 201(1) because the condition of the injury of the worker has stabilised; or

S. 200(2)(c) inserted by No. 8/2024 s. 19(2)(b).

(c) if subsection (1A) applies, of giving notice under section 167F(1) to the worker of an ongoing eligibility determination in respect of the worker—

by notice in writing to the worker remove the suspension under subsection (1).

S. 200(3) inserted by No. 8/2024 s. 19(3).

(3) In this section—

ongoing eligibility determination has the same meaning as in section 152.

201 Authority or self-insurer to accept or reject claim

(1) The Authority or self-insurer must, within 120 days after receiving a Division 5 claim from a worker or, in the case of a claim initiated by the Authority or self-insurer, within 120 days of the relevant date—

(a) if the claim is a Division 5 claim made by a worker, accept or reject liability for each injury included in the claim; and

(b) obtain an assessment or assessments in accordance with Division 4 of Part 2 as to the degree of permanent impairment (if any) of the worker resulting from the injury or injuries in respect of which liability is accepted; and

(c) after taking into account the assessment or assessments obtained under paragraph (b), determine the degree of permanent impairment (if any) of the worker for each of the purposes of—

(i) Division 5; and

(ii) Division 2 of Part 7;

(d) determine whether the worker has an injury which is a total loss mentioned in the Table in Schedule 4; and

(e) calculate any entitlement to compensation under Division 5; and

(f) advise the worker as to—

(i) if the claim is a Division 5 claim made by the worker, the decision to accept or reject liability for each injury included in the claim; and

(ii) each of the determinations as to the degree of permanent impairment (if any) of the worker and whether the worker has an injury which is a total loss mentioned in the Table in Schedule 4 resulting from the injury or injuries in respect of which liability is accepted; and

(iii) the calculation of any entitlement to compensation under Division 5; and

(g) provide to the worker a copy of—

(i) any medical reports, correspondence and other documents provided to; and

(ii) any medical reports, correspondence and other documents obtained from—

any medical practitioner referred to in section 54(1)(b) conducting an independent examination.

(2) The Authority or self-insurer is not bound by the assessment or assessments obtained under subsection (1)(b) in determining the degree of any permanent impairment under subsection (1)(c).

S. 202 (Heading) amended by Nos 73/2016 s. 21(5), 15/2021 s. 7(1).

202 No proceedings by worker in relation to rejection of liability without conciliation

(1) This section applies if—

(a) the Authority or self-insurer rejects liability in relation to the injuries included in the claim for compensation under Division 5 made by a worker; and

(b) the worker disputes the decision as to liability.

S. 202(2) amended by No. 73/2016 s. 21(2)(3), substituted by No. 15/2021 s. 7(2).

(2) If this section applies, the worker must not commence a proceeding in relation to the claim, except as provided in section 273(1) or (2).

203 Assessment of impairment

(1) The worker must, at the request of the Authority or self-insurer, attend an independent examination to be conducted by a medical practitioner referred to in section 54(1)(b) for the purposes of this Division.

(2) The Authority or self-insurer must obtain assessments in accordance with Division 4 of Part 2 as to the degree of permanent impairment resulting from any injury for which liability is accepted or established for the purposes of—

(a) determining any entitlement of the worker to compensation under Division 5; and

(b) determining the whole person impairment under sections 328(1) and 335.

(3) A determination of the degree of impairment must take into account all impairments resulting from the injuries entitling the worker to compensation included in the claim for compensation under Division 5.

(4) If the worker was not 18 years of age at the time of the event or circumstance, the determination of impairment resulting from the injury cannot be made until the worker attains the age of 18 years.

204 Written statement of injuries

(1) If an independent examination has been requested by the Authority or a self-insurer under section 199(1), the Authority or self-insurer must give the worker—

(a) a written statement of the injury or injuries to be included in the assessments; and

(b) a statement of rights in a form approved by the Authority for the purposes of this Division.

(2) A worker must, within 60 days of receiving a written statement under subsection (1)—

(a) make a Division 5 claim in respect of any additional injuries that the worker believes have arisen out of the same event or circumstance; or

(b) advise the Authority or self-insurer that he or she disputes the statement; or

(c) advise the Authority or self-insurer that he or she accepts the written statement of the injury or injuries.

(3) If, after receiving a written statement under subsection (1) the worker makes a claim for compensation under Division 5 in respect of any additional injuries that the worker believes have arisen out of the same event or circumstance—

(a) the claim by the worker and the claim initiated by the Authority or self-insurer are to be considered as one consolidated claim; and

(b) the consolidated claim is to be dealt with in accordance with section 201.

S. 204(4) amended by No. 73/2016 s. 21(2)(3), substituted by No. 15/2021 s. 8.

(4) If the worker advises the Authority or self-insurer that the worker disputes the written statement under subsection (1), the worker must not commence a proceeding in relation to the claim, except as provided in section 273(1) or (2).

(5) If the worker does not make a claim or dispute the statement within the period specified under subsection (2), the injury or injuries specified in the written statement are deemed to be the only injury or injuries arising from the same event or circumstance which are to be included in the determination of impairment to be dealt with in accordance with section 201.

205 Worker to advise Authority or self-insurer of worker's acceptance or dispute of decision as to liability under section 201(1)

(1) The worker must, within 60 days after being advised under section 201(1) in respect of a Division 5 claim made by the worker, advise the Authority or self-insurer in writing whether the worker accepts or disputes the decision as to liability in respect of each of the injuries claimed.

(2) If, under subsection (1), a worker disputes any part of the decision as to liability, the worker does not have to respond to any other part of the advice under section 201(1).

(3) Subject to subsection (1), the worker must within 60 days of being advised under section 201(1)(f), advise the Authority or self-insurer in writing—

(a) whether the worker accepts or disputes the determinations of impairment and total loss; and

(b) if the worker accepts the determinations of impairment and total loss, whether the worker accepts or disputes the entitlement to compensation, if any.

206 Variation of decision made under section 201(1)(a)

S. 206 (Heading) amended by No. 15/2021 s. 9(1).

(1) If the decision made under section 201(1)(a) to reject liability for an injury is varied as the result of a decision of a court, a determination by ACCS under Subdivision 4 of Division 2 of Part 6 or an agreement between the worker and the Authority or self-insurer, the Authority or self-insurer must within 90 days of the variation—

S. 206(1) amended by No. 15/2021 s. 9(2).

(a) obtain an assessment or assessments in accordance with Division 4 of Part 2 as to the degree of permanent impairment (if any) of the worker resulting from the injury or injuries in respect of which liability is accepted or determined; and

(b) after taking into account the assessment or assessments obtained under paragraph (a), determine the degree of permanent impairment (if any) of the worker for each of the purposes of—

(i) Division 5; and

(ii) Division 2 of Part 7;

(c) determine whether the worker has an injury which is a total loss mentioned in the Table in Schedule 4; and

(d) calculate any entitlement to compensation under Division 5; and

(e) advise the worker as to—

(i) the decision or determination of liability for each injury included in the claim; and

(ii) each of the determinations as to the degree of permanent impairment (if any) of the worker and whether the worker has an injury which is a total loss mentioned in the Table in Schedule 4 resulting from the injury or injuries in respect of which liability is accepted; and

(iii) the calculation of any entitlement to compensation under Division 5; and

(f) provide to the worker a copy of—

(i) any medical reports, correspondence and other documents provided to; and

(ii) any medical reports, correspondence and other documents obtained from—

any medical practitioner referred to in section 54(1)(b) conducting an independent examination.

(2) The Authority or self-insurer is not bound by the assessment or assessments obtained under subsection (1)(a) in determining the degree of permanent impairment (if any) under subsection (1)(b).

(3) The worker must within 60 days of being advised under subsection (1) advise the Authority or self-insurer in writing—

(a) whether the worker accepts or disputes the determinations of impairment and total loss; and

(b) if the worker accepts the determinations of impairment and total loss, whether the worker accepts or disputes the entitlement to compensation, if any.

(4) Subject to section 347(1), the Authority or self-insurer must, within 14 days of being advised by the worker, either under subsection (3) or under section 205(3), or at a later date, that the worker accepts the determinations of impairment and total loss and the entitlement to compensation—

(a) if the entitlement is under Division 5, except section 221, make payments in accordance with section 220; or

(b) if the entitlement is under section 221, pay the amount specified for the total loss under section 221.

207 Reference of dispute under section 205(3)(a) or 206(3)(a) to Medical Panel

(1) The Authority or self-insurer must, within 14 days of being advised by the worker that the worker disputes the determinations of impairment or total loss in respect of the injury or injuries claimed, refer the medical questions as to—

(a) the degree of impairment assessed in accordance with Division 4 of Part 2 resulting from the injury or injuries claimed for which liability is accepted or established; and

(b) whether the worker has an injury or injuries claimed for which liability is accepted or established which is a total loss mentioned in the Table in Schedule 4—

to a Medical Panel for its opinion under section 302.

(2) For the purposes of subsection (1), if a worker has suffered an injury arising out of the same event or circumstance resulting in both psychiatric impairment and impairment other than psychiatric impairment—

(a) the worker may—

(i) accept or dispute the determinations of impairment of both psychiatric impairment and impairment other than psychiatric impairment; or

(ii) accept or dispute either the determination of psychiatric impairment or the determination of impairment other than psychiatric impairment but cannot accept only part of the determination of impairment other than psychiatric impairment; and

(b) the Authority or self-insurer must refer the medical questions relating to the determination or determinations disputed in accordance with subsection (1).

(3) The Authority or self-insurer must, within 60 days of obtaining the opinion of the Medical Panel under section 302, advise the worker of the opinion and the entitlement, if any, under Division 5.

(4) The worker must, within 60 days of being advised by the Authority or self-insurer of the entitlement of the worker to compensation in accordance with subsection (3), advise the Authority or self-insurer whether the worker accepts or disputes the entitlement to compensation.

(5) Subject to section 347(1), the Authority or self-insurer must, within 14 days of being advised by the worker, either under subsection (4) or at a later date, that the worker accepts the entitlement to compensation—

(a) if the entitlement is under Division 5, except section 221, make payments in accordance with section 220; or

(b) if the entitlement is under section 221, pay the amount specified for the total loss under section 221.

208 No appeal from certain determinations and opinions

No appeal lies to any court or tribunal from a determination or opinion—

(a) as to the degree of permanent impairment of a worker resulting from an injury; or

(b) as to whether a worker has an injury which is a total loss mentioned in the Table in Schedule 4.

209 Minister may give directions

(1) For the purposes of this Division, the Minister may give directions in accordance with section 609 for or with respect to procedures for the determination of Division 5 claims.

(2) Directions under subsection (1) may include directions requiring that information in classes of claims specified in the directions must be provided by affidavit.

Division 5—Compensation for non-economic loss

210 Definitions

(1) In this Division—

compensation law means this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** or a workers compensation law of the Commonwealth or another State or Territory of the Commonwealth;

S. 210(1) def. of *further EPD injury* inserted by No. 10/2022 s. 64(c).

further EPD injury means an increase in the degree of impairment of a worker who has on one or more occasions suffered a prior EPD injury;

S. 210(1) def. of *further injury* substituted as *further hearing injury* by No. 10/2022 s. 64(a).

further hearing injury means a further loss of hearing in respect of industrial deafness after a worker has on one or more occasions suffered a prior hearing injury;

S. 210(1) def. of *further EPD injury* inserted by No. 10/2022 s. 64(c).

prior EPD injury means an eligible progressive disease for which a worker has received or become entitled to receive compensation for impairment;

S. 210(1) def. of *prior injury* substituted as *prior hearing injury* by No. 10/2022 s. 64(b).

prior hearing injury means industrial deafness for which the worker has received or become entitled to receive compensation for loss of hearing;

prior hearing loss means a loss of hearing for which a worker has received compensation under a compensation law for loss of hearing;

relevant date, in relation to the calculation of the amount of non-economic loss under this Division, means—

(a) if the worker's impairment benefit rating is not more than 70 per cent, the date of the relevant injury; or

(b) if the worker's impairment benefit rating is more than 70 per cent, the date on which the calculation is made;

spinal impairment means a whole person impairment derived solely in accordance with section 3.3 of Chapter 3 of the A.M.A Guides, without inclusion of any other impairment.

(2) For the purposes of this Division, a ***worker's impairment benefit rating*** is—

(a) if the worker's degree of impairment consists of, or includes, a whole person impairment assessed in accordance with Chapter 3 of the A.M.A Guides and that whole person impairment is not less than 5 per cent and not more than 29 per cent—

(i) the modified whole person impairment set out in column 2 of Schedule 3 opposite the relevant whole person impairment as assessed in accordance with Chapter 3 of the A.M.A Guides;

(ii) the modified whole person impairment set out in column 2 of Schedule 3 opposite the relevant whole person impairment as assessed in accordance with Chapter 3 of the A.M.A Guides for a spinal impairment;

(iii) if subparagraph (ii) does not apply, the worker's degree of impairment as assessed in accordance with Chapter 3 of the A.M.A Guides for a spinal impairment;

(iv) the worker's degree of impairment—

whichever provides the worker with the higher amount for non-economic loss under section 211(2);

(b) in any other case, the worker's degree of impairment.

211 Compensation for non-economic loss—permanent impairment

(1) A worker who suffers an injury which entitled the worker to compensation is, in respect of an injury resulting in permanent impairment as assessed in accordance with Division 4 of Part 2, entitled to compensation for non-economic loss calculated in accordance with this Division.

S. 211(2) amended by No. 10/2022 s. 65.

(2) The amount of the non-economic loss in respect of permanent impairment (other than psychiatric impairment and industrial deafness in respect of a further hearing injury) is to be calculated as at the relevant date as follows—

(a) if the worker's impairment benefit rating is less than 10 per cent—the amount of the non-economic loss is zero;

(b) if the worker's impairment benefit rating—

(i) is a modified whole person impairment (within the meaning of section 210(2)(a)(i)) and is not less than 10 per cent and less than 11 per cent—the amount of the non-economic loss

is to be determined in accordance with the formula—

$11 670 + [(D – 10) × $9940];

(ii) is a modified spinal impairment (within the meaning of section 210(2)(a)(ii)) and is not less than 10 per cent and less than 11 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

{$11 670 + [(D – 10) × $9940]} × 1·1;

(c) if the worker's impairment benefit rating—

(i) is not less than 10 per cent and not more than 30 per cent and paragraph (b) does not apply to the worker—the amount of the non-economic loss is to be determined in accordance with the formula—

$18 810 + [(D – 10) × $2830];

(ii) is a spinal impairment (within the meaning of section 210(2)(a)(ii) or (iii)) and is not less than 10 per cent and less than 30 per cent and paragraph (b) does not apply to the worker—the amount of the non-economic loss is—

(A) the amount determined in accordance with the formula—

{$18 810 + [(D – 10) × $2830]} × 1·1; or

(B) the amount determined in accordance with the formula $18 810 + [20 × $2830]—

whichever is the lesser;

(d) if the worker's impairment benefit rating is more than 30 per cent and not more than 70 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

$75 260 + [(D – 30) × $4700];

(e) if the worker's impairment benefit rating is more than 70 per cent and not more than 80 per cent—the amount of the non-economic loss is—

(i) the amount determined in accordance with the formula—

$262 070 + [(D – 70) × $29 330]; or

(ii) $555 350—

whichever is the lesser;

(f) if the worker's impairment benefit rating is more than 80 per cent—the amount of the non-economic loss is $555 350—

where **D** is the worker's impairment benefit rating expressed as a number.

212 Compensation for non-economic loss—permanent psychiatric impairment

The amount of the non-economic loss in respect of permanent psychiatric impairment as assessed in accordance with Division 4 of Part 2 is to be calculated as at the relevant date as follows—

(a) if the worker's degree of impairment is less than 30 per cent—the amount of the non-economic loss is zero;

(b) if the worker's degree of impairment is 30 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

$18 810 + [(D – 10) × $2830];

(c) if the worker's degree of impairment is more than 30 per cent and not more than 70 per cent—the amount of non-economic loss is the amount determined in accordance with the formula—

$75 260 + [(D – 30) × $4700];

(d) if the worker's degree of impairment is more than 70 per cent and not more than 80 per cent—the amount of the non-economic loss is—

(i) the amount determined in accordance with the formula—

$262 070 + [(D – 70) × $29 330]; or

(ii) $555 530—

whichever is the lesser;

(e) if the worker's degree of impairment is more than 80 per cent—the amount of the non-economic loss is $555 530—

where **D** is the worker's degree of impairment expressed as a number.

S. 213 (Heading) amended by No. 10/2022 s. 66(1).

213 Compensation for non-economic loss—industrial deafness in respect of further hearing injury

S. 213(1) amended by No. 10/2022 s. 66(2).

(1) Despite section 211(1), the amount of non-economic loss in respect of industrial deafness in respect of a further hearing injury is to be calculated as at the relevant date as follows—

(a) if T is not less than 10 per cent and not more than 30 per cent and P is less than 10 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

[(T – 10) × $2830] + [(10 – P) × $1860];

(b) if T is not less than 10 per cent and not more than 30 per cent and P is not less than 10 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

[(T – P) × $2830];

(c) if T is more than 30 per cent and P is less than 10 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

[(T – 30) × $4700] + [(30 – 10) × $2830] + [(10 – P) × $1860];

(d) if T is more than 30 per cent and P is not less than 10 per cent and is less than 30 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

[(T – 30) × $4700] + [(30 – P) × $2830];

(e) if T is more than 30 per cent and P is not less than 30 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

[(T – P) × $4700]—

where—

T is the percentage referred to in section 61(2)(a) rounded up to the next whole number, after that percentage has been converted in accordance with section 63(1);

P is the total percentage referred to in section 61(2)(b) rounded up to the next whole number, after that percentage has been converted in accordance with section 63(3).

(2) Compensation payable under this section for industrial deafness is the amount of compensation calculated—

(a) if the date of injury is deemed under section 60(1) to be the last day of the worker's employment out of which or in the course of which the injury arose—as at that day; or

(b) if the date of injury is deemed under section 60(2) to be the date of the claim—as at the day on which the compensation is determined.

214 Compensation for non-economic loss—loss of foetus

(1) The amount of the non-economic loss in respect of an injury resulting in the loss of a foetus or of the loss of more than one foetus is $67 660.

(2) For the purposes of subsection (1), ***foetus*** means the conceptus beyond the sixteenth week of development.

S. 214A inserted by No. 10/2022 s. 67.

214A Compensation for non-economic loss—further impairment

Despite section 211(1), the amount of non-economic loss in respect of impairment resulting from a further EPD injury or an injury referred to in section 68G is to be calculated as at the relevant date as follows—

S. 214A(a) amended by No. 27/2025 s. 11(1)(a).

(a) if T is not less than 10 per cent and not more than 30 per cent and P is less than 10 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

[(T - 10) × $3360] + [(10 - P) × $2210];

S. 214A(b) amended by No. 27/2025 s. 11(1)(b).

(b) if T is not less than 10 per cent and not more than 30 per cent and P is not less than 10 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

[(T - P) × $3360];

S. 214A(c) amended by No. 27/2025 s. 11(1)(c).

(c) if T is more than 30 per cent and P is less than 10 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

[(T - 30) × $5600] + [(30 - 10) × $3360] + [(10 - P) × $2210];

S. 214A(d) amended by No. 27/2025 s. 11(1)(d).

(d) if T is more than 30 per cent and P is not less than 10 per cent and is less than 30 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

[(T - 30) × $5600] + [(30 - P) × $3360];

(e) if T is more than 30 per cent and P is not less than 30 per cent—the amount of the non-economic loss is to be determined in accordance with the formula—

S. 214A(e) amended by No. 27/2025 s. 11(1)(e).

[(T - P) × $5600];

where—

T is the percentage referred to in section 68C(3)(a) or 68G(2)(a) (as the case requires);

P is the total percentage referred to in section 68C(3)(b) or 68G(2)(b) (as the case requires).

Note

The figures in this section correspond to the figures in section 213, as indexed on 1 July 2022.

Note to s. 214A inserted by No. 27/2025 s. 11(2).

215 Injuries by gradual process other than industrial deafness

(1) For the purposes of determining the worker's entitlement to compensation under this Part, subject to subsections (2) and (3), if a worker sustains an injury, other than industrial deafness, that occurs by way of gradual process over time, the injury is deemed to have been sustained on the last day on which the worker was—

(a) performing duties; or

(b) exposed to conditions—

by reason of which the injury was due to the nature of the worker's employment or arose out of or in the course of the worker's employment.

(2) For the purposes of determining the worker's entitlement to compensation under this Part, subject to subsection (3), if a worker sustains an injury, other than industrial deafness, that occurs

by way of gradual process over time and on the day on which the worker gives, serves or lodges a claim for compensation in respect of the injury, the worker is still—

(a) performing duties; or

(b) exposed to conditions—

by reason of which the injury is due to the nature of the worker's employment or arises out of or in the course of employment, the injury is deemed to have been sustained on that day.

(3) For the purposes of subsections (1) and (2), the Minister may make guidelines in accordance with section 611 specifying considerations and circumstances to be considered in determining whether subsection (1) or (2) applies in respect of an injury that occurs by way of gradual process over time.

216 Effect of payment of compensation under this Division

If compensation for non-economic loss, calculated in accordance with this Division, is paid to a worker in respect of an impairment, loss of bodily function, disfigurement, brain damage or total loss resulting from an injury (other than industrial deafness) that occurred—

(a) by way of gradual process over time due to the nature of the employment in which the worker was employed; or

(b) by way of gradual process over time and arose out of, or in the course of, employment in which the worker was employed—

the worker ceases to be entitled to compensation under this Division, or section 98, 98C or 98E of the **Accident Compensation Act 1985** or

section 11 of the **Workers Compensation Act 1958** in respect of any injury—

(c) suffered by the worker before the compensation was paid; and

(d) that materially contributed to the impairment, loss of body function, disfigurement, brain damage or total loss in respect of which the compensation was paid.

217 Limits on compensation

(1) If a worker suffers on the same occasion more than one injury which entitles the worker to compensation under section 211(1), the worker is not entitled to receive as compensation for non-economic loss more than $555 350.

(2) If a worker suffers an injury which entitles the worker to compensation for non-economic loss of more than one kind as specified in section 211, 212 or 214, the worker is not entitled to receive as compensation for non-economic loss under this Division more than $555 350.

(3) If compensation has been paid for non-economic loss in respect of a prior EPD injury, prior hearing injury, prior hearing loss or serious lung injury, that prior EPD injury, prior hearing injury, prior hearing loss or serious lung injury must be taken into account in accordance with Division 3 of Part 2 and this Division in determining the amount of compensation payable under this Division.

S. 217(3) amended by No. 10/2022 s. 68.

(4) If compensation has been paid—

(a) under this Division; or

(b) under section 98, 98A, 98C or 98E of the **Accident Compensation Act 1985**—

in respect of an injury, the amount of that compensation must be deducted from any compensation payable under this Division in

respect of any impairment or total loss resulting from an injury consisting of any recurrence, aggravation, acceleration, exacerbation or deterioration of the injury in respect of which compensation has been paid under this Division or under section 98, 98A, 98C or 98E of the **Accident Compensation Act 1985**.

S. 218 (Heading) amended by No. 49/2018 s. 33(1).

218 Compensation not payable after death of worker except in limited circumstances

S. 218 amended by No. 49/2018 s. 33(2)(3) (ILA s. 39B(1)).

(1) Except as provided in this section, compensation under this Division is not payable after the death of the worker concerned.

S. 218(2) inserted by No. 49/2018 s. 33(3).

(2) If—

(a) a worker suffers an injury which entitled the worker to compensation under this Division; and

(b) the worker has made a claim for compensation under Division 4 of this Part; and

(c) the worker has received the decision of the Authority or self-insurer in relation to liability for the claim, or liability for the claim has been determined by a court; and

(d) the worker has received an assessment or assessments in accordance with Division 4 of Part 2 as to the degree of impairment (if any) resulting from the injury; and

(e) the most recent assessment determines the worker has a degree of impairment that entitles the worker to compensation under this Division; and

(f) the worker dies before the compensation is fully paid—

any unpaid compensation is payable to the worker's estate.

219 Compensation not to exceed relevant maximum

Despite anything to the contrary in this Division, a worker is not entitled to an amount of compensation for non-economic loss under this Division that exceeds the maximum amount payable under section 217(2) as in force at the relevant date.

220 Payment of compensation as lump sum

Compensation for non-economic loss calculated under this Division is to be paid as a lump sum.

221 No Disadvantage—Compensation Table

(1) If—

(a) a worker suffers an injury which entitled the worker to compensation; and

(b) the injury is a total loss mentioned in the Table in Schedule 4; and

(c) the amount of compensation calculated under the preceding provisions of this Division is less than the amount payable for total loss specified in the Table in respect of that injury—

the worker is entitled to compensation equal to the amount specified in the Table instead of compensation calculated under the preceding provisions of this Division.

(2) For the purposes of this section, total loss of hearing—

(a) must be determined by a medical practitioner in the manner approved by the Minister; and

S. 221(2)(a) substituted by No. 27/2025 s. 12(1).

(b) must be determined in accordance with the Improved Procedure for Determination of Percentage Loss of Hearing (1988 Edition or a later prescribed edition) published by the National Acoustic Laboratory.

S. 221(3) repealed by No. 27/2025 s. 12(2).

* * * * *

(4) If a worker suffers on the same occasion more than one of the injuries mentioned in the Table in Schedule 4, the worker is not entitled to receive as compensation under subsection (1) more than $273 640 in respect of the injuries suffered on that occasion.

(5) The amount of compensation for an injury that is a total loss mentioned in the Table in Schedule 4 is to be calculated as at the date of the relevant injury.

Division 6—Rehabilitation services prior to acceptance of claim

222 Authority or self-insurer may pay for rehabilitation service

(1) The Authority, employer or a self-insurer may pay the reasonable costs of an occupational rehabilitation service provided to a worker whether or not the entitlement of the worker to compensation under this Act has been established.

(2) Where the Authority, employer or a self-insurer agrees to pay amounts under this section it must give the worker reasonable notice before discontinuing payments in respect of the occupational rehabilitation service.

Division 7—Compensation for medical and like services

223 Definitions

(1) In this Division—

family member of a worker, means a partner, parent, grandparent, sibling or child of the worker or of the worker's partner;

S. 223(1) def. of *family member* amended by No. 49/2018 s. 34.

parent of a worker includes a person who has day to day care and control of the worker;

severe injury means any of the following—

(a) paraplegia;

(b) quadriplegia;

(c) amputation of a limb;

(d) amputation of a hand or foot;

(e) severe head injury;

(f) severe eye injury;

(g) separation of a worker's skin from an underlying tissue (such as de-gloving or scalping);

(h) severe burns;

(i) severe lacerations;

(j) severe injuries arising out of an electric shock;

(k) any other work related injury giving rise to an imminent risk of death;

S. 223(1) def. of *supported accom-modation* amended by Nos 37/2021 s. 401, 9/2023 s. 264.

supported accommodation means—

(a) a residential facility in which residential care is provided under the Aged Care Act 1997 of the Commonwealth; and

(b) a supported residential service within the meaning of section 214 of the **Social Services Regulation Act 2021**; and

(c) an SDA dwelling within the meaning of the **Residential Tenancies Act 1997**; and

(d) a group home or other residential facility approved by the Authority for the purposes of this section.

(2) In this Division—

reasonable costs, in relation to a service (including modification of a car or a home), burial or cremation means an amount—

(a) that is determined by the Authority, employer or self-insurer as a reasonable cost in relation to that service, burial or cremation having regard to—

(i) the service or provision actually rendered; and

(ii) the necessity of the service or provision in the circumstances; and

(iii) any guidelines made by the Authority and published on its website in respect of services or provisions of that kind; and

(b) that does not exceed the amount (if any) specified in, or an amount determined in accordance with a method specified in, an Order of the Governor in Council;

Order of the Governor in Council means an Order made on the recommendation of the Authority and published in the Government Gazette specifying an amount, or an amount determined in accordance with a method specified in the Order as the maximum amount of costs payable in respect of a service (including modification of a car or a home) or a burial or cremation, being a maximum amount that is not less than the amount of the fee specified in a Table within the meaning of the Health Insurance Act 1973 of the Commonwealth applicable in respect of a service of that kind provided in Victoria.

(3) Guidelines made by the Authority for the purposes of paragraph (a)(iii) of the definition of ***reasonable costs*** in subsection (2) apply in relation to the cost of a service, burial or cremation provided or carried out after the making of the guidelines, irrespective of the date of the injury.

224 Liability of Authority and self-insurer

S. 224(1) amended by No. 44/2014 s. 11(1).

(1) If there is caused to a worker an injury which entitles a worker to compensation, the Authority or a self-insurer, and the employer in respect of the employer's excess under section 72(1)(c), is liable, unless a determination or order under Division 6 of Part 13 applies, to pay as compensation, in addition to any other compensation payable under this Act—

(a) the reasonable costs of the road accident rescue services, medical, hospital, nursing, personal and household, occupational rehabilitation and ambulance services received because of the injury; and

S. 224(1)(ab) inserted by No. 10/2022 s. 69(1).

(ab) if the worker dies, the reasonable costs of household help received by a family member of the worker for a period of 6 months commencing from the date on which the Authority is notified of the death, in circumstances where—

(i) it appears to the Authority that the worker's death results from the injury for which compensation is payable; and

(ii) at the time of the death of the worker, the worker was receiving compensation for household help within the meaning of paragraph (b) of the definition of ***personal and household service***; and

(iii) the family member resides at the worker's home; and

(iv) the Authority is notified of the death of the worker within 3 months from the date of the death; and

S. 224(1)(b) amended by No. 10/2022 s. 69(2), substituted by No. 27/2025 s. 13(1).

(b) if the injury is a severe injury for which immediate inpatient treatment in a hospital is received or an eligible progressive disease, or where death results from the injury, the reasonable costs incurred in Australia of the following services provided to family members of the worker—

(i) family counselling provided by a medical practitioner or registered psychologist or by a social worker approved by the Authority to provide

counselling services for the purposes of this section;

(ii) therapy and other support services provided by any person or class of person approved by the Authority to provide therapy and other support services for the purposes of this section—

not exceeding $10 000 in respect of that severe injury or eligible progressive disease or death; and

(c) if death results from the injury, the reasonable costs of burial or cremation; and

S. 224(1)(c) amended by No. 48/2017 s. 30(1).

(d) reasonable travelling or accommodation expenses not exceeding $20 000 incurred by family members of the worker in circumstances where—

S. 224(1)(d) inserted by No. 48/2017 s. 30(2), amended by No. 49/2018 s. 35.

(i) the injury is a severe injury for which immediate in-patient treatment in a hospital is received; and

(ii) the hospital is located at least 100 kilometres from the normal residence of the worker's family members; and

(e) reasonable travelling or accommodation expenses not exceeding $5000 incurred by family members of the worker in circumstances where—

S. 224(1)(e) inserted by No. 48/2017 s. 30(2).

(i) death results from the injury; and

(ii) a burial service or cremation service is held in respect of the worker; and

S. 224(1)(e)(iii) amended by Nos 10/2022 s. 69(3)(a), 27/2025 s. 13(2).

(iii) the service is held at least 100 kilometres from the normal residence of the worker's family members; and

S. 224(1)(e)(iv) repealed by No. 10/2022 s. 69(3)(b).

* * * * *

S. 224(1)(f) inserted by No. 27/2025 s. 13(3).

(f) if death results from the injury, the reasonable costs of forensic cleaning services incurred by family members of the worker in circumstances where the death occurred at the home of the worker or a family member of the worker.

S. 224(2) amended by No. 27/2025 s. 13(4).

(2) The Authority may make guidelines identifying services, or services of a class of services, referred to in subsection (1)(a), (b) or (f) for which approval should be sought from the Authority or self-insurer before the services are provided.

(3) The Authority must ensure that guidelines made under subsection (2) are published and are generally available.

(4) A worker is entitled to receive a service referred to in subsection (1) (other than an occupational rehabilitation service) from the provider of the worker's choice notwithstanding that an employer or the Authority or a self-insurer, as the case may be, offers or provides a service to the worker for the worker's use.

S. 224(5) inserted by No. 27/2025 s. 13(5).

(5) The Minister may give directions in accordance with section 609 specifying therapy and other support services, or a class of therapy and other support services, for which an amount may be paid under subsection (1)(b)(ii).

225 Where services provided by employer

(1) If a worker receives services from an employer who has made adequate arrangements to provide workers in the employer's employment with gratuitous medical, hospital, nursing, ambulance, personal and household or occupational rehabilitation services, the employer is, to the extent of the value of the services, deemed to have discharged any liability of the employer under section 72(1)(c).

(2) If the employer is not a self-insurer and the value of the services provided under subsection (1) exceeds $642, the employer may claim the amount by which the value of the services exceeds $642 from the Authority.

226 To whom compensation under this Division is to be paid

(1) A payment of compensation under this Division must be made to the person lawfully entitled to the payment.

(2) If the liability to the person lawfully entitled to payment of the costs specified in this Division has already been discharged in whole or in part by a payment by the worker or any other person whether legally liable to make the payment or not, the amount by which the liability has been so discharged must be paid to the worker or other person who made the payment.

(3) If a worker or a worker's dependants is or are entitled to any of the services (including burial or cremation) specified in this Division free of charge or at a reduced rate or charge because the worker—

(a) entered into any prior contract, agreement or arrangement; or

(b) was a contributor or subscriber to any institution, fund or scheme—

the payment in respect of those services must not be reduced but, after payment of the amount, if any, actually owing to the person lawfully entitled to payment, the balance of the reasonable cost must be paid to the worker or the worker's dependants.

(4) The payment of the whole of the reasonable costs of any service, burial or cremation specified in this Division wholly and finally discharges the worker or the worker's dependants and any other person from all liability whatsoever in respect of those costs.

227 Certain actions etc. not permitted

S. 227(1) amended by No. 44/2014 s. 11(2).

(1) An action, suit or other proceeding against a worker or the legal personal representative of a worker or a dependant of a worker for the payment or recovery of any costs which the Authority, a self-insurer or an employer is liable to pay under this Division or to which a determination or order under Division 6 of Part 13 applies must not be entertained by any court.

S. 227(2) amended by No. 44/2014 s. 11(3).

(2) Subsection (1) does not apply in relation to a worker or a worker's legal personal representative or dependant in respect of the payment or recovery of costs of professional services provided by a person after the worker, representative or dependant has been informed in writing by the Authority or self-insurer that a determination or order against that person has been made under Division 6 of Part 13.

228 Medical and like services outside Australia

(1) Notwithstanding anything to the contrary in this Division, unless subsection (3) or (4) applies, the Authority, employer or self-insurer is not liable to pay as compensation the costs of any service specified in section 224(1)(a), (ab) or (b) which is provided or carried out outside Australia, unless the worker or claimant obtained the approval of the Authority, employer or self-insurer before the service was provided or carried out.

S. 228(1) amended by No. 10/2022 s. 70(1).

(2) In determining whether to approve the provision or carrying out of a service for the purposes of subsection (1), the Authority, employer or self-insurer must have regard to the matters specified in the definition of ***reasonable costs*** in section 223(2) and to section 232.

S. 228(2) amended by No. 10/2022 s. 70(2).

(3) Subsection (1) does not apply if the worker or claimant satisfies the Authority, employer or self-insurer that, because of an emergency situation—

(a) it was necessary to immediately provide or carry out a service to which section 224(1) applies; and

S. 228(3)(a) amended by No. 10/2022 s. 70(2).

(b) it was not reasonably practicable to first obtain approval.

(4) In the case of a worker who resides outside Australia, the Authority, employer or self-insurer may, for the purposes of subsection (1), give a general approval specifying a class or classes of services.

S. 228(4) amended by No. 10/2022 s. 70(3).

(5) The requirement imposed by subsection (1) is in addition to any other relevant requirements under this Division.

229 Compensation not payable for certain accommodation etc.

(1) Nothing in this Division renders the Authority, a self-insurer or the employer liable to pay as compensation the cost of the provision to, or for, a worker of any of the following things, unless the provision of a particular thing to the worker is a medical service, or a hospital service, provided as a result of the injury—

(a) accommodation (including accommodation-related costs such as rent, bonds, rates, accommodation costs levied in accordance with Commonwealth legislation, capital contributions and costs associated with the buying or selling of property, but not including contributions or costs for which the Authority or self-insurer is liable under section 231(5));

(b) food or household or personal items;

(c) power, water or any other service provided by a utility;

(d) room temperature controls;

(e) any other thing specified by the regulations for the purposes of this subsection.

(2) Subsection (1) does not apply in the case of a person who—

(a) is under 18 years of age and, as a result of his or her injury, is unable to reside at the place at which he or she resided before the injury; or

(b) is receiving respite care as a result of his or her injury; or

(c) receives a hospital service as a result of his or her injury and, after being discharged from hospital for the first time after suffering

the injury, resides in supported accommodation but only while so residing during the first 18 months after being so discharged.

(3) If, during the period of 18 months referred to in subsection (2), the person receives a hospital service or hospital services, a reference in that subsection to 18 months has effect, in relation to that person, as a reference to that period as extended by the period, or periods, during which the person receives the hospital service or hospital services.

(4) The contribution to be made by a worker towards the cost of supported accommodation referred to in paragraph (b) or (d) of the definition of ***supported accommodation*** in section 223 must not exceed $32.50 per day.

(5) The Governor in Council may, on the recommendation of the Authority, by Order published in the Government Gazette, declare that section 545 does not apply to an amount referred to in subsection (4) of this section in respect of a specified financial year.

230 Occupational rehabilitation services

(1) A worker is entitled to receive occupational rehabilitation services referred to in this Division—

(a) from a provider of an occupational rehabilitation service chosen by the worker from a list of at least 3 approved providers given to the worker by the Authority, employer or self-insurer, having regard, as far as possible to—

(i) the type of injury the worker has suffered; and

(ii) the type of occupational rehabilitation service required; and

(iii) where the worker resides; and

(iv) where the provider is requested by the Authority, self-insurer or employer to provide the services; or

(b) if the Authority, employer or self-insurer does not give the worker a list of approved providers in accordance with paragraph (a), from an approved provider of the worker's choice.

(2) For the purposes of subsection (1)(a), if there are not 3 approved providers available to provide a particular occupational rehabilitation service, it is sufficient compliance with subsection (1)(a) if the list contains the names of the available approved provider or providers of that occupational rehabilitation service.

(3) If—

(a) the Authority, employer or self-insurer offers occupational rehabilitation services from approved providers of occupational rehabilitation services to be chosen by the worker from a list of approved providers; and

(b) the worker does not choose an approved provider of those occupational rehabilitation services within 14 days of the offer of occupational rehabilitation services—

the occupational rehabilitation services will be offered or provided to the worker by an approved provider chosen by the Authority, employer or self-insurer, having regard to subsection (1)(a).

(4) In this section, ***approved provider***, in relation to an occupational rehabilitation service, means a person approved by the Authority as a provider of the occupational rehabilitation service.

231 Modification of cars and homes

(1) Unless the Authority or a self-insurer otherwise determines, the Authority or self-insurer is not liable to pay the reasonable costs, or contribute a reasonable amount, referred to in subsection (2), (3) or (5) unless the Authority or self-insurer approved the worker's requirement, and its costs, before the costs were incurred.

(2) If a worker, as a result of his or her injury, reasonably requires a car used by him or her in Australia to be modified, the Authority or self-insurer is liable—

(a) to pay the reasonable costs of modifying the car; or

(b) if the car is not capable of being modified, to contribute a reasonable amount to the purchase cost of a suitably modified car selected by the Authority or self-insurer.

(3) If a worker, as a result of his or her injury, reasonably requires access to a car, and he or she does not have access to a car, the Authority or self-insurer is liable to contribute a reasonable amount to the purchase cost of a suitable car selected by the Authority or self-insurer.

(4) Without limiting the factors the Authority or self-insurer may consider in determining what is a reasonable amount for the purposes of subsections (2)(b) and (3), the Authority or self-insurer must have regard to the following factors so far as they are applicable—

(a) the current market value of the car used by the worker at the time of the injury;

(b) if that car is no longer used by the worker, the market value of the car at the time of the injury;

(c) how often the worker was using a car at the time of the injury;

(d) how often the worker will, or is likely to, use a car in future;

(e) the market value of any other car that the worker uses.

(5) If a worker, as a result of his or her injury, reasonably requires that a home in which he or she resides in Australia be modified, the Authority or self-insurer is liable—

(a) to pay the reasonable costs of modifying the home; or

(b) if for any reason the home cannot be reasonably modified, to contribute a reasonable amount—

(i) to the purchase cost of a semi-detachable portable unit; or

(ii) to the cost of relocating the worker to another home that is suitable for the worker or that is capable of being reasonably modified.

(6) Without limiting the factors the Authority or self-insurer may consider in determining the reasonable costs or amount for the purposes of subsection (5), the Authority or self-insurer must have regard to the following factors—

(a) whether the home in which the worker resides is structurally suitable for modification;

(b) the nature of the worker's injuries;

(c) how those injuries restrict, or are likely to restrict, the worker's ability—

(i) to enter and leave the home in which the worker resides; and

(ii) to move about the home for necessary purposes;

(d) the extent of the modifications that will be needed to address those restrictions or likely restrictions;

(e) any complex, unique or unusual circumstances associated with those modifications;

(f) whether the cost of those modifications is likely to exceed the value of the home in which the worker resides.

(7) If a worker moves from a home that has modifications to which the Authority or self-insurer made a contribution, in assessing whether to make a payment in respect of modifications to the worker's new home, the Authority or self-insurer must have regard to the appropriateness of that home for modification, having regard to all relevant circumstances, with respect to the modifications that are needed.

(8) The Authority or self-insurer must not make a payment or contribution under subsection (2), (3) or (5) which exceeds $10 000 or a greater amount as may be prescribed, unless the worker enters into an agreement with the Authority or self-insurer in relation to the ownership of, and maintenance of modifications to, the car, home or semi-detachable portable unit.

(9) Without limiting what may be included in an agreement under subsection (8), the agreement must include provisions in respect of—

(a) subsequent modifications; and

(b) changes of ownership; and

(c) the frequency of modifications and changes of ownership.

232 Duration of compensation under this Division

(1) Subject to subsection (4), if weekly payments are payable, compensation under this Division ceases 52 weeks after the entitlement to weekly payments ceases, unless subsection (5) applies.

(2) Subject to subsection (4), if compensation is payable only under this Division, compensation under this Division ceases 52 weeks after the entitlement arises, unless subsection (5) applies.

(3) Before compensation under subsection (1) or (2) ceases, the Authority or self-insurer—

(a) must give at least 28 days written notice to the worker; and

(b) must state in the notice—

(i) the reasons for giving the notice; and

(ii) the date when the entitlement will cease.

(4) If a worker—

(a) receives a settlement or award of pecuniary loss damages within the meaning of section 325 of this Act or section 93 of the **Transport Accident Act 1986**; or

(b) accepts a voluntary settlement of weekly payments under Division 9 in respect of an injury—

the worker is entitled, subject to this Act, to continue to receive compensation under this Division.

(5) Compensation under this Division does not cease if—

(a) the worker has returned to work but—

(i) could not remain at work if a service under section 224(1) was not provided; or

S. 232(5)(a)(i) amended by No. 44/2014 s. 24(8)(a).

(ii) surgery is required for the worker; or

(b) the worker requires modification of a prosthesis; or

(c) a service referred to in section 224(1) is essential to ensuring that the worker's health or ability to undertake the necessary activities of daily living does not significantly deteriorate.

S. 232(5)(c) amended by No. 44/2014 s. 24(8)(b).

233 Termination of payment for professional services obtained fraudulently

(1) If the Authority or a self-insurer determines that payment for professional services was obtained by a worker fraudulently, the Authority or self-insurer may terminate payment of those professional services by giving to the worker, within 7 days after the determination is made, written notice stating—

(a) the date on which; and

(b) the grounds on which—

the determination was made.

(2) The termination of payment of professional services under subsection (1) takes effect from the date of the determination.

Division 8—Compensation for death of worker

234 Definitions

(1) In this Division—

S. 234(1) def. of *child* amended by No. 10/2022 s. 71.

child means a person who—

(a) is under the age of 16 years; or

(b) is 16 years or more but under the age of 25 years and is a full-time student or full-time apprentice—

and in sections 241 and 242, includes a person who is 16 years or more but under the age of 25 years if the person has a disability within the meaning of section 3(1) of the **Disability Act 2006**;

corresponding law means an Act of another State or Territory in relation to the status of a child who is born after the death of a person whether or not the birth of that child was a result of an assisted reproductive treatment using the gametes, or an embryo formed from the gametes, of the deceased person;

dependent child means a child who is a dependant of the worker and includes—

(a) an orphan child; and

(b) a child born after the death of the worker where the deceased worker is that child's parent because of the **Status of Children Act 1974** or a corresponding law;

dependent partner means a partner who is, or would be, but for the incapacity of the worker due to injury, wholly or mainly dependent on the worker's earnings;

orphan child means a child—

(a) who is a child of the worker and whose other parent—

(i) was dead before the death of the worker; or

(ii) was not, at the time of the death of the worker, a dependent partner of the worker and did not at that time wholly, mainly or in part provide economic support for the child; or

(b) who is not a child of the worker and—

(i) whose parents were both dead before the worker died; or

(ii) neither of whose parents, at the time of the death of the worker, wholly, mainly or in part provided economic support for the child and neither of whom was at that time a dependent partner of the worker;

partially dependent partner means a partner who is, or would be, but for the incapacity of the worker due to injury, to any extent dependent on the worker's earnings.

(2) In determining, for the purposes of this Division, whether a partner was a dependent partner at the time of the death of the worker or other relevant time, regard must not be had to—

(a) any money which the partner had earned or was earning by his or her own personal exertion; or

(b) any savings arising from any such earnings.

(3) For the purposes of this Division, a partner who resided with the worker at the time of the worker's death is deemed to have been dependent on the earnings of the worker at the time of the worker's death.

S. 235 amended by No. 27/2025 s. 13A.

235 How compensation for death of worker determined

If a worker's death results from, or is materially contributed to by, an injury which entitles the worker's dependants to compensation, the amount of compensation must be determined in accordance with this section and sections 234, 236, 237, 237AA and 239—

(a) if a dependant does not have legal representation, or is a minor or a person under a disability, by the court; or

(b) in all other cases, by the Authority or self-insurer.

236 Dependants

(1) If the worker leaves a dependent partner, or dependent partners, and no dependent child, the amount of compensation is $555 350—

(a) payable to the dependent partner; or

(b) if there is more than one dependent partner, payable in equal shares to each of the dependent partners.

(2) If the worker leaves no dependent partner and no dependent children other than an orphan child or orphan children, the amount of compensation is $555 350—

(a) payable to that orphan child; or

(b) if there are 2 or more orphan children, payable in equal shares to each of those children.

(3) If the worker leaves a dependent partner, or dependent partners, and one, and only one, dependent child, the amount of compensation is $555 350 of which—

(a) $55 530 is payable to the dependent child; and

(b) the balance—

(i) is payable to the dependent partner; or

(ii) if there is more than one dependent partner, is payable in equal shares to each of the dependent partners.

(4) If the worker leaves a dependent partner, or dependent partners, and more than one and not more than 5 dependent children, the amount of compensation is $555 350 of which—

(a) $27 770 is payable to each dependent child; and

(b) the balance—

(i) is payable to the dependent partner; or

(ii) if there is more than one dependent partner, is payable in equal shares to each of the dependent partners.

(5) If the worker leaves a dependent partner, or dependent partners, and more than 5 dependent children, the amount of compensation is $555 350 of which—

S. 236(5) amended by No. 44/2014 s. 24(9).

(a) $416 520 is payable—

(i) to the dependent partner; or

(ii) if there is more than one dependent partner, in equal shares to each of the dependent partners; and

(b) the balance is payable to each of the dependent children in equal shares.

(6) If the worker does not leave a dependent partner but leaves—

(a) a dependent child (not being an orphan child); or

(b) a dependent child (not being an orphan child) and any other dependent children (including any other orphan children)—

that dependent child is, or if more than one, each of those dependent children are, entitled to the amount of compensation being such share of a sum not exceeding $555 350 which the court, the Authority or self-insurer considers is reasonable and appropriate to the injury to the dependent child or, if more than one dependent child, to those dependent children.

237 Dependent children and partners and partially dependent partner

(1) If the worker leaves—

(a) one or more partially dependent partners; or

(b) one or more partially dependent partners and one or more dependants, whether dependent children or dependent partners—

each partially dependent partner, each dependent child and each dependent partner is entitled to the amount of compensation, being such share of a sum not exceeding $555 350 which the court, the Authority or self-insurer considers is reasonable and appropriate to the injury to that dependant.

(2) If the worker does not leave any dependent partner, dependent child or partially dependent partner but leaves any other person who is to any extent dependent on the worker's earnings, the amount of compensation is a sum not exceeding $555 350 which the court, Authority or self-insurer considers is reasonable and

appropriate to the injury to that person or, if more than one, to those persons in such shares as the court, the Authority, or self-insurer determines.

(3) If the worker, being under the age of 21 years at the time of the injury, leaves no dependent partner, dependent child or partially dependent partner but, immediately before the injury, was contributing to the maintenance of the home of the members of the worker's family, the members of the worker's family are deemed to have been partly dependent on the worker's earnings at the time of the worker's death.

237AA Other dependants

S. 237AA inserted by No. 27/2025 s. 15.

(1) If a worker leaves—

(a) one or more dependants, whether dependent partners or dependent children or partially dependent partners; and

(b) any other person who is to any extent dependent on the worker's earnings—

each person referred to in paragraph (b) is entitled to an amount of compensation, being a sum not exceeding $20 000, which the court, Authority or self-insurer considers is reasonable and appropriate to the injury to that person.

(2) To avoid doubt, a determination of the amount of compensation to which a dependant is entitled under section 236 or 237 is not affected by, and does not affect, a determination of the amount of compensation to which a dependant is entitled under subsection (1).

S. 237A inserted by No. 27/2025 s. 15.

237A Compensation of close family members for grief and loss

(1) In addition to any other compensation paid under this Division, the amount of compensation payable on the death of the worker to each close family member of the worker is $10 000.

(2) In this section—

close family member of a worker means a person who, at the time of the worker's death—

(a) was a partner, parent, guardian, step-parent, grandparent, sibling or step-sibling of the worker or a person to whom the worker was a parent, step-parent or guardian; and

(b) had a genuine personal relationship with the worker.

S. 238 amended by No. 27/2025 s. 16.

238 Certain compensation payable to trustee

If, under section 235, 236, 237, 237AA, 237A or 239, compensation is payable to a minor or a person under a disability, the compensation must be paid to a trustee for the minor or person under a disability appointed by the court to be invested, applied or otherwise dealt with for the benefit of the minor or person under a disability as the trustee thinks fit.

239 Interest payable [s. 92A(12)]

A claimant is entitled to interest at the prescribed rate on an amount of compensation determined in accordance with the preceding provisions of this Division—

(a) in the case of a determination by the court, in respect of the period beginning on the date the claim for compensation was lodged in accordance with section 20 and ending on the date of the determination; or

(b) in the case of a determination by the Authority or self-insurer, in respect of the period beginning on the date the claim was lodged in accordance with section 20 and ending on the date the Authority or self-insurer makes the determination.

240 Reimbursement of expenses incurred by non-dependent family members of a deceased worker

(1) If—

(a) a worker's death results from, or is materially contributed to by, an injury arising out of or in the course of employment; and

(b) had the worker had a dependant, or dependants, at the time of his or her death, the injury would have entitled that dependant or those dependants to compensation under this Act; and

(c) the worker did not have any dependants at the time of his or her death—

a member of the worker's family may apply to the Magistrates' Court for an order that the Authority or a self-insurer (as appropriate) reimburse the applicant for expenses incurred as a result of the worker's death.

(2) An application under this section must—

(a) specify the expenses of the applicant incurred as a result of the death of the worker and how the incurring of those expenses caused financial hardship to the applicant; and

(b) unless subsection (3) applies, be made within 2 years after the date of the worker's death.

(3) The Magistrates' Court may grant leave to an applicant to apply out of time, if the applicant has a special excuse for not making the application within time.

(4) On application under this section, the Magistrates' Court may, in its discretion, order that the Authority or a self-insurer reimburse an applicant for expenses not exceeding the maximum amount if the Magistrates' Court is satisfied that—

(a) the expenses incurred by the applicant were as a result of the death of the worker; and

(b) the expenses were reasonably incurred and are of a reasonable amount; and

(c) the incurring of the expenses caused financial hardship to the applicant.

(5) In making an order under this section, the Magistrates' Court may order that more than one applicant in respect of a deceased worker be reimbursed by the Authority or self-insurer under this section.

(6) The total amount that can be ordered under this section to be reimbursed in respect of the deceased worker must not exceed the maximum amount regardless of how many applicants apply in respect of that deceased worker.

(7) The Magistrates' Court must not award any interest in making an order for reimbursement of an applicant under this section.

(8) A reimbursement of expenses under this section is not a payment of compensation under this Act except for the purposes of—

(a) calculating premiums under Part 10; or

(b) seeking indemnity from a third party under section 369 or any other indemnity under this Act; or

(c) seeking a refund of payments under section 599 or any other amount relating to the recovery of payments under this Act.

(9) In this section—

expenses does not include the following—

(a) the cost of any service or contribution that may be claimed under Division 7;

(b) the legal or other costs of a member of the deceased worker's family incurred by that person as a result of a dispute arising from the deceased worker's will, or the distribution of the deceased worker's estate;

(c) an expense incurred as a result of the loss of a service provided to a member of the deceased worker's family;

maximum amount means an amount of $33 120 in total for expenses incurred as a result of a worker's death.

241 Weekly pensions for dependants of worker who dies

S. 241(1) amended by No. 27/2025 s. 17.

(1) In addition to compensation under section 236, 237, 237AA or 237A, compensation in the form of weekly payments of pension is payable subject to and in accordance with this section.

(2) If the worker leaves one, and only one, dependent partner, the partner is entitled to a weekly pension at the rate of—

(a) during the first 13 weeks after death—

(i) 95 per cent of the worker's pre-injury average weekly earnings; or

(ii) twice the State average weekly earnings—

whichever is the lesser; and

(b) from the end of the first 13 weeks after the death until the end of 3 years after the death—

(i) unless subparagraph (ii) or (iii) applies, 50 per cent of the worker's pre-injury average weekly earnings or twice the State average weekly earnings, whichever is the lesser; or

S. 241(2)(b)(ii) amended by No. 27/2025 s. 35(1)(a).

(ii) if the worker leaves not more than 4 dependent children who are entitled to a pension under this section and subsection (10) applies, an amount calculated in accordance with the formula—

$$\text{twice the State average weekly earnings} \times \frac{50}{50 + 12{\cdot}5\text{N}}$$

where **N** is the number of dependent children so entitled; or

S. 241(2)(b)(iii) amended by No. 27/2025 s. 35(1)(b).

(iii) if the worker leaves more than 4 dependent children who are entitled to a pension under this section and subsection (10) applies, 50 per cent of twice the State average weekly earnings.

(3) If the worker leaves 2 or more dependent partners, each partner is entitled to a weekly pension at the rate of an equal share of—

(a) during the first 13 weeks after death—

(i) 95 per cent of the worker's pre-injury average weekly earnings; or

(ii) twice the State average weekly earnings—

whichever is the lesser; and

(b) from the end of the first 13 weeks after the death until the end of 3 years after the death—

(i) unless subparagraph (ii) or (iii) applies, 50 per cent of the worker's pre-injury average weekly earnings or twice the State average weekly earnings, whichever is the lesser; or

(ii) if the worker leaves not more than 4 dependent children who are entitled to a pension under this section and subsection (10) applies, an amount calculated in accordance with the formula—

S. 241(3)(b)(ii) amended by No. 27/2025 s. 35(2)(a).

$$\text{twice the State average weekly earnings} \times \frac{50}{50 + 12{\cdot}5\text{N}}$$

where **N** is the number of dependent children so entitled; or

(iii) if the worker leaves more than 4 dependent children who are entitled to a pension under this section and subsection (10) applies, 50 per cent of twice the State average weekly earnings.

S. 241(3)(b)(iii) amended by No. 27/2025 s. 35(2)(b).

(4) If the worker leaves no dependent child other than one, and only one, orphan child, the orphan child is entitled, subject to this section, to a weekly pension at the rate of—

(a) during the first 13 weeks after the death or until the orphan child ceases to be eligible, whichever first occurs—

(i) 95 per cent of the worker's pre-injury average weekly earnings; or

(ii) twice the State average weekly earnings—

whichever is the lesser; and

(b) if still eligible, from the end of the first 13 weeks after the death until the orphan child ceases to be eligible—

(i) 50 per cent of the worker's pre-injury average weekly earnings; or

(ii) twice the State average weekly earnings—

whichever is the lesser.

(5) If the worker leaves no dependent children other than 2 or more orphan children, each such child is entitled, subject to this section, to a weekly pension at the rate of an equal share of—

(a) during the first 13 weeks after the death or until the orphan child ceases to be eligible, whichever first occurs—

(i) 95 per cent of the worker's pre-injury average weekly earnings; or

(ii) twice the State average weekly earnings—

whichever is the lesser; and

(b) if still eligible, from the end of the first 13 weeks after the death until the orphan child ceases to be eligible—

(i) 50 per cent of the worker's pre-injury average weekly earnings; or

(ii) twice the State average weekly earnings—

whichever is the lesser.

(6) If the worker leaves not more than 4 dependent children, each such child is entitled, from the end of the first 13 weeks after the death until the child ceases to be eligible, to a weekly pension at the rate of— S. 241(6) amended by No. 27/2025 s. 35(3)(a).

(a) unless subsection (10) applies, 12·5 per cent of the worker's pre-injury average weekly earnings; or S. 241(6)(a) amended by No. 27/2025 s. 35(3)(b).

(b) if subsection (10) applies, an amount calculated in accordance with the formula— S. 241(6)(b) amended by No. 27/2025 s. 35(3)(c).

$$\text{twice the State average weekly earnings} \times \frac{12{\cdot}5}{50 + 12{\cdot}5N}$$

where **N** is the number of dependent children so entitled.

(7) If a worker leaves more than 4 dependent children, each such child is entitled, from the end of the first 13 weeks after the death until the child ceases to be eligible, to a weekly pension at the rate of an equal share of— S. 241(7) amended by No. 27/2025 s. 35(4)(a).

(a) unless subsection (10) applies, 50 per cent of the worker's pre-injury average weekly earnings; or S. 241(7)(a) amended by No. 27/2025 s. 35(4)(b).

(b) if subsection (10) applies, 50 per cent of twice the State average weekly earnings. S. 241(7)(b) amended by No. 27/2025 s. 35(4)(c).

(8) A child ceases to be eligible under this section—

(a) on attaining the age of 16 years; or

(ab) if the child has a disability within the meaning of section 3(1) of the **Disability Act 2006**, on attaining the age of 25 years; or S. 241(8)(ab) inserted by No. 10/2022 s. 72.

(b) if the child is a full-time student or a full-time apprentice on attaining 16 years, whichever of the following occurs first—

(i) on ceasing to be a full-time student or full-time apprentice; or

(ii) the child attains the age of 25 years.

(9) For the purposes of subsection (8)(b)—

(a) a child does not cease to be a full-time student or a full-time apprentice if that child ceases to be a student in order to become an apprentice;

(b) a child does not cease to be a full-time student or a full-time apprentice if that child ceases to be an apprentice in order to become a student;

(c) if a child attains the age of 25 years before ceasing to be a full-time student or full-time apprentice, the child remains eligible under this section until the end of the calendar year in which the child attains the age of 25.

(10) The total amount of weekly pensions payable to the dependent partner, dependent partners and the dependent child or dependent children, of a worker under—

(a) subsections (2)(b) and (6) or (7); or

(b) subsections (3)(b) and (6) or (7)—

must not exceed twice the State average weekly earnings.

242 Payment of weekly pensions

(1) A weekly pension under section 241 must be paid by fortnightly, monthly, quarterly or annual instalments in accordance with this section, as the Authority, employer or self-insurer determines.

(2) The first payment of amounts due as weekly pension must be made within 14 days after the amount is determined.

(3) Subsequent amounts are payable—

(a) on the 1st and 15th days of each month; or

(b) on the 1st day of each month; or

(c) on 1 January, 1 April, 1 July and 1 September in each year; or

(d) on 1 July in each year—

as the case requires, and must be paid within 7 days.

(4) A weekly pension to which a child under the age of 18 is entitled is payable to—

(a) the parent of the child who has custody of the child; or

(b) if there is no such person, the child's guardian; or

(c) if there is no person referred to in paragraph (a) or (b), the person who has day to day care and control of the child and with whom the child is ordinarily resident.

(5) The liability to the person entitled to a weekly pension is not satisfied until the person receives the amount.

(6) If the Authority, employer or self-insurer fails to make a payment before the end of the period within which it is required by this section to be paid, the Authority, employer or self-insurer must make the payment together with interest calculated at the prescribed rate in respect of the period beginning when the payment was first payable and ending on the day before the payment was made.

243 Provisional payments

(1) Subject to subsection (7), if it appears to the Authority or self-insurer that a person may be entitled to compensation in respect of the death of the worker, the Authority or self-insurer may make provisional payments to the person as follows—

S. 243(1)(a) amended by No. 27/2025 s. 18(1).

(a) weekly pension that may be payable under section 241(2)(a) for a period of up to 13 weeks from the date of death of the worker;

S. 243(1)(ab) inserted by No. 27/2025 s. 18(2).

(ab) weekly pension that may be payable under section 241(2)(b) for a period from the end of the first 13 weeks after the death of the worker until the end of 26 weeks after the death of the worker;

(b) medical and other costs that may be payable under section 224(1)(a) up to a maximum of $8270;

S. 243(1)(c) amended by No. 27/2025 s. 18(3).

(c) family counselling, therapy and other support services costs that may be payable under section 224(1)(b) up to the maximum prescribed in that section;

S. 243(1)(d) amended by No. 49/2018 s. 36(1).

(d) the costs of the deceased worker's burial or cremation that may be payable under section 224(1)(c) up to the maximum amount determined as reasonable costs by the Authority under section 223(2);

S. 243(1)(e) amended by Nos 49/2018 s. 36(2), 27/2025 s. 18(4).

(e) reasonable travelling or accommodation expenses that may be payable under section 224(1)(e) up to the maximum prescribed in that section;

(f) the costs of forensic cleaning services that may be payable under section 224(1)(f) up to the maximum amount determined as reasonable costs by the Authority under section 223(2).

S. 243(1)(f) inserted by No. 27/2025 s. 18(5).

(2) Except as provided by subsection (3)—

(a) a provisional payment made under a paragraph in subsection (1) may be paid to more than one person; and

(b) the total paid in respect of a deceased worker must not exceed the maximum set out in the relevant paragraph under that subsection regardless of how many persons receive provisional payments.

(3) Only one partner of a deceased worker may receive provisional payments under subsection (1)(a) or (ab).

S. 243(3) amended by No. 27/2025 s. 18(6).

(4) A provisional payment made under this section is not a payment of compensation under this Act except for the purposes of—

(a) calculating employer premiums; or

(b) the reduction of common law damages under section 366(7)(a); or

(c) seeking indemnity from a third party under section 369 or any other indemnity under this Act; or

(d) seeking a refund of payments under section 599 or any other amount relating to the recovery of payments under this Act.

(5) A decision made by the Authority or self-insurer to make provisional payments under this section is not an admission of liability to pay compensation under this Act.

(6) If liability to pay compensation in respect of the death of a worker is accepted, or determined by a court to be payable, after a provisional payment has been made to a person—

(a) under subsection (1)(a), any liability the Authority or self-insurer has to the person to whom the payment was made under section 241(2)(a) is discharged to the extent of that payment; or

S. 243(6)(ab) inserted by No. 27/2025 s. 18(7)(a).

(ab) under subsection (1)(ab), any liability the Authority or self-insurer has to the person to whom the payment was made under section 241(2)(b) is discharged to the extent of that payment; or

(b) under subsection (1)(b), any liability the Authority or self-insurer has under section 224(1)(a) is discharged to the extent of that payment; or

(c) under subsection (1)(c), any liability the Authority or self-insurer has under section 224(1)(b) is discharged to the extent of that payment; or

S. 243(6)(d) amended by No. 27/2025 s. 18(7)(b).

(d) under subsection (1)(d), any liability the Authority or self-insurer has under section 224(1)(c) is discharged to the extent of that payment; or

S. 243(6)(e) inserted by No. 27/2025 s. 18(7)(c).

(e) under subsection (1)(e), any liability the Authority or self-insurer has to the person to whom the payment was made under section 224(1)(e) is discharged to the extent of that payment; or

S. 243(6)(f) inserted by No. 27/2025 s. 18(7)(c).

(f) under subsection (1)(f), any liability the Authority or self-insurer has to the person to whom the payment was made under section 224(1)(f) is discharged to the extent of that payment.

(7) The Authority or self-insurer must not make provisional payments to a person under this section in respect of the death of the worker if it appears to the Authority or self-insurer that the worker's death resulted from or was materially contributed to by a heart attack injury, disease or stroke injury unless at the time of the worker's death—

S. 243(7) amended by No. 10/2022 s. 73, substituted by No. 27/2025 s. 18(8).

(a) the Authority or the self-insurer had already accepted a claim for compensation made by the worker in respect of that injury or disease; and

(b) the worker was receiving compensation payments in respect of that injury or disease.

(8) The Authority may make guidelines for the purposes of this section relating to the process to be observed by the Authority or self-insurer when acting under this section.

(9) The Authority must ensure that guidelines made under subsection (8) are published and are generally available.

(10) Proceedings must not be brought in respect of any question or matter arising out of a decision of the Authority or self-insurer under this section.

243A Certain provisional payments payable to trustee

S. 243A inserted by No. 10/2022 s. 74.

If, under section 243, a provisional payment is payable to a minor or a person under a disability, the provisional payment must be paid to a trustee for the minor or person under a disability appointed by a court or VCAT to be invested, applied or otherwise dealt with for the benefit of the minor or person under a disability as the trustee thinks fit.

Division 9—Voluntary settlements

Subdivision 1—Settlements in specific circumstances

244 To whom this Subdivision applies

This Subdivision applies to a worker who—

(a) is receiving, or is entitled to receive, compensation under this Act (other than Division 7 of this Part) with respect to an injury; and

(b) is over the age of 55 years; and

(c) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and

(d) has been receiving weekly payments for at least 130 weeks.

245 Right to apply for settlement

(1) A worker to whom this Subdivision applies may apply for the settlement of his or her entitlement under this Act (other than Division 7 of this Part) with respect to the injury.

(2) The application must be made in accordance with Subdivision 3.

246 Amount of settlement

(1) The amount of the settlement is the amount resulting from applying the following formula—

$A \times B$

where—

A is—

(a) if a declaration under subsection (2) is not in effect, the amount of the weekly payment to which the worker is, or, but

for the operation of section 172(2), would be, entitled as at the notification date less the amount that must be withheld from that payment for the purposes of the Pay as you go system under Schedule 1 to the Taxation Administration Act 1953 of the Commonwealth; or

(b) if a declaration under subsection (2) is in effect, the amount of the weekly payment to which the worker is, or, but for the operation of section 172(2), would be, entitled as at the notification date;

B is the number in Column 2 of Schedule 5 opposite the number in Column 1 of that Schedule corresponding to the worker's age in years on his or her birthday next following—

(a) if the worker is not receiving payments as a result of the operation of section 172(2), the day after the specified period defined in section 172(3) expires; or

(b) in any other case, the notification date.

(2) The Minister may, by Order published in the Government Gazette, declare that the meaning of "A" in the formula set out in subsection (1) is the meaning set out in paragraph (b) of the definition of **A**.

Note

The purpose of this provision is to enable the Minister to respond to possible policy changes in relation to the taxation of settlement payments by the Commonwealth Government.

(3) A declaration takes effect on the day after the Order is published, or on any later day specified in the Order.

(4) In this section ***notification date*** means the day on which the Authority or self-insurer receives an expression of interest from the worker under section 251.

Subdivision 2—Other settlements

247 Application of this Subdivision

This Subdivision applies to a worker if—

(a) the worker is receiving, or is entitled to receive, compensation under this Act (other than Division 7 of this Part) with respect to an injury; and

(b) the regulations state that the worker may apply for the settlement of his or her entitlement under this Act (other than Division 7 of this Part) in any particular circumstances specified by the regulations.

248 Right to apply for settlement

(1) A worker to whom this Subdivision applies may apply for the settlement of his or her entitlement under this Act (other than Division 7 of this Part) with respect to the injury.

(2) The application must be made in accordance with Subdivision 3.

249 Amount of settlement

The amount of the settlement is to be calculated in accordance with the relevant method set out in an Order in Council made under section 250.

250 Order in Council concerning settlements

(1) The Governor in Council, may by Order, specify how settlement amounts are to be determined for the purposes of this Subdivision.

(2) The Minister must not recommend the making of an Order unless the Minister certifies in writing that, in his or her opinion, the making of the Order—

(a) is consistent with ensuring that the accident compensation scheme is managed as effectively, efficiently and economically as is possible; and

(b) is not likely to adversely affect the competitiveness of the scheme; and

(c) is not likely to interfere with the scheme being fully-funded.

(3) An Order, and the certificate of the Minister, must be published in the Government Gazette.

(4) An Order takes effect on the day after it is published in the Government Gazette, or on any later day specified in the Order.

(5) On taking effect, an Order has the like force and effect as if it were expressly enacted in this Act.

Subdivision 3—Application procedure

251 Expression of interest must first be given

(1) Before applying for a settlement under this Division, a worker must give a written expression of interest in applying for the settlement—

(a) if the liability to pay compensation lies with a self-insurer, to the self-insurer; or

(b) in any other case, to the Authority.

(2) An expression of interest is only valid if—

(a) on the date it is given, the worker is eligible to apply for the settlement; and

(b) it is accompanied by any documents in relation to the identity and date of birth of the worker that are required by a direction of the Minister under section 263.

252 Authority or self-insurer must respond to expression of interest

(1) On receiving from a worker an expression of interest in applying for a settlement, the Authority or self-insurer must give the worker a written response to the expression of interest.

(2) If the Authority or self-insurer is of the opinion that the worker is eligible to apply for the settlement, the response must include—

(a) a statement of that opinion; and

(b) a statement of the amount that the worker is eligible to receive under Subdivision 1 or 2 if he or she applies for the settlement and an offer of settlement is made; and

(c) a statement that the Authority or self-insurer will not grant an application unless the worker obtains legal and financial advice as specified in any relevant direction of the Minister under section 263, and a copy of any such direction; and

(d) a statement—

(i) that the Authority or self-insurer will pay the reasonable costs of the worker in obtaining the legal and financial advice; and

(ii) of the maximum amount that will be paid with respect to the advice; and

(iii) of when and how the costs of the advice will be paid; and

(e) a statement that sets out the period within which the application must be made and that states the consequences if an application is not made within that time.

(3) If the Authority or self-insurer is of the opinion that the worker is not eligible to apply for the settlement, the response must include—

(a) a statement of that opinion; and

(b) a statement of the reasons why the Authority or self-insurer is of that opinion.

253 Application for settlement

(1) This section applies if a worker is given a response from the Authority or a self-insurer under section 252(2).

(2) The worker may apply to the Authority or self-insurer for the settlement.

(3) The application must—

(a) be made in writing; and

(b) be accompanied by any certificate required by any direction of the Minister under section 263.

254 Time limit for making applications

(1) A worker wishing to apply for a settlement must do so before the expiry of 6 months from the date the Authority or self-insurer gives him or her a response under section 252(2).

(2) If a worker who is entitled to apply for a settlement under Subdivision 1 or 2 fails to comply with subsection (1), the worker is not entitled to apply for a settlement under Subdivision 1 or 2 until he or she gives the

Authority or self-insurer another expression of interest in applying for a settlement and is given another response under section 252(2).

255 Authority or self-insurer must respond to application

(1) On receiving an application for settlement from a worker that complies with this Division, the Authority or self-insurer must decide whether it will offer a settlement to the worker.

(2) On making the decision, the Authority or self-insurer must give the worker written notice of the decision.

(3) If the Authority or self-insurer decides to offer a settlement to the worker, the notice must include an offer to settle for the amount advised under section 252(2)(b).

(4) If the Authority or self-insurer decides not to offer a settlement to the worker, the notice must include a statement of the reasons why a settlement will not be offered to the worker.

256 Time limit on response to offer

(1) If a worker wishes to accept an offer of settlement made by the Authority or a self-insurer, he or she must give the Authority or self-insurer a written notice accepting the offer before the expiry of 28 days from the date the offer was given to him or her.

(2) If a worker rejects the offer, or fails to accept the offer within that 28 day period, the application lapses and the worker ceases to be entitled to apply for a settlement under this Division in respect of the injury.

257 Payment and nature of settlement amounts

(1) If a worker accepts an offer of settlement, the Authority or self-insurer must make the settlement payment within the time (if any) required by any direction of the Minister under section 263.

(2) A settlement payment under this Division is a capital sum for loss of earning capacity.

258 Adjustment of settlement amount offers

(1) This section applies if the Authority or a self-insurer becomes aware at any time after providing the response required by section 252, and before paying the worker a settlement amount, that the amount specified as the settlement amount in the response does not comply with this Division.

(2) The Authority or self-insurer must, as soon as is practicable after becoming aware that the proposed settlement amount does not comply with this Division, give the worker—

(a) a notice advising the worker that the proposed settlement amount does not comply with this Division and explaining the effect of this section; and

(b) an amended written response complying with section 252.

(3) For the purposes of section 254(1), the relevant date is the date the worker was given the last amended response.

(4) If—

(a) the reason why a proposed settlement amount no longer complies with this Division is the coming into effect of a declaration under section 246(2); and

(b) the worker has obtained legal or financial advice in respect of a response from the Authority or self-insurer that has been amended under this section; and

(c) the settlement amount specified in the amended response is more than—

(i) 5 per cent greater than the last settlement amount previously advised; and

(ii) $5000 greater than that last amount—

the worker is entitled to obtain further legal or financial advice at the expense of the Authority or self-insurer.

(5) If the worker is given an amended response after the worker has—

(a) applied for a settlement; or

(b) been offered a settlement; or

(c) accepted an offer of settlement—

the application, offer or acceptance is to be treated as if it was for a settlement for the amount set out in the amended response, unless the worker gives the Authority or self-insurer a written notice, before the expiry of 42 days from the date the worker is given the amended response, stating that he or she withdraws the application or acceptance or rejects the offer (as the case may be).

(6) A worker to whom subsection (5) applies may give the Authority or self-insurer a written notice before the expiry of 42 days from the date the worker is given the amended response accepting an amended offer, or stating that he or she wishes the application or acceptance to proceed (as the case may be) on the basis of the amended amount.

(7) The Authority or self-insurer must give effect to a notice given to it under subsection (6).

(8) The rights conferred on a worker by subsection (5) are in addition to any rights conferred on the worker by section 259.

259 Worker may withdraw application at any time

A worker who has applied for a settlement under this Division may withdraw the application at any time before an offer is made by giving the Authority or self-insurer written notice of the withdrawal.

260 Circumstances in which offer may be withdrawn or settlement avoided

(1) If this section applies, the Authority or a self-insurer may—

(a) withdraw an offer of settlement made to the worker under this Division before the worker has accepted the offer of settlement; or

(b) if the worker has accepted the offer of settlement made to the worker under this Division and the settlement payment has not been made, avoid the settlement.

(2) This section applies if a worker applying for a settlement under this Division has made a fraudulent or reckless misrepresentation relating to his or her circumstances or any change in his or her circumstances which would have been material to the decision of the Authority or self-insurer under section 255 whether or not to offer a settlement to the worker.

(3) Without limiting the generality of subsection (2), the circumstances include the following—

(a) the worker ceases to satisfy any of the eligibility criteria specified in Subdivision 1 or 2;

(b) the worker is serving a sentence of imprisonment which would disentitle the worker to weekly payments in accordance with section 177;

(c) the worker becomes aware that any other ground for the termination of weekly payments in accordance with Division 3 applies but weekly payments have not been terminated.

261 Preclusion of further claims

(1) A person who accepts a settlement under Subdivision 1 or 2 is not entitled, after accepting the settlement—

(a) to any further compensation or other payment under this Act (other than Division 7); or

(b) to recover damages in any proceedings against—

(i) an employer who is a self-insurer or an eligible subsidiary of a self-insurer; or

(ii) an employer or the Authority; or

(iii) a person whom the Authority is liable to indemnify under section 71—

in respect of the injury, or in respect of any recurrence of the injury, other than a recurrence resulting from, or materially contributed to by, employment engaged in after the date of the settlement.

(2) Nothing in this section is intended to preclude or interfere with any right a person may have to recover compensation under the **Sentencing Act 1991**.

(3) In this section, ***recurrence*** includes aggravation, acceleration, exacerbation, or deterioration.

262 Authority or self-insurer may extend or waive time limits

(1) The Authority or a self-insurer may extend or waive any time limit specified in this Division (including a time limit imposed under subsection (4)) as it applies to a worker, on the written application of the worker.

(2) The Authority or self-insurer may only extend or waive such a time limit if it is satisfied that the worker's failure to meet the time limit was due to special circumstances.

(3) An application for the waiver of a time limit may be made at any time, either before or after the limit has expired.

(4) In extending or waiving a time limit, the Authority or self-insurer must specify in writing a new time limit within which the relevant act must be done.

(5) If the Authority or self-insurer extends or waives a time limit—

(a) in the case of an extension, or a waiver that is granted before the time limit expires, the worker's entitlement to apply for a settlement on the expiration of that time limit does not cease on the expiration of that time limit; and

(b) in the case of a waiver, any entitlement to apply for a settlement that ceased on the expiry of the time limit is revived.

263 Minister may give directions

The Minister may give written directions in accordance with section 609 that—

(a) require an expression of interest under section 251 to be accompanied by proof of the identity and date of birth of the worker giving the expression of interest; and

(b) specify what documents may be used to satisfy such a requirement; and

(c) specify the legal and financial issues in relation to a proposed settlement on which a worker must receive advice before being eligible to apply for the settlement; and

(d) specify the categories of people from whom the advice may be received, or specify that the advice must be obtained from a person holding a specified minimum qualification; and

(e) specify the form of certificates to be completed by legal and financial advisors to provide evidence that any advice required by a direction made under this section has been given; and

(f) specify when and how the Authority or a self-insurer is to pay or reimburse a worker in relation to the worker obtaining legal and financial advice in relation to a proposed settlement; and

(g) specify the maximum amounts that the Authority or a self-insurer is liable to pay a worker in respect of such advice; and

(h) require a worker to provide a copy to the Authority or self-insurer of any advice obtained for the purposes of this Division, but only for the purpose of enabling a determination of the reasonable cost of the advice to be made; and

(i) specify the form in which an application for settlement is to be made; and

(j) require the Authority or a self-insurer to pay the settlement amount to a worker within a specified period after the worker accepts the settlement offer; and

(k) specify that the Authority, self-insurer or a worker do anything else that is necessary or expedient to enable settlements under this Division to be dealt with fairly and efficiently.

Division 10—Provisional payments for mental injuries

Pt 5 Div. 10 (Heading and ss 263A–263N) inserted by No. 5/2021 s. 11.

263AA Definition of *mental injury* does not apply

S. 263AA inserted by No. 8/2024 s. 9.

(1) For the purposes of this Division, the definition of ***mental injury*** does not apply.

(2) To avoid doubt, a worker may be entitled to provisional payments under this Division in respect of a claimed mental injury regardless of whether the worker's claim for compensation in respect of a mental injury is ultimately accepted or rejected by the Authority or self-insurer.

263A Definition

S. 263A inserted by No. 5/2021 s. 11.

In this Division—

reasonable costs has the same meaning as in section 223(2).

263B Entitlement to provisional payments for mental injuries

S. 263B inserted by No. 5/2021 s. 11.

(1) If a worker makes a claim for compensation under this Act in respect of a mental injury, the Authority or a self-insurer must pay the reasonable costs of a service specified in section 224(1)(a) received because of the claimed mental injury as provisional payments in accordance with this Division.

(2) Subsection (1) does not apply—

(a) if the claim for compensation was made before the commencement of this Division; or

(b) subject to section 263I(1)(b), if the Authority or a self-insurer has previously determined a claim for compensation relating to the same mental injury and circumstances.

(3) Guidelines made under section 224(2) apply for the purposes of this Division.

(4) A worker is entitled to receive a service referred to in subsection (1) (other than an occupational rehabilitation service) from the provider of the worker's choice notwithstanding that an employer or the Authority or a self-insurer, as the case may be, offers or provides a service to the worker for the worker's use.

S. 263C inserted by No. 5/2021 s. 11.

263C To whom provisional payments under this Division are to be paid

(1) Provisional payments under this Division must be made to a person lawfully entitled to the payment.

(2) If the liability to the person lawfully entitled to payment of the costs specified in section 263B(1) has already been discharged in whole or in part by a payment by the worker or any other person whether legally liable to make the payment or not, the amount by which the liability has been so discharged must be paid to the worker or other person who made the payment.

(3) If a worker is entitled to any of the services specified in section 263B(1) free of charge or at a reduced rate or charge because the worker—

(a) entered into any prior contract, agreement or arrangement; or

(b) was a contributor or subscriber to any institution, fund or scheme—

the payment in respect of those services must not be reduced but, after payment of the amount, if any, actually owing to the person lawfully entitled to payment, the balance of the reasonable cost must be paid to the worker.

(4) The payment of the whole of the reasonable costs of any service specified in section 263B(1) wholly and finally discharges the worker and any other person from all liability whatsoever in respect of those costs.

263D Certain actions etc. not permitted

S. 263D inserted by No. 5/2021 s. 11.

For the purposes of this Division, section 227 applies as if in subsection (1) of that section, for "this Division" there were substituted "Division 10".

263E Medical and like services outside Australia

S. 263E inserted by No. 5/2021 s. 11.

For the purposes of this Division, section 228 applies as if—

(a) in subsection (1) of that section, for "compensation" there were substituted "provisional payments"; and

(b) in subsections (1) and (2) of that section ", burial or cremation" (wherever occurring) were omitted; and

(c) in subsection (2) of that section, for "section 232" there were substituted "section 263I"; and

(d) in subsection (3) of that section ", burial or cremation" were omitted; and

(e) in subsection (4) of that section ", burials or cremations" were omitted.

S. 263F inserted by No. 5/2021 s. 11.

263F Provisional payments not payable for certain accommodation etc.

For the purposes of this Division, section 229 applies as if in subsection (1) of that section—

(a) for "compensation" there were substituted "provisional payments"; and

(b) for "injury" there were substituted "mental injury".

S. 263G inserted by No. 5/2021 s. 11.

263G Occupational rehabilitation services

For the purposes of this Division, section 230 applies as if in subsection (1) of that section—

(a) for "this Division" there were substituted "section 224(1)(a)"; and

(b) in paragraph (a)(i), for "type of injury" there were substituted "nature of the mental injury".

S. 263H inserted by No. 5/2021 s. 11.

263H Modification of cars and homes

For the purposes of this Division, section 231 applies as if—

(a) in subsections (2), (3), (4)(a), (b) and (c) and (5) of that section, for "injury" there were substituted "mental injury"; and

(b) in subsection (6)(b) and (c) of that section, for "injuries" there were substituted "mental injuries".

263I Duration of provisional payments under this Division

S. 263I inserted by No. 5/2021 s. 11.

(1) Provisional payments are payable under this Division on and from the day the worker is determined under section 75A to be entitled to provisional payments until—

(a) if the worker's claim for compensation in respect of the mental injury is accepted by the Authority or a self-insurer, the day the claim is accepted; or

(b) in any other case, 13 weeks after the day the worker is determined under section 75A to be entitled to provisional payments.

(2) To avoid doubt, a worker whose claim for compensation in respect of a mental injury is rejected by the Authority or a self-insurer or terminated under section 182 or 183 is entitled to provisional payments under this Division for that claimed injury until the day referred to in subsection (1)(b).

263J Provisional payments are not compensation

S. 263J inserted by No. 5/2021 s. 11.

(1) Provisional payments made under this Division are not a payment of compensation under this Act except for the purposes of—

(a) seeking a refund of payments under section 599 or any other amount relating to the recovery of payments under this Act; and

(b) calculating employer premiums.

(2) A decision made by the Authority or self-insurer to make provisional payments under this Division is not an admission of liability to pay compensation under this Act.

(3) Except as provided in subsection (4), nothing in this Division limits or otherwise affects a worker's entitlement to compensation or damages arising from the worker's mental injury.

(4) If the reasonable costs of a service are paid as provisional payments under this Division, the liability of the Authority or a self-insurer to pay compensation under Division 7 in respect of that service is discharged.

S. 263K inserted by No. 5/2021 s. 11.

263K Termination of provisional payments for services obtained fraudulently

For the purposes of this Division, section 233 applies as if—

(a) in subsection (1) of that section—

(i) for "payment for professional services" there were substituted "provisional payments made under Division 10"; and

(ii) for "payment of those professional services" there were substituted "those provisional payments"; and

(b) in subsection (2) of that section, for "payment of professional services" there were substituted "those provisional payments".

S. 263L inserted by No. 5/2021 s. 11.

263L Guidelines for the purposes of this Division

(1) The Authority may make guidelines for the purposes of this Division relating to the process to be observed by the Authority or self-insurer when acting under this Division.

(2) The Authority must ensure that guidelines made under subsection (1) are published and are generally available.

263M Disputes about provisional payments

S. 263M inserted by No. 5/2021 s. 11.

For the purposes of this Division, section 6(6)(a) applies as if in that subsection, for "claim for compensation under" there were substituted "request for provisional payments under Division 10 of Part 5 of".

263N Requests for information about provisional payments

S. 263N inserted by No. 5/2021 s. 11.

For the purposes of this Division, section 9 applies as if—

(a) in subsection (1) of that section—

(i) for "made a claim for compensation" there were substituted "requested provisional payments under Division 10 of Part 5"; and

(ii) for "the claim for compensation" there were substituted "the request for provisional payments"; and

(b) in subsection (2) of that section—

(i) for "made a claim for compensation" there were substituted "requested provisional payments under Division 10 of Part 5"; and

(ii) for "the claim" there were substituted "the request for provisional payments".

Part 6—Dispute resolution

Division 1—Jurisdiction

264 Jurisdiction—general

(1) Subject to the **County Court Act 1958**, the County Court has exclusive jurisdiction to inquire into, hear and determine any question or matter arising under this Act or the **Accident Compensation Act 1985** out of—

(a) any decision of the Authority, an employer or a self-insurer; or

S. 264(1)(b) amended by No. 73/2016 s. 21(6).

(b) any recommendation or direction of ACCS.

(2) If the County Court is exercising the jurisdiction conferred by subsection (1) in a proceeding relating to the entitlement of a worker to weekly payments, the County Court has the jurisdiction in the proceeding to inquire into, hear and determine any question or matter under this Act or the **Accident Compensation Act 1985** relating to any termination or alteration of any entitlement to weekly payments by virtue of this Act or the **Accident Compensation Act 1985**.

(3) Proceedings must not be brought in respect of any question or matter arising out of a decision of the Authority under section 337 of this Act or section 134AB(20), 134AB(20A), 135A(6A) or 135A(6B) of the **Accident Compensation Act 1985**.

(4) Subsection (1) does not apply to a question or matter arising under—

(a) Division 9 of Part 5, section 357, Part 8 or Part 10; or

(b) Division 3A, 6A, 9A or 9B of Part IV or Part V of the **Accident Compensation Act 1985**.

264A Jurisdiction under Subdivision 4 of Division 2

S. 264A inserted by No. 15/2021 s. 10.

Despite section 264(1), the County Court does not have jurisdiction to inquire into, hear and determine any question or matter arising under Subdivision 4 of Division 2 of this Part, other than a question or matter that is the subject of a dispute that is dismissed under section 301N.

265 Jurisdiction under Workers Compensation Act 1958

Subject to the **County Court Act 1958**, the County Court—

(a) has exclusive jurisdiction to inquire into, hear and determine—

(i) any question or matter in relation to whether liability to pay compensation in relation to a claim for compensation arises under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; and

(ii) any other question or matter relating to claims for compensation under the **Workers Compensation Act 1958**; and

(b) has jurisdiction to inquire into, hear and determine any question or matter relating to—

(i) whether an insurer is, or two or more insurers are, liable to indemnify an employer under a policy of insurance or

indemnity issued under the **Workers Compensation Act 1958**; or

(ii) the amount of any such liability; and

(c) has exclusive jurisdiction to inquire into, hear and determine any question or matter in respect of which jurisdiction is conferred on the County Court by this Act in respect of any question or matter arising under the **Workers Compensation Act 1958**.

266 Jurisdiction of Magistrates' Court

(1) If the County Court would have had jurisdiction under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** to inquire into, hear and determine any question or matter, the Magistrates' Court has a like jurisdiction unless expressly excluded by this Act.

(2) The Magistrates' Court has jurisdiction to inquire into, hear and determine any question or matter relating to a decision, recommendation or direction in respect of a request made under section 9.

(3) The Magistrates' Court has exclusive jurisdiction to hear and determine any application made under section 240 of this Act or section 92AA of the **Accident Compensation Act 1985**.

(4) Divisions 2 and 3 of Part 5 of the **Magistrates' Court Act 1989** do not apply to a proceeding commenced in the Magistrates' Court under this Part.

267 Application of this Act to the Magistrates' Court

This Act applies to the Magistrates' Court when exercising jurisdiction under this Part as if a reference to the County Court were a reference to the Magistrates' Court.

268 Certain evidence inadmissible in certain proceedings

S. 268 (Heading) amended by No. 15/2021 s. 11(1).

(1) Evidence of anything said, and any admission or agreement made, at or during, or any document prepared for the purposes of, a conciliation or the arbitration of a dispute is not admissible in any proceedings other than—

S. 268(1) amended by No. 15/2021 s. 11(2).

(a) proceedings for the enforcement of such an agreement; or

(ab) any proceeding for the enforcement of a determination of ACCS; or

S. 268(1)(ab) inserted by No. 15/2021 s. 11(3).

(ac) any proceeding in the Supreme Court to inquire into, hear and determine any question or matter relating to a determination made under Subdivision 4 of Division 2 of this Part; or

S. 268(1)(ac) inserted by No. 15/2021 s. 11(3).

(b) in proceedings for an offence against this Act, the **Accident Compensation Act 1985**, the **Accident Compensation (WorkCover Insurance) Act 1993** or the **Workers Compensation Act 1958**; or

(c) in proceedings for an offence against the **Crimes Act 1958** that arises in connection with a claim for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

(2) This section does not apply to evidence of an outcome certificate issued under section 296(1) or a determination certificate issued under section 301U.

S. 268(2) amended by No. 15/2021 s. 11(4).

S. 269 (Heading) substituted by No. 44/2014 s. 24(10).

269 Use of documents relating to worker's claim

Despite anything to the contrary in any Act (other than the **Charter of Human Rights and Responsibilities Act 2006**) or at common law, a document produced or served or information acquired in respect of a proceeding or claim for compensation, damages or other payment under, or in accordance with, this Act, the **Accident Compensation Act 1985**, the **Workers Compensation Act 1958** or at common law, whether before, on or after 1 July 2014 may be used subject to this Part for the purposes of any claim, proceeding or payment under or in accordance with this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

270 Protection of information given to Medical Panel

Information given to a Medical Panel must not be used in any civil or criminal proceedings in any court or tribunal other than proceedings—

(a) under this Act or the **Accident Compensation Act 1985** before a court or VCAT; or

(b) for an offence against this Act, the **Accident Compensation Act 1985**, the **Accident Compensation (WorkCover Insurance) Act 1993** or the **Workers Compensation Act 1958**; or

S. 270(c) substituted by No. 5/2021 s. 12.

(c) for an offence against the **Crimes Act 1958** that arises in connection with—

(i) a claim for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; or

(ii) a request for provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**.

271 Admissibility of certificates of Medical Panel

A certificate given by a Medical Panel is admissible in evidence in any proceedings under this Act, the **Accident Compensation Act 1985** or Part VBA of the **Wrongs Act 1958**.

272 Certain persons not compelled to give evidence

(1) A person who is, or has been, a member of a Medical Panel is competent to give evidence in proceedings as to matters in a certificate given by the Medical Panel but is not compelled to give such evidence.

(2) A person who has given expert advice to a Medical Panel is competent to give evidence in proceedings as to matters relating to that expert advice but is not compelled to give such evidence.

S. 272(3) inserted by No. 48/2017 s. 31.

(3) A person referred to in subsection (1) is competent to give evidence in proceedings as to reasons for an opinion under Division 3 or to matters relating to the person's role and function as a Panel member but is not compelled to give such evidence.

S. 272(4) inserted by No. 48/2017 s. 31.

(4) A person referred to in subsection (2) is competent to give evidence in any proceedings about the person's role as an expert retained by a Medical Panel to give advice but is not compelled to give such evidence.

273 Certain proceedings referred for conciliation

(1) Proceedings, other than proceedings specified in subsection (3), must not be commenced in a court unless—

(a) the dispute between the parties has been referred for conciliation under Division 2; and

S. 273(1)(b) amended by No. 73/2016 s. 21(3).

(b) ACCS is satisfied that all reasonable steps have been taken by the claimant to settle the dispute; and

S. 273(1)(c) amended by No. 73/2016 s. 21(3)(4).

(c) ACCS has issued a certificate to that effect that ACCS is so satisfied.

(2) Despite the requirements of subsection (1), if—

(a) proceedings have been commenced in a court in respect of a claim for compensation under this Act or the **Accident Compensation Act 1985**; and

(b) another dispute to which subsection (1) applies (***the other dispute***) exists between the parties (whether relating to the claim or to another claim) that has not been referred to conciliation under Division 2—

the other dispute need not be referred for conciliation if a party seeks and obtains the leave of the court to add the other dispute to the matters to be brought before the court.

S. 273(2A) inserted by No. 5/2021 s. 13.

(2A) To avoid doubt, a proceeding referred to in subsection (2)(a) does not include a proceeding in respect of provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**.

(3) This section does not apply to proceedings relating to—

(a) Division 8 of Part 5, Part 10 or Division 7 of Part 13; or

(b) a claim or payment under section 92, 92A, 92AA, 92B, 98 or 98A of the **Accident Compensation Act 1985**; or

(c) any question or matter referred to in section 265.

273A Proceeding may not be commenced if dispute referred for arbitration

S. 273A inserted by No. 15/2021 s. 12.

(1) Despite section 273(1), a proceeding must not be commenced in the County Court in respect of a dispute between parties that is referred to ACCS for arbitration under Subdivision 4 of Division 2 of this Part.

(2) Subsection (1) does not apply to a dispute that is dismissed from arbitration under section 301N.

274 Medical questions

(1) In exercising jurisdiction under this Part, a court—

(a) may, on the court's own motion, refer a medical question to a Medical Panel for an opinion under Division 3; or

(b) if—

(i) a party to the proceedings requests that a medical question be referred to a Medical Panel; and

(ii) the party notified the court, no later than 14 days prior to the date fixed for hearing of the proceedings, or another time determined by the court, of the party's intention to request that a medical question be so referred—

the court must, subject to subsections (3), (4) and (5), refer a medical question to a Medical Panel for an opinion under Division 3.

(2) This section extends to, and applies in respect of, an application to the County Court for leave under section 335(2)(d) of this Act or section 134AB(16)(b) of the **Accident Compensation Act 1985**—

(a) so as to enable, in accordance with subsection (1)(a), the County Court to refer a medical question to a Medical Panel for an opinion; or

(b) so as to require the County Court, at the request of a party to the application, to refer, in accordance with subsection (1)(b), a medical question (other than a medical question referred to in paragraph (o) of the definition of ***medical question*** in section 3)—

to a Medical Panel for an opinion.

(3) If a request is made to a court under subsection (1)(b) to refer a medical question to a Medical Panel for an opinion, the court may refuse to refer the question if the court is of the opinion that the referral would, in all the circumstances, constitute an abuse of process.

(4) A court has the discretion, if a request is made under subsection (1)(b), as to the form in which a medical question is referred to a Medical Panel.

(5) A court must not refer a medical question if it appears to the court that the formation of an opinion by a Medical Panel on the medical question would depend substantially on the resolution of factual issues which are more appropriately determined by the court than by a Medical Panel.

275 Court may state a question regarding factual issues before referring a medical question to a Medical Panel

(1) If, under section 274(5), the court has not referred a medical question to a Medical Panel, the court may—

(a) state a question to be answered by the court for the purposes of determining the factual issues referred to in section 274(5); and

(b) give directions for the hearing and determination of that question; and

(c) hear and determine the question and, by the answer to that question, make appropriate findings of fact.

(2) After answering a question referred to in subsection (1), the court may refer a medical question to a Medical Panel for an opinion.

(3) If, under subsection (2), the court refers a medical question to a Medical Panel, the court must provide the Medical Panel with—

(a) a copy of the question and the court's answer to the question; and

(b) any reasons published by the court in relation to the question; and

(c) any further documents the court considers appropriate.

(4) In forming an opinion on a medical question referred to a Medical Panel under subsection (2), the Medical Panel is bound by the answer to the question stated and answered by the court under subsection (1).

276 Court to give copies of documents to parties

If a court refers a medical question to a Medical Panel, the court must give to each party to the proceedings, copies of all documents in the possession of the court relating to the medical question.

277 Copies of Medical Panel's opinion

After a court receives the opinion of a Medical Panel on a medical question referred to the Medical Panel, the court—

(a) must give a copy of the opinion and the written statement of reasons for that opinion to the worker, the employer and the Authority or self-insurer; and

(b) may give a copy of the opinion and the written statement of reasons for that opinion to a party to the proceedings.

278 Costs

(1) Subject to this Act, in proceedings brought before a court under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**, by a person other than the Authority, an employer or a self-insurer, the court—

(a) must award costs against the party against whom a judgment or decision is made; and

(b) may, if it considers it appropriate, include in an order under paragraph (a) an award of costs to the representative of a worker in whose favour a judgment or decision is made; and

(c) must not otherwise make an award of costs.

(2) Nothing in subsection (1) applies to proceedings brought by the Authority, an employer or a self-insurer.

(3) In proceedings before the County Court under this Act which relate to a claim under section 98 or 98A of the **Accident Compensation Act 1985**, if a judgment or order is made by the County Court for the payment of an amount of compensation to the claimant—

S. 278(3)(a) amended by No. 10/2022 s. 80(1).

(a) which is not less than 90 per cent of the claimant's counter statutory offer but is greater than the statutory offer made by the Authority, employer or self-insurer, the Authority, employer or self-insurer must pay the claimant's costs assessed on the standard basis and must bear their own costs; or

S. 278(3)(b) amended by No. 10/2022 s. 80(2).

(b) which is equal to or less than the statutory offer made by the Authority, employer or self-insurer, the claimant must pay costs assessed on the standard basis of the Authority, employer or self-insurer and bear his or her own costs; or

(c) which is greater than the statutory offer made by the Authority, employer or self-insurer but less than 90 per cent of the counter statutory offer made by the claimant, each party must bear their own costs—

and the County Court must not otherwise make an award of costs.

S. 278(4) amended by No. 73/2016 s. 21(2).

(4) If a direction of ACCS under Division 2—

(a) is revoked by the court on an application under section 299; and

(b) the court has not made an order under section 299(4)(b)—

the court—

(c) must order that the costs of the worker are to be paid by the person who made the application; and

(d) must not order that the costs of the person who made the application be paid by the worker.

(5) Costs awarded to a worker or claimant by the County Court in proceedings brought by the worker or claimant in which the judgment or decision is a judgment or decision that could have been made by the Magistrates' Court, had the proceedings been brought in the Magistrates' Court, must be awarded as if the scale of costs applicable in the Magistrates' Court applied.

(6) If a settlement or compromise is made in respect of proceedings in the County Court brought under this Act or the **Accident Compensation Act 1985**, by a worker or claimant and the outcome achieved by the settlement or compromise could have been achieved by a judgment or decision made by the Magistrates' Court had the proceedings been brought in the Magistrates' Court—

(a) subsections (7) and (8) apply in respect of that settlement or compromise; and

(b) whether or not an agreement referred to in subsection (7) is entered into, the worker or claimant or his or her legal practitioner is not entitled to receive either directly or indirectly from the other party to the proceedings an amount for or in respect of the legal practitioner appearing for or acting on behalf of the worker or claimant in the proceedings that exceeds the amount the worker or claimant or legal practitioner could have been awarded if the scale of costs applicable in the Magistrates' Court applied.

(7) An agreement must not be entered into in respect of, or which forms part of, the settlement or compromise which provides that the worker or claimant or his or her legal practitioner is to receive directly or indirectly from the other party to the proceedings for or in respect of the legal practitioner appearing for or acting on behalf of the worker or claimant in the proceedings, an amount that exceeds the amount that the worker or claimant or legal practitioner could have been awarded if the scale of costs applicable in the Magistrates' Court applied.

(8) An agreement that does not comply with subsection (7) is void but the validity of the settlement or compromise is not otherwise affected.

(9) This section has effect despite anything to the contrary in any other Act or law.

279 Costs liability of legal practitioner

(1) If the legal practitioner for a party to proceedings before a court brought under this Act or the **Accident Compensation Act 1985**, whether personally or through a servant or agent, has—

(a) without reasonable cause, caused proceedings which could have been brought within the jurisdiction of the Magistrates' Court to be commenced in the County Court; or

(b) caused costs to be incurred improperly or without reasonable cause or to be wasted by undue delay or negligence or by any other misconduct or default—

the court may make an order as specified in subsection (2).

(2) The court may order that—

(a) all or any of the costs between the legal practitioner and the client be disallowed or that the legal practitioner repay to the client the whole or part of any money paid on account of costs; or

(b) the legal practitioner pay to the client all or any of the costs which the client has been ordered to pay to any party; or

(c) the legal practitioner pay all or any of the costs payable by any party other than the client.

(3) Without limiting subsection (1), a legal practitioner is in default for the purposes of that subsection if any proceeding cannot conveniently be heard or proceed, or fails or is adjourned without any useful progress being made, because the legal practitioner failed to—

(a) attend in person or by a proper representative; or

(b) file any document which ought to have been filed; or

(c) lodge or deliver any document for the use of the court which ought to have been lodged or delivered; or

(d) be prepared with any proper evidence or account; or

(e) otherwise proceed.

(4) The court must not make an order under subsection (2) without giving the legal practitioner a reasonable opportunity to be heard.

(5) The court may order that notice of any proceeding or order against a legal practitioner under this section be given to the client in such manner as the court directs.

(6) This section is to be construed as being in addition to, and not in derogation of, the **Civil Procedure Act 2010**, section 78A of the **County Court Act 1958** or section 132 of the **Magistrates' Court Act 1989**.

Division 2—Disputes and conciliation

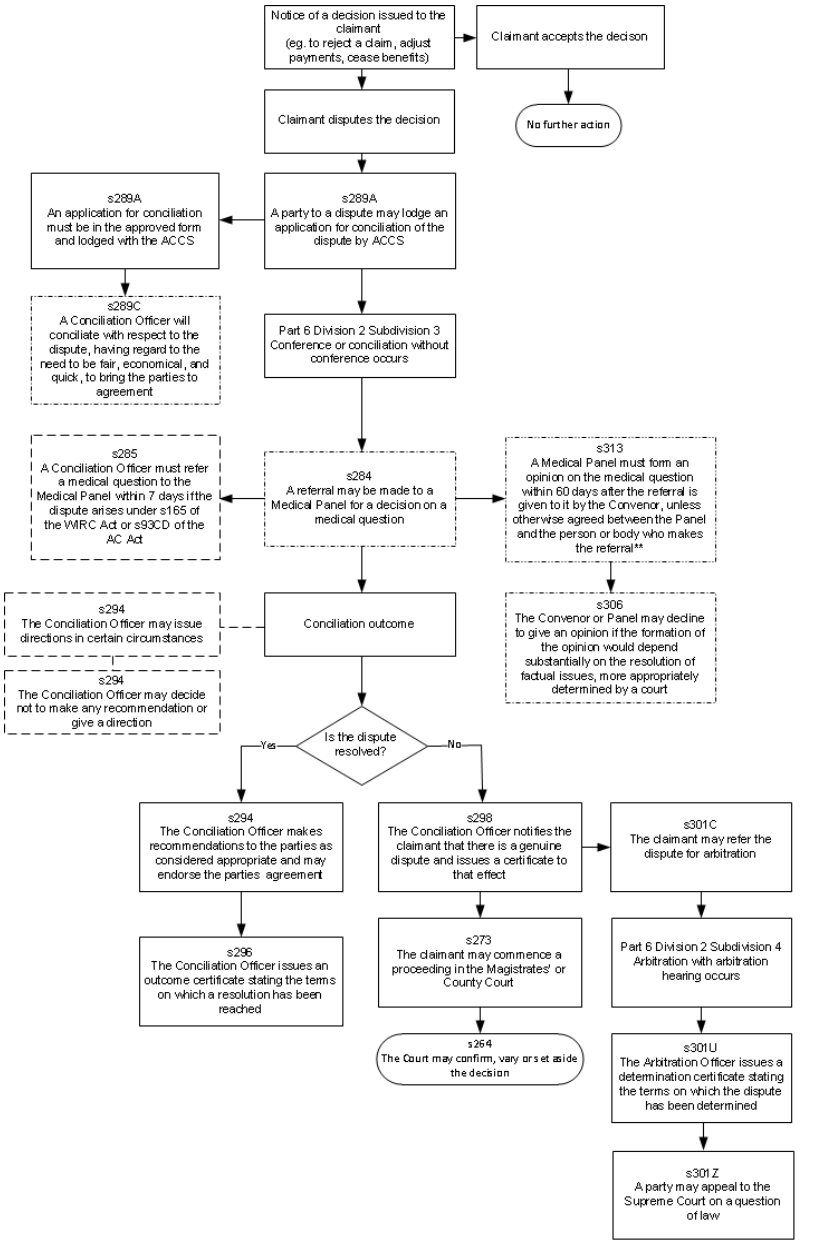
Subdivision 1—Preliminary

Pt 6 Div. 2 Subdiv. 1 (Heading) inserted by No. 15/2021 s. 13.

S. 280 (Heading) amended by No. 44/2014 s. 24(11).

S. 280 amended by No. 15/2021 s. 14.

280 Flow chart 7—dispute resolution process if a claimant disagrees with a decision



* Disputes other than disputes relating to death related claims or discrimination must be referred to conciliation before a proceeding can commence.
** A determination of the Medical Panel on a medical question is final and binding.

281 Definitions

(1) In this Division—

arbitration hearing means a hearing held before ACCS for the purpose of determining a dispute by arbitration;

S. 281(1) def. of *arbitration hearing* inserted by No. 15/2021 s. 15.

conciliation conference means a conference held with or before ACCS—

(a) to resolve; or

(b) for the purpose of giving directions in connection with—

a dispute referred for conciliation;

S. 281(1) def. of *conciliation conference* amended by No. 73/2016 s. 21(2).

dispute means a dispute to which this Division applies;

S. 281(1) def. of *dispute* amended by No. 27/2025 s. 19(a).

resolution certificate means a certificate issued under section 301ZC(2).

S. 281(1) def. of *resolution certificate* inserted by No. 27/2025 s. 19(b).

(2) This Division applies to a dispute in connection with a claim for compensation under this Act or the **Accident Compensation Act 1985** or a request for provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985** between the person who makes, or has made, the claim or request and any one or more of the following—

S. 281(2) amended by No. 5/2021 s. 14(a)(b).

(a) the employer (not being a self-insurer or an eligible subsidiary of a self-insurer) of the relevant worker;

S. 281(2)(b) amended by No. 5/2021 s. 14(c).

(b) if the compensation or provisional payments are or may be payable by the Authority, the Authority;

S. 281(2)(c) amended by No. 5/2021 s. 14(c).

(c) if the compensation or provisional payments are or may be payable by a self-insurer, the self-insurer.

S. 281A inserted by No. 15/2021 s. 16.

281A Duty of ACCS

ACCS must, having regard to the need to be fair, economical, informal and quick, and having regard to the objectives of this Act, make all reasonable efforts to conciliate or arbitrate in relation to a dispute to either bring the parties to agreement or determine the dispute.

S. 282 amended by No. 73/2016 s. 21(1)(2), repealed by No. 15/2021 s. 17.

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S. 283 amended by No. 73/2016 s. 21(4)(7), repealed by No. 15/2021 s. 17.

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Subdivision 2—Medical questions

Pt 6 Div. 2 Subdiv. 2 (Heading) inserted by No. 15/2021 s. 18.

284 ACCS may seek opinion of a Medical Panel on medical question

S. 284 (Heading) amended by No. 73/2016 s. 21(8)(a).

(1) ACCS may refer a medical question to a Medical Panel for an opinion under this Division.

S. 284 amended by Nos 73/2016 s. 21(8)(b), 15/2021 s. 19 (ILA s. 39B(1)).

S. 284(2) inserted by No. 15/2021 s. 19.

(2) ACCS must seek the opinion of each party to the dispute before referring a medical question under subsection (1) to a Medical Panel for an opinion.

S. 284(3) inserted by No. 15/2021 s. 19.

(3) However, ACCS may refer a medical question to a Medical Panel for an opinion without the consent of each party to the dispute.

S. 284(4) inserted by No. 15/2021 s. 19.

(4) ACCS may refer more than one medical question arising in a dispute to be considered by a Medical Panel concurrently or consecutively.

284A Resolution of factual issues before referral to Medical Panel

S. 284A inserted by No. 15/2021 s. 20.

(1) ACCS must not refer a medical question to a Medical Panel under section 284 if it appears to ACCS that the formation of an opinion by a Medical Panel on the medical question would depend substantially on the resolution of factual issues which are more appropriately considered by ACCS in conciliation or arbitration than by a Medical Panel.

(2) However, ACCS may refer the medical question to a Medical Panel for an opinion after the factual issue is resolved by the agreement of the parties in conciliation or by arbitration (as the case requires).

285 Referral of medical question relating to section 165 of this Act or section 93CD of the Accident Compensation Act 1985

S. 285(1) amended by Nos 73/2016 s. 21(3), 15/2021 s. 21.

(1) If a medical question arises in a dispute relating to section 165 of this Act or section 93CD of the **Accident Compensation Act 1985** that does not require the resolution of a factual issue, ACCS must, within 7 days after becoming aware of the medical question, refer the medical question to a Medical Panel.

(2) The Authority or self-insurer must bear all the costs reasonably incurred by a worker in relation to a referral of a medical question under this section.

S. 286 amended by No. 73/2016 s. 21(3), repealed by No. 15/2021 s. 22.

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S. 287 amended by No. 73/2016 s. 21(9), repealed by No. 15/2021 s. 22.

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288 Information from provider of medical service or other service

S. 288 amended by Nos 73/2016 s. 21(3), 5/2021 s. 15.

A provider of a medical service or a provider of a service under Division 6, 7 or 10 of Part 5 of this Act or Division 2B, 2BA or 2C of Part IV of the **Accident Compensation Act 1985** who has

examined a worker may, with the consent of the worker and at the request of ACCS—

(a) meet with ACCS and answer questions; and

S. 288(a) amended by No. 73/2016 s. 21(3).

(b) supply relevant documents to ACCS.

S. 288(b) amended by No. 73/2016 s. 21(3).

289 Costs of reports by registered health practitioners

(1) The Authority or a self-insurer must pay the reasonable costs of a report provided by a registered health practitioner who has examined a worker if—

(a) the report has been requested by ACCS; and

S. 289(1)(a) amended by No. 73/2016 s. 21(2).

(b) the worker has consented to a report being provided.

(2) In this section, ***registered health practitioner*** means any of the following—

(a) medical practitioner;

(b) registered dentist;

(c) registered optometrist;

(d) registered physiotherapist;

(e) registered chiropractor;

(f) registered osteopath;

(g) registered podiatrist;

(h) registered psychologist.

Pt 6 Div. 2 Subdiv. 3 (Heading and ss 289A–289C) inserted by No. 15/2021 s. 23.

Subdivision 3—Conciliation of disputes

S. 289A inserted by No. 15/2021 s. 23.

289A Lodging of disputes for conciliation

(1) A party to a dispute may lodge an application for conciliation of the dispute by ACCS.

(2) A party to a dispute that is dismissed from conciliation under section 294(1)(e) may lodge an application for further conciliation of the dispute or any part of the dispute by ACCS.

(3) A person may lodge an application under this section on behalf of a party to the dispute.

(4) An application for conciliation of a dispute must be lodged with ACCS by sending or delivering notice, in a form approved by ACCS, within 60 days after—

(a) notice of the decision to which the dispute relates was given to, or served on, the worker or claimant; or

(b) the dispute was dismissed from conciliation under section 294(1)(e).

Note

The **Electronic Transactions (Victoria) Act 2000** provides for lodgement by electronic communication in accordance with that Act.

S. 289B inserted by No. 15/2021 s. 23.

289B Power of ACCS to allow late or out of time referral of dispute

If ACCS considers it appropriate in the circumstances of the particular case, ACCS may, on application, allow—

(a) an extension of time for lodging an application for conciliation; or

(b) an application for conciliation to be lodged out of time.

289C Conciliation by Conciliation Officer

S. 289C inserted by No. 15/2021 s. 23.

(1) The conciliation of a dispute under this Subdivision must be conducted by a Conciliation Officer.

(2) The Conciliation Officer who conducts the conciliation of a dispute must not be the same person who has acted as an Arbitration Officer in respect of the arbitration (if any) of that dispute.

290 Conciliation without conference

S. 290 amended by Nos 73/2016 s. 21(2)(3), 15/2021 s. 24.

If ACCS is satisfied that sufficient information has been supplied to ACCS in connection with a dispute that is the subject of conciliation, ACCS may exercise functions under this Subdivision—

(a) without having any conciliation conference; and

(b) without requesting further information from any party to the dispute.

290A Representation by legal practitioner in conciliation

S. 290A inserted by No. 15/2021 s. 25.

(1) Except as provided in subsection (2), a person who is a party to a dispute is not entitled to be represented by a legal practitioner at a conciliation conference.

(2) On the submission of a party to a dispute, ACCS may agree to the party being represented by a legal practitioner at a conciliation conference, having regard to—

(a) the fairness of allowing the party to be represented, including whether each party is able to represent themselves effectively; and

(b) whether it would enable the matter to be dealt with more efficiently; and

(c) any other matters specified in any policies and procedures of ACCS published under section 301B.

(3) A legal practitioner appearing at a conciliation conference on behalf of a party in accordance with subsection (2) has the same protection and immunity as a legal practitioner has in appearing for a party in a proceeding in the Supreme Court.

S. 290B inserted by No. 15/2021 s. 25.

290B Production and disclosure of information

(1) Subject to subsection (2), a party to a dispute who participates in a conciliation must—

(a) produce to ACCS all documents in the party's possession, custody or power that relate to the dispute and are reasonably available to the party; and

(b) disclose to ACCS all information that relates to the dispute.

(2) A party may claim privilege or immunity from producing a document or disclosing information to ACCS under subsection (1).

291 Power to request or release documents etc.

S. 291(1) amended by No. 73/2016 s. 21(3)(10).

(1) ACCS may request a party who participates in a conciliation to—

(a) produce a document or a class of documents specified; or

(b) provide information or information of a kind specified—

that ACCS considers may be relevant to the resolution of the dispute.

(2) ACCS may make any document produced or information provided under subsection (1) available to any other party to the dispute.

S. 291(2) amended by Nos 73/2016 s. 21(10), 10/2022 s. 81, substituted by No. 27/2025 s. 20.[1]

(3) On the request of a worker who was a party to a conciliation for which an outcome certificate has been issued, or that has been dismissed, ACCS may make the following available to the worker—

S. 291(3) inserted by No. 27/2025 s. 20.

(a) any document produced or information disclosed by or on behalf of the worker under section 290B;

(b) any document produced or information provided by the worker under subsection (1);

(c) any document or information made available to the worker under subsection (2).

292 Offence to make false or misleading statement

A person must not, in connection with a dispute referred for conciliation, make a statement that the person knows to be false or misleading in a material particular.

Penalty: In the case of a natural person, 60 penalty units or 6 months imprisonment or both;

In the case of a body corporate, 300 penalty units.

* * * * *

S. 293 amended by No. 73/2016 s. 21(10)(11), repealed by No. 15/2021 s. 27.

S. 294 (Heading) amended by Nos 73/2016 s. 21(11), 15/2021 s. 28(1).

294 Powers of ACCS in conciliation

S. 294(1) amended by Nos 73/2016 s. 21(9), 15/2021 s. 28(2)(a).

(1) ACCS may do any one or more of the following things in connection with the conciliation of a dispute or any part of a dispute—

S. 294(1)(a) amended by No. 73/2016 s. 21(4).

(a) make such recommendations to the parties to the dispute as ACCS considers to be appropriate;

(b) in the case of a dispute arising under section 9—

S. 294(1)(b)(i) amended by No. 5/2021 s. 16.

(i) give a direction that information relevant to a claim for compensation or a request for provisional payments is to be given to the person who requested the information; or

(ii) notify the person who requested the information that there is a genuine dispute with respect to the giving of the information requested;

S. 294(1)(c) amended by No. 15/2021 s. 28(2)(b).

(c) in the case of a dispute to which section 297 applies, give directions under this Subdivision;

S. 294(1)(d) amended by No. 15/2021 s. 28(2)(c).

(d) decline to make any recommendation or give any direction;

S. 294(1)(e) inserted by No. 15/2021 s. 28(2)(d).

(e) dismiss the dispute.

(2) Unless a court determines otherwise, ACCS may—

S. 294(2) amended by No. 73/2016 s. 21(2).

(a) conciliate with respect to a dispute; and

(b) make or give relevant recommendations or directions—

even though the dispute is pending determination in proceedings under this Act or the **Accident Compensation Act 1985**.

295 Offence not to comply with direction

S. 295 amended by Nos 73/2016 s. 21(2), 15/2021 s. 29.

A person who is given a direction by ACCS under this Subdivision in relation to the conciliation of a dispute must comply with the direction.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

296 Outcome certificates to be issued

(1) Subject to subsection (4), ACCS must issue an outcome certificate within 7 days of the conclusion of a conciliation if—

S. 296(1) amended by No. 73/2016 s. 21(2).

(a) the dispute that is the subject of the conciliation was lodged for conciliation under section 289A; and

S. 296(1)(a) amended by No. 15/2021 s. 30.

(b) the dispute is resolved.

(2) The outcome certificate must—

(a) be in a form approved by ACCS; and

S. 296(2)(a) amended by No. 73/2016 s. 21(1).

(b) be provided to the worker and the employer and the Authority or self-insurer; and

(c) set out any terms on which the dispute is resolved; and

(d) certify that each party to the dispute is bound by the result; and

(e) state that the outcome certificate is evidence of—

(i) the resolution of the dispute between the parties; and

(ii) the terms on which the dispute has been resolved.

(3) The outcome certificate is admissible in any court proceeding as evidence of—

(a) the resolution of the dispute between the parties; and

(b) the terms on which the dispute has been resolved.

S. 296(4) amended by No. 73/2016 s. 21(3)(10).

(4) ACCS is not required to comply with subsection (1) in relation to a dispute referred to in that subsection if ACCS issues a certificate in respect of that dispute under section 273 of this Act or section 104(7) of the **Accident Compensation Act 1985**.

S. 297 (Heading) amended by No. 73/2016 s. 21(5).

297 ACCS may give directions about payment of compensation

(1) In this section, a reference to a dispute as to liability to make or continue to make weekly payments includes a reference to a dispute as to—

(a) whether a worker has no current work capacity; or

(b) whether a worker has a current work capacity; or

(c) any other matter that affects the amount of weekly payments—

but does not include—

(d) a dispute as to compensation in the form of superannuation contributions; or

(e) a reference of a matter under section 26(1);

S. 297(1)(e) amended by No. 8/2024 s. 20(a).

(f) a dispute as to the degree of impairment of a worker as determined under section 167A.

S. 297(1)(f) inserted by No. 8/2024 s. 20(b).

(2) This section applies if a dispute relating to—

S. 297(2) amended by No. 73/2016 s. 21(2).

(a) a claim for weekly payments under this Act or the **Accident Compensation Act 1985**; or

(b) a continuation of weekly payments under this Act or the **Accident Compensation Act 1985**; or

(c) a claim for payment of compensation under Division 7 of Part 5 of this Act or Division 2B of Part IV of the **Accident Compensation Act 1985**; or

(ca) a request for provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**; or

S. 297(2)(ca) inserted by No. 5/2021 s. 17(1).

(d) payment, or continuation of payment, of compensation under Division 7 of Part 5 of this Act or Division 2B of Part IV of the **Accident Compensation Act 1985**—

has been referred to conciliation under this Division, but ACCS is unable to bring the parties to agreement by conciliation.

S. 297(3) amended by No. 73/2016 s. 21(3).

(3) If ACCS is satisfied that there is no genuine dispute with respect to the liability to make, or continue to make, weekly payments, ACCS may direct the Authority, employer or self-insurer, as the case may be, to pay, or continue to pay, compensation in accordance with the direction.

S. 297(4) amended by No. 73/2016 s. 21(2).

(4) A direction or further direction of ACCS under this section may require the Authority, employer or self-insurer to pay, or continue to pay, weekly payments for such period not exceeding 12 weeks as is specified in the direction.

S. 297(5) amended by No. 73/2016 s. 21(2).

(5) Nothing in this section prevents ACCS from giving a further direction or further directions for payment of compensation after the expiry of an earlier direction, except where the earlier direction is revoked by the court.

S. 297(6) amended by No. 73/2016 s. 21(2).

(6) In addition to the power conferred by subsection (4), ACCS may direct payment of weekly payments in respect of a period ending before the direction is given, but that period must not exceed 24 weeks.

S. 297(7) amended by No. 73/2016 s. 21(2)(3).

(7) If ACCS gives a direction or further direction to pay or continue to pay weekly payments, ACCS may also give a general direction to the Authority, employer or self-insurer, to pay, subject to and in accordance with Division 7 of Part 5 of this Act or Division 2B of Part IV of the **Accident Compensation Act 1985**, the reasonable costs of services specified in Division 7 of Part 5 of this Act or Division 2B of Part IV of the **Accident Compensation Act 1985** that were, or are to be, provided during the period specified in the direction under subsection (4) or (6), as the case may be.

(8) Subsection (9) applies if—

(a) the dispute is, or includes, a dispute as to liability for— S. 297(8)(a) substituted by No. 5/2021 s. 17(2).

(i) payment of compensation, or continuation of payment of compensation, under Division 7 of Part 5 of this Act or Division 2B of Part IV of the **Accident Compensation Act 1985**; or

(ii) payment of provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**; and

(b) ACCS is satisfied that there is no genuine dispute with respect to such liability; and S. 297(8)(b) amended by No. 73/2016 s. 21(3).

(c) ACCS has not given a direction under subsection (7). S. 297(8)(c) amended by No. 73/2016 s. 21(3).

(9) If this subsection applies, ACCS may give a general direction to the Authority, self-insurer or employer to pay, subject to and in accordance with Division 7 or 10 of Part 5 of this Act or Division 2B or 2BA of Part IV of the **Accident Compensation Act 1985**, the reasonable costs of services specified in Division 7 or 10 of Part 5 of this Act or Division 2B or 2BA of Part IV of the **Accident Compensation Act 1985** but not exceeding $5000 in respect of the relevant injury. S. 297(9) amended by Nos 73/2016 s. 21(3), 5/2021 s. 17(3).

(10) For the purposes of this section, ACCS is to be taken to be satisfied that there is no genuine dispute if ACCS is satisfied that there is no arguable case in support of the denial of liability. S. 297(10) amended by No. 73/2016 s. 21(2)(3).

S. 298 (Heading) amended by No. 15/2021 s. 31(1).

298 Genuine disputes about certain matters

S. 298(1) amended by Nos 73/2016 s. 21(2)(3), 5/2021 s. 18(1)(a), 15/2021 s. 31(2).

(1) If ACCS is satisfied that there is a genuine dispute with respect to liability for payment of compensation referred to in section 297(1) and (2) or provisional payments referred to in section 297(2), compensation in the form of superannuation contributions or interest payable on an outstanding payment, ACCS must notify the person—

S. 298(1)(a) amended by No. 5/2021 s. 18(1)(b).

(a) who made the claim for compensation or request for provisional payments; or

S. 298(1)(b) amended by No. 5/2021 s. 18(1)(c).

(b) who was receiving compensation or provisional payments—

of that fact and that an application may be made to a court to determine the matter or, subject to section 301C, to ACCS to determine the matter by arbitration.

Note to s. 298(1) inserted by No. 8/2024 s. 23.

Note

See section 301C(1) for matters that can be referred to arbitration.

S. 298(2) amended by Nos 73/2016 s. 21(2)(3), 5/2021 s. 18(2), 15/2021 s. 31(3).

(2) For the purposes of this section, ACCS is to be taken to be satisfied that there is a genuine dispute if ACCS is satisfied that there is an arguable case in support of the amount of compensation to which a claimant is entitled or the denial of liability for the payment of compensation or provisional payments.

299 Revocation of directions of ACCS

S. 299 (Heading) amended by No. 73/2016 s. 21(5).

(1) A direction given by ACCS under this Subdivision may be revoked by ACCS.

S. 299(1) substituted by No. 73/2016 s. 21(12), amended by No. 15/2021 s. 32.

(2) A court may, on the application of a person who is liable to make payments of compensation or provisional payments in accordance with a direction of ACCS under this Subdivision, revoke the direction.

S. 299(2) amended by Nos 73/2016 s. 21(2), 5/2021 s. 19(1), 15/2021 s. 32.

(3) If a direction is revoked, the obligation to make payments of compensation or provisional payments under the direction ceases.

S. 299(3) amended by No. 5/2021 s. 19(1).

(4) If a court determines that a person is not liable to make the payments of compensation or provisional payments that have been paid in accordance with a direction of ACCS—

S. 299(4) amended by Nos 73/2016 s. 21(2), 5/2021 s. 19(2)(a).

(a) the worker or other person who received those payments is not required to refund those payments unless the court otherwise orders under paragraph (b);

(b) if the court is satisfied that the claim for compensation or request for provisional payments was wholly or partly fraudulent or made without proper justification, it may order the worker or other person concerned to refund the whole or a specified part of those payments;

S. 299(4)(b) amended by No. 5/2021 s. 19(2)(b).

(c) the court may, instead of making an order for a refund, order any other person whom it determines was liable for the whole or any part of those payments to reimburse the person who made those payments.

(5) The Magistrates' Court may, on the application of a person to whom a direction has been given under section 294(1)(b)(i), revoke the direction.

300 Payments under direction etc. not admission of liability

(1) The fact that a person—

S. 300(1)(a) amended by Nos 73/2016 s. 21(2), 5/2021 s. 20, 15/2021 s. 33.

(a) pays or continues to pay compensation or provisional payments in accordance with a direction or recommendation of ACCS under this Subdivision; or

(b) does not apply for a revocation of any such direction—

is not an admission of liability by the person.

(2) The grant or refusal by a court of an application for revocation of a direction is not a finding as to liability in respect of the matter in dispute.

301 Costs

(1) Despite section 285(2), each party to a dispute referred to conciliation bears the party's own costs.

(2) Despite subsection (1) and regardless of the outcome of a conciliation conference, the Authority or a self-insurer is liable to—

(a) pay the reasonable expenses of the worker's transport to and from the conciliation conference as specified in subsection (3); and

(b) reimburse the worker for any loss of income sustained by the worker in attending the conciliation conference as specified in subsection (4).

(3) An amount not exceeding $56 may be paid to a worker for his or her reasonable transportation expenses in getting to and from the conciliation conference.

(4) An amount not exceeding $386 per day may be paid to a worker for any loss of income sustained as a result of his or her attendance at the conciliation conference.

(5) A payment made in accordance with subsection (2) is not a payment of compensation under this Act or the **Accident Compensation Act 1985** except for the purposes of—

(a) calculating employer premiums under Part 10; or

(b) seeking an indemnity from a third party under section 369 or any other indemnity under this Act or under section 138 of the **Accident Compensation Act 1985** or any other indemnity under that Act; or

(c) seeking a refund of payments under section 599 or any other amount relating to the recovery of payments under this Act or the **Accident Compensation Act 1985**.

301A Ministerial guidelines for conciliations

S. 301A inserted by No. 15/2021 s. 34.

(1) The Minister may make guidelines in accordance with section 611 as to the procedures of ACCS for the purposes of—

(a) ensuring procedural fairness in the conduct of conciliations; and

(b) facilitating the proper administration of ACCS for conciliations.

(2) Without limiting subsection (1), the Minister may make guidelines in relation to—

(a) the organisation of ACCS for the purposes of conducting conciliations; and

(b) records to be kept by ACCS in relation to conciliations; and

(c) reasons for which extensions of time may be granted under section 289B; and

(d) any other relevant matters determined by the Minister.

S. 301B inserted by No. 15/2021 s. 34.

301B ACCS policies and procedures for conciliations

(1) Subject to this Division, ACCS may make its own arrangements for the conduct of conciliations and any related matters but must do so in accordance with any Ministerial guidelines made under section 301A.

(2) ACCS must ensure that any policies and procedures developed by ACCS in relation to the conduct of conciliations are published on a Government Internet website.

Subdivision 4—Arbitration of disputes

Pt 6 Div. 2 Subdiv. 4 (Heading and ss 301C–301ZB) inserted by No. 15/2021 s. 35.

301C Lodging of disputes for arbitration

S. 301C inserted by No. 15/2021 s. 35.

(1) A claimant in a dispute may refer the dispute for arbitration by ACCS if—

(a) ACCS has notified the claimant under section 298 that ACCS is satisfied that there is a genuine dispute with respect to the payment of any of the following—

S. 301C(1)(a) amended by No. 8/2024 s. 24(1).

(i) compensation referred to in section 297(1) and (2);

(ii) compensation in the form of superannuation contributions;

(iii) interest on an outstanding amount; and

(ab) the dispute is not or does not include a dispute as to any of the following—

S. 301C(1)(ab) inserted by No. 8/2024 s. 24(2).

(i) whether an injury is an injury under this Act;

(ii) whether an injury has occurred in circumstances that create a liability for the Authority or self-insurer to pay compensation under this Act; and

(b) the claimant has not applied to a court for the determination of the dispute.

(2) A person may refer a dispute under this section on behalf of the claimant.

S. 301C(2A) inserted by No. 8/2024 s. 24(3).

(2A) A dispute excluded from arbitration under subsection (1)(ab) includes a dispute as to any of the following matters—

(a) whether a claimant is a worker;

(b) whether the claimant has suffered an injury, including a mental injury;

(c) whether an injury caused to the claimant is an injury that arose out of, or in the course of, or due to the nature of, the claimant's employment;

(d) whether the claimant's employment was a significant contributing factor to an injury caused to the claimant;

(e) whether an injury caused to the claimant is a mental injury for which there is no entitlement to compensation;

(f) whether an injury caused to the claimant is a disease for which there is no entitlement to compensation;

(g) whether an injury caused to the claimant is a proclaimed disease;

(h) any other matter that is relevant to determining any of the following—

(i) whether an injury is an injury under this Act;

(ii) whether an injury has occurred in circumstances that create a liability for the Authority or self-insurer to pay compensation under this Act.

(3) A referral for arbitration of a dispute must be lodged with ACCS by sending or delivering notice, in a form approved by ACCS, within 60 days after receipt of a notice under section 298 or 301N(3) in respect of the dispute.

Note

The **Electronic Transactions (Victoria) Act 2000** provides for lodgement by electronic communication in accordance with that Act.

301D Power of ACCS to allow late or out of time referral of dispute

S. 301D inserted by No. 15/2021 s. 35.

If ACCS considers it appropriate in the circumstances of the particular case, ACCS may, on application, allow—

(a) an extension of time for referring a dispute for arbitration; or

(b) a referral for arbitration of a dispute to be lodged out of time.

301E Arbitration by Arbitration Officer

S. 301E inserted by No. 15/2021 s. 35.

(1) The arbitration of a dispute referred to ACCS must be conducted by an Arbitration Officer.

(2) The Arbitration Officer who conducts the arbitration of a dispute must not be the same person who has acted as a Conciliation Officer in respect of the conciliation of that dispute.

301F Conduct of arbitration hearing

S. 301F inserted by No. 15/2021 s. 35.

(1) The arbitration of a dispute is to be determined solely on the information and evidence presented before ACCS at an arbitration hearing.

(2) An arbitration hearing must commence within 30 days of the date on which the dispute is referred for arbitration.

(3) ACCS must, by notice given in writing to each party to the dispute, specify the date, time and place at which the arbitration hearing will be held.

S. 301G inserted by No. 15/2021 s. 35.

301G Representation by legal practitioner in arbitration

(1) Except as provided in subsection (2), a person who is a party to a dispute is not entitled to be represented by a legal practitioner at an arbitration hearing.

(2) On the submission of a party to a dispute, ACCS may agree to the party being represented by a legal practitioner at an arbitration hearing, having regard to—

(a) the fairness of allowing the party to be represented, including whether each party is able to represent themselves effectively; and

(b) whether it would enable the matter to be dealt with more efficiently; and

(c) any other matters specified in any policies and procedures of ACCS published under section 301ZB.

(3) A legal practitioner appearing at an arbitration hearing on behalf of a party in accordance with subsection (2) has the same protection and immunity as a legal practitioner has in appearing for a party in a proceeding in the Supreme Court.

S. 301H inserted by No. 15/2021 s. 35.

301H Production and disclosure of information

(1) Subject to subsection (3), a party to a dispute who participates in an arbitration must—

(a) produce to ACCS all documents in the party's possession, custody or power that relate to the dispute and are reasonably available to the party; and

(b) disclose to ACCS all information that relates to the dispute.

(2) Without limiting subsection (1)(b), a party may disclose information by providing oral evidence at an arbitration hearing.

(3) A party may claim privilege or immunity from producing a document or disclosing information to ACCS under this section.

(4) ACCS must make any document produced or information disclosed under this section available to each party to the dispute.

301I Power to request documents or information

S. 301I inserted by No. 15/2021 s. 35.

(1) If ACCS considers that it may be relevant to the arbitration of a dispute, ACCS may request a party to a dispute or any other person to—

(a) produce a document or a class of documents specified; or

(b) provide information or information of a kind specified.

(2) For the purposes of subsection (1)(b), ACCS may request the party or other person to provide oral evidence at an arbitration hearing.

(3) If ACCS requests a person who is not a party to the dispute to do any thing under subsection (1) or (2), ACCS must inform the person that—

(a) the doing of that thing is voluntary; and

(b) any document produced or information provided will be made available to each party to the dispute.

Note

A party to the dispute has an obligation under section 301H to produce certain documents and disclose certain information.

(4) ACCS must make any document or information provided under this section available to each party to the dispute.

S. 301I(5) inserted by No. 27/2025 s. 21.

(5) On the request of a worker who was a party to an arbitration that has been determined, dismissed or referred for further conciliation, ACCS may make the following available to the worker—

(a) any document produced or information disclosed by or on behalf of the worker under section 301H(1);

(b) any document produced or information provided by the worker under subsection (1);

(c) any document or information made available to the worker under section 301H(4) or subsection (4).

S. 301J inserted by No. 15/2021 s. 35.

301J Offence to make false or misleading statement

A person must not, in connection with a dispute referred for arbitration, make a statement that the person knows to be false or misleading in a material particular.

Penalty: In the case of a natural person, 60 penalty units or 6 months imprisonment or both;

In the case of a body corporate, 300 penalty units.

S. 301K inserted by No. 15/2021 s. 35.

301K Powers of ACCS

(1) ACCS may do any one or more of the following things in connection with a dispute or any part of a dispute referred for arbitration—

(a) make a binding determination as ACCS considers to be appropriate;

S. 301K(1)(ab) inserted by No. 27/2025 s. 22.

(ab) with the consent of the parties to the dispute, certify that the parties agree to resolve the dispute;

(b) with the consent of the parties to the dispute, refer the dispute for further conciliation by ACCS;

(c) adjourn the dispute;

(d) dismiss the dispute.

(2) Unless a court determines otherwise, ACCS may arbitrate with respect to a dispute and make a determination in respect of a dispute even though the dispute is pending determination in a proceeding for damages at common law brought under—

(a) Part 7; or

(b) Part IV of the **Accident Compensation Act 1985**.

301L Dispute resolved by parties or referred for further conciliation

S. 301L (Heading) amended by No. 27/2025 s. 23(1).

S. 301L inserted by No. 15/2021 s. 35.

(1) Nothing in this Subdivision prevents the parties to a dispute from resolving the dispute by agreement at any time before ACCS makes a determination in respect of the dispute.

S. 301L(1A) inserted by No. 27/2025 s. 23(2).

(1A) If the parties to a dispute resolve the dispute by agreement, ACCS may certify the agreement in accordance with Subdivision 5.

(2) If at any time before making a determination in respect of a dispute, ACCS determines that the dispute would be more appropriately dealt with by further conciliation, ACCS may, with the consent of both parties to the dispute, refer the dispute or any part of the dispute for further conciliation.

301M Adjournment of dispute

S. 301M inserted by No. 15/2021 s. 35.

ACCS may adjourn the arbitration of a dispute—

(a) to allow a guardian to be appointed under the **Guardianship and Administration Act 2019** for a party to the dispute; or

(b) for any other appropriate reason.

S. 301N inserted by No. 15/2021 s. 35.

301N Dismissal of dispute

(1) ACCS may dismiss a dispute from arbitration without making a determination—

(a) if a party to the dispute is no longer able to participate in the arbitration; or

(b) for any other appropriate reason.

(2) In determining whether to dismiss a dispute, ACCS must have regard to any matters specified in any policies and procedures of ACCS published under section 301ZB.

(3) If ACCS dismisses a dispute from arbitration and is satisfied that there is a genuine dispute in connection with the claim within the meaning of section 298, ACCS must notify the parties to the dispute that—

(a) ACCS is satisfied that there is a genuine dispute in connection with the claim; and

(b) the claimant may apply—

(i) to a court of competent jurisdiction to have the matter determined by the court; or

(ii) subject to section 301C, to ACCS to have the matter determined by further arbitration.

S. 301O inserted by No. 15/2021 s. 35.

301O Arbitration hearing procedures

(1) Subject to this Division, for the purposes of conducting an arbitration hearing, ACCS—

(a) may inform itself in any manner it thinks fit; and

(b) is bound by the rules of natural justice; and

(c) is not bound by the rules of evidence; and

(d) must act as expeditiously and with as little formality as possible, without regard to technicalities and legal forms.

(2) ACCS must act in accordance with any Ministerial guidelines made under section 301ZA.

(3) ACCS may draw an inference adverse to a party to the dispute if that party fails or refuses to—

(a) produce to ACCS all documents in the party's possession, custody or power that relate to the dispute and are reasonably available to the party; or

(b) disclose to ACCS all information that relates to the dispute.

301P Time period in which determination must be made

S. 301P inserted by No. 15/2021 s. 35.

(1) An arbitration hearing convened for the purposes of determining a dispute must conclude within 60 days of the date on which the arbitration hearing is commenced.

(2) ACCS must make a determination in respect of a dispute referred for arbitration within 14 days after the conclusion of the arbitration hearing.

(3) ACCS may, in exceptional circumstances, extend the time by which ACCS must make a determination of a dispute.

(4) In determining whether to grant an extension of time under subsection (3), ACCS must take into account any submissions made by the parties as to whether it is appropriate to do so.

301Q Periods in which time does not accrue

S. 301Q inserted by No. 15/2021 s. 35.

A time period referred to in section 301F(2) or 301P(1) or (2) does not accrue during the period—

(a) commencing on the day that a medical question in the dispute is referred to a Medical Panel under section 284 or 285 and concluding on the day of receipt of the written opinion and written statement of reasons from the Medical Panel in relation to that question; or

(b) commencing on the day that any information is requested under section 301I and concluding on the day of receipt of the requested information; or

(c) commencing on the day that the arbitration of a dispute is adjourned under section 301M and concluding on the day on which the arbitration of the dispute is resumed.

S. 301R inserted by No. 15/2021 s. 35.

301R Determination

(1) Subject to this Act, ACCS may make any determination in relation to a dispute or any part of a dispute as ACCS thinks fit.

(2) A determination under subsection (1) may only be made in relation to the matters referred for arbitration.

(3) A determination under subsection (1) may be made subject to conditions.

(4) Subject to subsection (2), ACCS may make an ancillary determination in relation to the matters referred for arbitration if ACCS determines it to be appropriate for the purposes of achieving the arbitrated outcome.

S. 301S inserted by No. 15/2021 s. 35.

301S ACCS may make determination about compensation

Without limiting section 301R, ACCS may do any of the following in a determination made under that section in respect of a dispute or part of a dispute—

(a) confirm, vary or revoke a decision made by the Authority, an employer or a self-insurer in relation to any of the following—

(i) liability for the payment of compensation to the claimant;

(ii) the amount of compensation to which the claimant is entitled;

(b) order that the Authority, employer or self-insurer determine in accordance with this Act the amount of compensation to which the claimant is entitled;

(c) order the Authority, employer or self-insurer to pay to the claimant any of the following—

(i) weekly payments of an amount calculated in accordance with Part 5 and for a period not exceeding a total of 52 weeks;

(ii) any consequential superannuation payments;

(iii) interest payable;

(d) order the Authority, employer or self-insurer to pay the claimant's medical and like expenses of a total amount not exceeding $20 000.

301T When determination has effect

S. 301T inserted by No. 15/2021 s. 35.

A determination of ACCS comes into effect immediately after it is made or at such later time as specified in the determination.

301U Determination certificates to be issued

S. 301U inserted by No. 15/2021 s. 35.

(1) ACCS must issue a determination certificate within 14 days of the conclusion of an arbitration hearing.

(2) The determination certificate must—

(a) be in a form approved by ACCS; and

(b) be provided to the claimant and the employer and the Authority or self-insurer; and

(c) set out any terms on which the dispute is determined; and

(d) set out any conditions of the determination; and

(e) set out any ancillary determinations in relation to the dispute; and

(f) certify that each party to the dispute is bound by the result; and

(g) state that the determination certificate is evidence of—

(i) the determination of the dispute between the parties; and

(ii) the terms on which the dispute has been determined; and

(h) state that the determination of ACCS comes into effect immediately after it is given or at such later time as specified in the determination certificate; and

(i) specify the appeal rights (if any) available to the parties to the dispute.

(3) The determination certificate is admissible in any court proceeding as evidence of—

(a) the determination of the dispute between the parties; and

(b) the terms on which the dispute has been determined.

301V Reasons for determination

S. 301V inserted by No. 15/2021 s. 35.

(1) Subject to subsection (2), ACCS is not required to provide written reasons for a determination.

(2) ACCS must provide written reasons for a determination on the request of a party to the dispute.

(3) A written transcript of the part of the arbitration hearing in which reasons for a determination are given orally is sufficient for compliance with the requirement under subsection (2) to provide written reasons on request.

301W Costs

S. 301W inserted by No. 15/2021 s. 35.

(1) If ACCS determines a dispute referred to arbitration in favour of the claimant in the dispute, ACCS must award the claimant an amount fixed by the Minister in accordance with subsection (4) and paid—

(a) if the other party to the dispute is the Authority or an employer—out of the WorkCover Authority Fund; or

(b) if the other party to the dispute is a self-insurer—by the self-insurer.

(2) Regardless of the outcome of an arbitration hearing, the Authority, an employer or self-insurer (as the case requires) is liable to bear their own costs, unless ACCS orders otherwise in accordance with subsection (3).

(3) ACCS may order the claimant to pay costs of the other party if ACCS determines that the claim is fraudulent or vexatious.

(4) For the purposes of subsection (1), the Minister may, by notice published in the Government Gazette, fix amounts payable in respect of the reasonable costs of a claimant.

S. 301WA inserted by No. 27/2025 s. 24.

301WA Costs for arbitration of dispute that is resolved at further conciliation

(1) ACCS may award a claimant in a dispute costs in accordance with the amounts fixed by the Minister under section 301W(4) if—

(a) at any time before determining the dispute, ACCS refers the dispute or any part of the dispute for further conciliation; and

(b) an outcome certificate is issued in respect of the dispute or part of the dispute and the resolution is in favour of the claimant.

(2) An amount awarded by ACCS to a claimant under subsection (1) must only relate to the costs of the claimant that were incurred during the arbitration of the dispute.

(3) An amount awarded to a claimant under this section must be paid—

(a) if the other party to the dispute is the Authority or an employer—out of the WorkCover Authority Fund; or

(b) if the other party to the dispute is a self-insurer—by the self-insurer.

S. 301X inserted by No. 15/2021 s. 35.

301X Enforcement of determination

(1) A person who is entitled to the payment of money under a determination of ACCS may enforce the determination by filing in a court of competent jurisdiction—

(a) a certified copy of the determination certificate; and

(b) an affidavit as to the amount not paid under the determination.

(2) No charge is to be paid by the person filing a copy of the determination.

301Y Determination is binding

S. 301Y inserted by No. 15/2021 s. 35.

Except as otherwise provided by this Act, a determination of ACCS in an arbitration hearing is final and binding on the parties and is not subject to appeal or review in the County Court or the Magistrates' Court.

301Z Appeal to Supreme Court

S. 301Z inserted by No. 15/2021 s. 35.

(1) A party to a dispute may appeal on a question of law from a determination of the dispute by ACCS to the Trial Division of the Supreme Court with leave of the Trial Division.

(2) An application for leave to appeal to the Trial Division of the Supreme Court must be made—

(a) within 28 days after the day of the determination of ACCS, unless the rules of the Supreme Court otherwise provide; and

(b) in accordance with the rules of the Supreme Court.

(3) On the hearing of an appeal by the Supreme Court, the Court may—

(a) make any order the Court thinks fit; and

(b) by order confirm, vary or revoke a determination of ACCS.

301ZA Ministerial guidelines for arbitrations

S. 301ZA inserted by No. 15/2021 s. 35.

(1) The Minister may make guidelines in accordance with section 611 as to the procedures of ACCS for the purposes of—

(a) ensuring procedural fairness in the conduct of arbitration hearings; and

(b) facilitating the proper administration of ACCS for arbitration hearings.

(2) Without limiting subsection (1), the Minister may make guidelines in relation to—

(a) the organisation of ACCS for the purposes of conducting arbitration hearings; and

(b) records to be kept by ACCS in relation to arbitration hearings; and

(c) reasons for which extensions of time may be granted under section 301P; and

(d) the assessment of costs in arbitration hearings, other than any costs fixed by the Minister under section 301W(4); and

(e) any other relevant matters determined by the Minister.

S. 301ZB inserted by No. 15/2021 s. 35.

301ZB ACCS policies and procedures for arbitrations

(1) Subject to this Division, ACCS may make its own arrangements for the conduct of arbitrations and any related matters but must do so in accordance with any Ministerial guidelines made under section 301ZA.

(2) ACCS must ensure that any policies and procedures developed by ACCS in relation to the conduct of arbitrations are published on a Government Internet website.

Pt 6 Div. 2 Subdiv. 5 (Heading and ss 301ZC, 301ZD) inserted by No. 27/2025 s. 25.

Subdivision 5—Resolution by agreement of parties to dispute

S. 301ZC inserted by No. 27/2025 s. 25.

301ZC Certification of agreement for resolution of dispute

(1) At any time before a dispute that has been referred to arbitration has been determined under Subdivision 4 or referred for further conciliation,

the parties to the dispute may request ACCS to certify an agreement reached between the parties as to the resolution of the dispute.

(2) Within 7 days of receiving a request under subsection (1), ACCS must issue a certificate to certify that the parties to the agreement have resolved the dispute by consent.

(3) A resolution certificate must—

(a) be in a form approved by ACCS; and

(b) be provided to the claimant and the employer and the Authority or self-insurer; and

(c) certify that each party to the dispute is bound by the agreement; and

(d) state that the resolution certificate is evidence of the resolution of the dispute between the parties.

(4) The resolution certificate is admissible in any court proceeding as evidence of the resolution of the dispute between the parties.

301ZD Costs

S. 301ZD inserted by No. 27/2025 s. 25.

(1) If an agreement certified by ACCS under this Subdivision does not include an agreement as to liability for the costs of the parties to the dispute, ACCS may award the claimant in the dispute costs in accordance with the amounts fixed by the Minister under section 301W(4).

(2) If an agreement certified by ACCS under this Subdivision includes an agreement as to liability for the costs of the parties to the dispute calculated in accordance with the amounts fixed by the Minister under section 301W(4), ACCS may award the claimant in the dispute the amount specified in the agreement.

(3) An amount awarded to a claimant under this section must be paid—

(a) if the other party to the dispute is the Authority or an employer—out of the WorkCover Authority Fund; or

(b) if the other party to the dispute is a self-insurer—by the self-insurer.

Division 3—Medical Panels

302 Function of Medical Panel

S. 302(1) amended by No. 73/2016 s. 21(2).

(1) The function of a Medical Panel is to give its opinion on any medical question in respect of injuries arising out of, or in the course of, or due to the nature of, employment referred by ACCS, the court, VCAT, the Authority or a self-insurer.

(2) A Medical Panel must give its opinion on a medical question in accordance with this Division.

303 Procedures and powers

(1) A Medical Panel is not bound by rules or practices as to evidence, but may inform itself on any matter relating to a reference in any manner it thinks fit.

(2) The Medical Panel must act informally, without regard to technicalities or legal forms and as speedily as a proper consideration of the reference allows.

(3) The Minister may, for the purposes of—

(a) ensuring procedural fairness in the procedures of the Medical Panels; and

(b) facilitating the proper administration of the Medical Panels—

make guidelines as to the procedures of Medical Panels.

(4) The Minister must consult with the Attorney-General before making any guidelines under this section.

(5) Guidelines made by the Minister under this section must be published in the Government Gazette and on a Government Internet website.

(6) The Convenor may give directions as to the arrangement of the business of the Medical Panels but must not give directions inconsistent with any guidelines made by the Minister.

304 Reference of medical question

A person or body referring a medical question to a Medical Panel must give the Convenor—

(a) a document specifying—

(i) the injury or alleged injury to, or in respect of, which the medical question relates; and

(ii) the facts or questions of fact relevant to the medical question that the person or body is satisfied have been agreed and those facts or questions that are in dispute; and

(b) copies of all documents relating to the medical question in the possession of that person or body.

305 Convenor to convene Medical Panel

If a medical question is referred to the Convenor under section 304, subject to section 306(1), the Convenor must, as expeditiously as possible—

(a) convene a Medical Panel; and

(b) give the Medical Panel the documents received by the Convenor with the reference.

306 When opinion on medical question may not be given

S. 306(1) amended by Nos 73/2016 s. 21(2), 15/2021 s. 36.

(1) Despite sections 302(2) and 313(1), if ACCS refers a medical question to a Medical Panel under section 284 and it becomes apparent to the Convenor or the Medical Panel that the formation of an opinion by the Medical Panel on the medical question will depend substantially on the resolution of factual issues which are more appropriately determined by a court or in arbitration than by a Medical Panel—

(a) the Convenor may decline to convene a Medical Panel; or

(b) the Medical Panel may decline to give an opinion on the medical question.

S. 306(2) amended by No. 73/2016 s. 21(3).

(2) The Convenor must inform ACCS, in writing, of a decision made by the Convenor or the Medical Panel under subsection (1)(a) or (b).

307 What a Medical Panel may ask a worker to do

A Medical Panel may ask a worker to do any or all of the following—

(a) to meet with the Medical Panel and answer questions;

(b) to supply copies of all documents in the possession of the worker which relate to the medical question to the Medical Panel;

(c) to submit to a medical examination by the Medical Panel or by a member of the Medical Panel.

308 Examination by Medical Panel

S. 308(1) amended by No. 73/2016 s. 21(10).

(1) ACCS, a court, the Authority or a self-insurer may, at any time or from time to time, require any worker who—

(a) claims compensation under this Act or the **Accident Compensation Act 1985**; or

(ab) receives provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**; or

S. 308(1)(ab) inserted by No. 5/2021 s. 21.

(b) receives weekly payments of compensation under this Act or the **Accident Compensation Act 1985**—

to submit himself or herself for examination by a Medical Panel on a date and at a place arranged by the Convenor of Medical Panels.

(2) A Medical Panel may refuse to proceed with an examination if—

(a) the worker has submitted himself or herself for examination by a medical practitioner in accordance with a requirement of the Authority or self-insurer or has been examined by a medical practitioner selected by the worker; and

(b) the Authority or self-insurer or the worker (as the case may be) has furnished the other with a copy of the medical practitioner's report of the examination; and

(c) the Medical Panel is not provided with a copy of that report.

309 If worker unreasonably refuses to comply with request under section 307

(1) If a worker unreasonably refuses to comply with a request under section 307 or in any way hinders the examination—

(a) the worker's rights to recover compensation under this Act or the **Accident Compensation Act 1985** with respect to the injury; or

(b) the worker's rights to weekly payments under this Act or the **Accident Compensation Act 1985**—

are suspended until the examination has taken place.

(2) When the examination takes place, any period between the date on which the request was made or the worker in any way hindered the examination and the date of the examination must be taken into account for the purpose of calculating, subject to this Act, a period of time for the purposes of this Act or the **Accident Compensation Act 1985**.

(3) Any weekly payments which would otherwise be payable during the period of suspension are forfeited.

310 Attendance before Medical Panel to be in private

(1) Any attendance of a worker before a Medical Panel must be in private, unless the Medical Panel considers that it is necessary for another person to be present.

(2) If a worker is a minor or a person under a disability, the Medical Panel must permit a representative of the worker to be present.

(3) In this section, ***representative of the worker*** means—

S. 310(3)(a) amended by No. 13/2019 s. 221(Sch. 1 item 62).

(a) if proceedings have not been commenced in respect of the worker's claim, an administrator appointed for the worker under the **Guardianship and Administration Act 2019**; or

(b) if proceedings have commenced in respect of the worker's claim—

(i) the worker's litigation guardian; or

(ii) a person appointed by the court to be a representative of the worker for the purposes of subsection (2).

311 Medical Panel can ask provider of medical service to attend

If a Medical Panel so requests and the worker consents, a person who is a provider of a medical service (within the meaning of paragraph (a) of the definition of ***medical service*** in section 3) and has examined the worker must—

(a) meet with the Medical Panel and answer questions; and

(b) supply relevant documents to the Medical Panel.

312 Medical Panel may request further information

(1) If a medical question has been referred to a Medical Panel and the Medical Panel considers that further information is required to enable it to form a medical opinion on the question—

(a) the Medical Panel may request the worker, or the person or body referring the medical question, to provide the information within the period specified in the request, not being a period less than 14 days after the date on which the worker last attended for examination by the Medical Panel; and

(b) the Medical Panel must consider the information provided; and

(c) the time limit specified in section 313(1) is suspended from the date on which the request under paragraph (a) is made until the end of the period specified in the request.

(2) The Medical Panel may accept any further information requested under subsection (1)(a) which is provided after the period specified in the request under subsection (1).

313 Opinions

S. 313(1) amended by No. 44/2014 s. 12.

(1) Subject to section 312, a Medical Panel must form its opinion on a medical question referred to it—

(a) within 60 days after the Medical Panel receives from the Convenor the documents relating to the medical question; or

S. 313(1)(b) amended by No. 73/2016 s. 21(3).

(b) within such longer period as is agreed by ACCS, a court, VCAT, the Authority or the self-insurer.

(2) The Medical Panel to whom a medical question is so referred must give a certificate as to its opinion and a written statement of reasons for that opinion.

S. 313(3) amended by No. 73/2016 s. 21(13).

(3) Within 7 days after forming its opinion on a medical question referred to it, a Medical Panel must give ACCS, the court, VCAT or the Authority or the self-insurer its written opinion and a written statement of reasons for that opinion.

(4) For the purposes of determining any question or matter, the opinion of a Medical Panel on a medical question referred to the Medical Panel—

(a) is to be adopted and applied by any court, body or person; and

(b) must be accepted as final and conclusive by any court, body or person—

irrespective of who referred the medical question to the Medical Panel or when the medical question was referred.

Division 4—Determination by courts and recognition of determinations

314 Determination of State with which worker's employment is connected in proceedings under this Act

S. 314(1) amended by No. 5/2021 s. 22.

(1) If the question of whether this State is connected with a worker's employment arises in proceedings in a court in relation to a claim for compensation under this Act or the **Accident Compensation Act 1985** or a request for provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**, that court must—

(a) determine the State with which the worker's employment is connected in accordance with section 37; and

(b) cause that determination to be entered in the records of the court.

(2) Subsection (1) does not apply if there is a determination that is to be recognised under section 316.

315 Determination of the State with which worker's employment is connected

S. 315(1) amended by No. 5/2021 s. 23.

(1) If a claim for compensation under this Act or the **Accident Compensation Act 1985** or a request for provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985** has been made, a party to the claim or request may apply to the court for a determination of the question of which State is the State with which the worker's employment is connected.

(2) The court must determine an application under subsection (1) in accordance with section 37 and cause that determination to be entered in the records of the court.

(3) An application under subsection (1) is not to be made or heard if there is a determination that is to be recognised under section 316.

316 Recognition of previous determinations

(1) If a determination of the State with which a worker's employment is connected has been made—

(a) by a court of this State under section 314 or 315; or

(b) by a designated court under a provision of a law that corresponds with section 314 or 315; or

(c) by a court of this State or another State in the course of proceedings on a claim for damages—

the State so determined is to be recognised for the purposes of this Act or the **Accident Compensation Act 1985** as the State with which the worker's employment is connected.

(2) This section does not prevent any appeal relating to any such determination of a court and, if the determination is altered on appeal, the altered determination is to be recognised under subsection (1).

(3) In this section—

corresponding law means the provisions of the statutory workers compensation scheme of another State that corresponds with section 37;

designated court means—

(a) the Supreme Court of a State in which a corresponding law is in force; or

(b) a court, tribunal or other decision-making body of a State in which a corresponding law is in force that is declared by the Minister to be a designated court for the purposes of this section by a notice published in the Government Gazette;

State includes Territory.

317 Determination may be made by consent

In this Division a reference to a determination made by a court or a designated court in a proceeding includes a reference to a determination made by the court with the consent of the parties to the proceeding.

Part 7—Actions and proceedings for damages

Division 1—Choice of law

318 Claims to which this Division applies

(1) This Division applies only to a claim for damages or recovery of contribution brought against a worker's employer in respect of an injury that was caused by—

(a) the negligence or other tort (including breach of statutory duty) of the worker's employer; or

(b) a breach of contract by the worker's employer.

(2) This Division also applies to a claim for damages or recovery of contribution brought against a person other than a worker's employer in respect of an injury if—

(a) the worker's employment is connected with Victoria; and

(b) the negligence or other tort or the breach of contract on which the claim is founded occurred in Victoria.

(3) Subsections (1)(a) and (2) apply even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.

(4) A reference in this Division to a worker's employer includes a reference to—

(a) a person who is vicariously liable for the acts of the employer; and

(b) a person for whose acts the employer is vicariously liable.

319 The applicable substantive law for work injury damages claims

(1) If there is an entitlement to compensation under the statutory workers compensation scheme of a State in respect of an injury to a worker (whether or not compensation has been paid), the substantive law of that State is the substantive law that governs—

(a) whether or not a claim for damages in respect of the injury can be made; and

(b) if it can be made, the determination of the claim.

(2) This Division does not apply if compensation is payable in respect of the injury under the statutory workers compensation scheme of more than one State.

(3) For the purposes of this section, compensation is considered to be payable under a statutory workers compensation scheme of a State in respect of an injury if compensation in respect of it—

(a) would have been payable but for a provision of the scheme that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision; or

(b) would have been payable if a claim for that compensation had been duly made, and (where applicable) an election to claim that compensation (instead of damages) had been duly made.

(4) A reference in this section to compensation payable in respect of an injury does not include a reference to compensation payable on the basis of the provisional acceptance of liability.

(5) In this Division, ***State*** includes Territory.

320 What constitutes injury and employment and who is employer

For the purposes of this Division—

(a) ***injury*** and ***employer*** include anything that is within the scope of a corresponding term in the statutory workers compensation scheme of another State; and

(b) the determination of what constitutes employment or whether or not a person is the worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers compensation scheme of another State.

321 Claim in respect of death included

For the purposes of this Division, a claim for damages in respect of death resulting from an injury is to be considered as a claim for damages in respect of the injury.

322 Meaning of *substantive law*

In this Division—

a State's legislation about damages for a work related injury means—

(a) for this State, this Part, Part 10 and any other provision of this Act providing for the interpretation of anything in this Part; and

(b) for any other State, any provisions of a law of the State that is declared by the Minister to be the State's legislation about damages for a work related injury for the purposes of this section by a notice published in the Government Gazette;

substantive law includes—

(a) a law that establishes, modifies or extinguishes a cause of action or a defence to a cause of action; and

(b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgment of that time); and

(c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not commenced within a particular time limit; and

(d) a law that limits the kinds of injury, loss or damage for which damages or compensation may be recovered; and

(e) a law that precludes the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered; and

(f) a law expressed as a presumption, or rule of evidence, that affects substantive rights; and

(g) a provision of a State's legislation about damages for a work related injury, whether or not it would be otherwise regarded as procedural in nature—

but does not include a law prescribing rules for choice of law.

323 Availability of action in another State not relevant

(1) It makes no difference for the purposes of this Division that, under the substantive law of another State—

(a) the nature of the circumstances is such that they would not have given rise to a cause of action had they occurred in that State; or

(b) the circumstances on which the claim is based do not give rise to a cause of action.

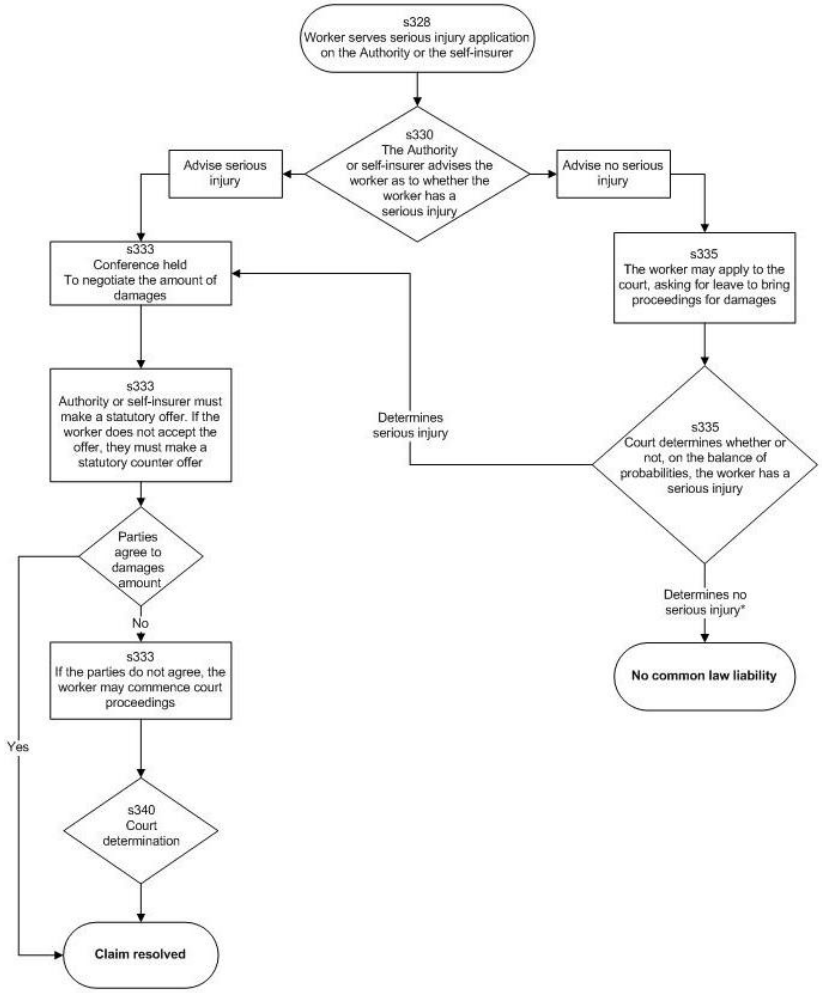
(2) In this section, ***another State*** means a State other than the State with which the worker's employment is connected.

Division 2—Actions for damages

Subdivision 1—Preliminary

Pt 7 Div. 2 Subdiv. 1 (Heading) inserted by No. 10/2022 s. 75.

324 Flow chart 8—common law process



+ The worker must be found to have a serious injury to be eligible to recover common law damages

325 Definitions

(1) In this Division—

determination date, in relation to an injury, means—

(a) if the worker is assessed under Division 4 of Part 5 or under section 104B of the **Accident Compensation Act 1985** to have a degree of impairment of 30 per cent or more, the date on which the worker receives advice under section 330(1)(a); or

(b) the date on which the Authority or self-insurer issues a certificate under section 335(2)(c) consenting to the bringing of proceedings; or

(c) if the Authority or self-insurer fails to advise the worker in writing as required by section 330(1) within the period referred to in section 330(1), the date on which, under section 330(3), the injury is deemed to be a serious injury; or

(d) the date—

(i) unless subparagraph (ii) applies, on which a court gives leave under section 335(2)(d); or

(ii) on which an appeal by the Authority, self-insurer or worker in relation to a decision of a court under section 335(2)(d) is determined—

whichever is the later date;

medical report means—

(a) a statement in writing on medical matters concerning the worker, made by a medical practitioner; and

(b) includes any document which the medical practitioner intends should be read with the statement, whether the document—

(i) was in existence at the time the statement was made; or

(ii) was a document which he or she obtained or caused to be brought into existence subsequently;

pain and suffering includes loss of amenities of life or loss of enjoyment of life;

pecuniary loss damages means damages for loss of earnings, loss of earning capacity, loss of value of services or any other pecuniary loss or damage;

response date means the date on which the period of 28 days after the determination date expires;

serious injury means—

(a) permanent serious impairment or loss of a body function; or

(b) permanent serious disfigurement; or

(c) permanent severe mental or permanent severe behavioural disturbance or disorder; or

(d) loss of a foetus.

(2) For the purposes of the assessment of ***serious injury*** in accordance with section 335(2) and (5)—

(a) the following definitions apply—

foetus has the same meaning as in section 214(2);

income from personal exertion has the same meaning as in section 6(2) of the **Transport Accident Act 1986**;

(b) the terms ***serious*** and ***severe*** are to be satisfied by reference to the consequences to the worker of any impairment or loss of a body function, disfigurement, or mental or behavioural disturbance or disorder, as the case may be, with respect to—

(i) pain and suffering; or

(ii) loss of earning capacity—

when judged by comparison with other cases in the range of possible impairments or losses of a body function, disfigurements, or mental or behavioural disturbances or disorders, respectively;

(c) an impairment or loss of a body function or a disfigurement is not to be held to be serious for the purposes of section 335(2) unless—

(i) the pain and suffering consequence; or

(ii) the loss of earning capacity consequence—

is, when judged by comparison with other cases, in the range of possible impairments or losses of a body function, or disfigurements, as the case may be, fairly described as being more than significant or marked, and as being at least very considerable;

(d) a mental or behavioural disturbance or disorder is not to be held to be severe for the purposes of section 335(2) unless—

(i) the pain and suffering consequence; or

(ii) the loss of earning capacity consequence—

is, when judged by comparison with other cases, in the range of possible mental or behavioural disturbances or disorders, as the case may be, fairly described as being more than serious to the extent of being severe;

(e) if a worker relies upon paragraph (a), (b) or (c) of the definition of ***serious injury*** in subsection (1), the Authority or self-insurer must not issue a certificate under section 335(2)(c), and a court must not grant leave under section 335(2)(d), on the basis that the worker has established the loss of earning capacity required by paragraph (b) unless the worker establishes in addition to the requirements of paragraph (c) or (d), as the case may be, that—

(i) at the date of a decision under section 335(2)(c) or at the date of the hearing of an application under section 335(2)(d), the worker has a loss of earning capacity of 40 per cent or more, measured (except in the case of a worker referred to in item 1 of Schedule 2 or a worker under the age of 26 years at the date of the injury) as set out in paragraph (f); and

(ii) the worker (including a worker referred to in item 1 of Schedule 2 or a worker under the age of 26 years at the date of the injury) will, after the date of the

decision or of the hearing, continue permanently to have a loss of earning capacity which will be productive of financial loss of 40 per cent or more;

(f) for the purposes of paragraph (e)(i), a worker's loss of earning capacity is to be measured by comparing—

(i) the worker's gross income from personal exertion (expressed at an annual rate) which the worker is—

(A) earning, whether in suitable employment or not; or

(B) capable of earning in suitable employment—

as at that date, whichever is the greater, and—

(ii) the gross income (expressed at an annual rate) that the worker was earning or was capable of earning from personal exertion or would have earned or would have been capable of earning from personal exertion during that part of the period within 3 years before and 3 years after the injury as most fairly reflects the worker's earning capacity had the injury not occurred;

(g) a worker does not establish the loss of earning capacity required by paragraph (b) if the worker, taking into account the worker's capacity for suitable employment after the injury and, where applicable, the reasonableness of the worker's attempts to participate in rehabilitation or retraining—

(i) has; or

(ii) after rehabilitation or retraining, would have—

a capacity for any employment including alternative employment or further or additional employment which, if exercised, would result in the worker earning more than 60 per cent of gross income from personal exertion as determined in accordance with paragraph (f) had the injury not occurred;

(h) the psychological or psychiatric consequences of a physical injury are to be taken into account only for the purposes of paragraph (c) of the definition of ***serious injury*** and not otherwise;

(i) the physical consequences of a mental or behavioural disturbance or disorder are to be taken into account only for the purposes of paragraph (c) of the definition of ***serious injury*** and not otherwise;

(j) the assessment of serious injury must be made at the time that the application is heard by the court, unless sections 348 and 358 apply;

(k) the monetary thresholds and statutory maximums specified by or under section 340 must be disregarded for the purposes of the assessment of serious injury.

326 Actions for damages

A worker who is, or the dependants of a worker who are, or may be, entitled to compensation in respect of an injury arising out of, or in the course of, or due to the nature of, employment must not, in proceedings in respect of the injury, recover any damages for pecuniary or non-pecuniary loss except—

(a) if the injury arises from a transport accident—

(i) in accordance with the **Transport Accident Act 1986** and sections 343 and 347(1) of this Act; or

(ii) in accordance with Part III of the **Wrongs Act 1958**, subject to and in accordance with the **Transport Accident Act 1986** and section 366(7)(a) and (b) of this Act; or

(b) in proceedings, in accordance with sections 343 and 347(1), to which the employer is not a party if—

(i) by reason of section 46(1), the injury is deemed to have arisen out of, or in the course of, employment; and

(ii) the worker's place of employment is a fixed place of employment; and

(iii) the injury did not occur while the worker was present at that fixed place of employment; or

(c) as permitted by and in accordance with this Division, Division 3 or section 366.

327 Actions for damages—serious injury

Subject to this Division, a worker may recover damages in respect of an injury arising out of, or in the course of, or due to the nature of, employment if the injury is a serious injury.

Subdivision 2—Proceedings for damages

Pt 7 Div. 2 Subdiv. 2 (Heading) inserted by No. 10/2022 s. 76.

328 Proceedings under this Division

(1) Subject to subsection (3), a worker may not bring proceedings in accordance with this Division unless—

(a) a determination of the degree of impairment of the worker has been made under Division 4 of Part 5 of this Act or under section 104B of the **Accident Compensation Act 1985** and the worker has made an application under subsection (2) of this section; or

(b) subject to any directions given by the Minister under section 352, the worker elects to make an application under subsection (2) on the ground that the worker has a serious injury.

(2) Subject to subsection (3), a worker may make an application under this subsection—

(a) if subsection (1)(a) applies, only after the worker—

(i) has advised the Authority or self-insurer under section 205(3) or 206(3) of this Act or under section 104B(6B) or (7B) of the **Accident Compensation Act 1985** that he or she accepts the determinations of degree of impairment; or

(ii) has received the advice of the Authority or self-insurer under section 207(3) of this Act or under section 104B(10) of

the **Accident Compensation Act 1985**; or

(b) if subsection (1)(b) applies, only after a period of at least 18 months has elapsed since the event or circumstance giving rise to the injury occurred.

(3) If a worker has made a claim for compensation under Division 5 of Part 5 or under section 98C of the **Accident Compensation Act 1985** in respect of an injury, the worker must not make an application under subsection (2) in respect of that injury unless—

(a) the degree of impairment resulting from the injury has been determined in accordance with Division 4 of Part 5 or under section 104B of the **Accident Compensation Act 1985**; and

(b) the worker has accepted the determination of the degree of impairment; and

(c) the worker has accepted the entitlement to compensation.

(4) An application under subsection (2) must—

(a) be in a form approved by the Authority; and

(b) be accompanied by an authority in a form approved by the Authority, signed by the worker, authorising the release of medical information to the Authority or a self-insurer relevant to the application; and

(c) be accompanied by—

(i) a copy of all medical reports; and

(ii) affidavits attesting to other material—

existing when the application is made and of which the worker or his or her legal representative is aware and on which the

worker intends to rely, or the substance of which the worker intends to adduce in evidence, in proceedings in accordance with this section or in any related proceedings.

(5) An authority to release information referred to in subsection (4)(b) has effect and cannot be revoked by the worker—

(a) until all proceedings brought in accordance with this Division have been heard and determined or compromised; or

(b) the worker withdraws his or her application.

(6) A copy of—

(a) any claim under Division 4 of Part 5 or under section 104B of the **Accident Compensation Act 1985** resulting in a determination referred to in subsection (1); and

(b) an application under subsection (2)—

must be served on each person against whom the applicant claims to have a cause of action.

(7) If a worker suffers an injury referred to in section 5(2)—

(a) this Division applies; and

(b) the worker cannot make an application under Division 8A of Part IV of the **Accident Compensation Act 1985**.

329 Medical examination

If the worker—

(a) unreasonably refuses to comply with a request by the Authority or self-insurer that the worker submit to a medical examination to be paid for by the Authority or self-insurer; or

(b) in any way hinders such a medical examination—

the period between the date on which the worker so refused to comply, or hindered the medical examination, and the date of the medical examination must be disregarded in calculating the period referred to in section 330(1).

S. 329A inserted by No. 10/2022 s. 82.

329A Calculation of period of time for certain matters

In calculating a period of time for the purpose of section 330, 331, 332, 333, 334, 335 or 337, the period from 24 December to 9 January next following must be disregarded.

330 Authority or self-insurer to respond to application

(1) The Authority or self-insurer must, within 120 days (or such other period as may be specified in directions given under section 352) of receiving the application, advise the worker in writing—

(a) that the worker is deemed to have a serious injury; or

(b) if the worker is not deemed to have a serious injury, whether or not the Authority or self-insurer will issue a certificate under section 335(2)(c).

(2) The advice referred to in subsection (1)(a) must be accompanied by—

(a) a copy of all medical reports; and

(b) affidavits attesting to such other material—

existing when the advice is given and—

(c) of which the employer, Authority or self-insurer or the legal representative of any of them is aware; and

(d) on which the employer, Authority or self-insurer intends to rely or the substance of which the employer, Authority or self-insurer intends to adduce in evidence in proceedings brought by the worker in accordance with this Division or in any related proceedings.

(3) If the Authority or self-insurer fails to advise the worker in writing within the period referred to in subsection (1) as required by that subsection, the worker is deemed to have suffered a serious injury.

331 Response by applicant

The worker, within 28 days after receiving the advice referred to in section 330(1) and (2), may give to the Authority or self-insurer an affidavit attesting to any further material (whether or not existing before the worker made the application under section 328(2)) in rebuttal of the material (other than medical reports) attested to in affidavits accompanying the advice.

332 Certain material not admissible in proceedings

In proceedings in accordance with this Division, a medical report or other material is inadmissible in evidence—

(a) on behalf of the Authority or self-insurer if—

(i) it was in existence, and the employer, Authority or self-insurer, or the legal representative or any of them, was aware of it before the date by which the advice of the Authority or self-insurer is required to be given under section 330(1) and (2); and

(ii) it had not been disclosed to the worker in accordance with section 330; or

(b) on behalf of the worker if—

(i) it was in existence, and the worker or the worker's legal representative was aware of it, before the expiration of 28 days after receiving the advice under section 330; and

(ii) it had not been disclosed to the other party in accordance with section 328(4) or in an affidavit under section 331.

S. 333 amended by No. 44/2014 s. 13(1).

333 Conference before proceedings commence

The worker must not commence proceedings in accordance with this Division, other than an application under section 335(2)(d) or the commencement of proceedings with the consent of the Authority under section 337, unless—

(a) the worker and the Authority or self-insurer hold, or begin, a conference within 21 days after the response date; and

(b) the Authority or self-insurer makes a statutory offer in writing in settlement or compromise of the claim at that conference, or after the conference begins but no later than 60 days after the response date; and

(c) if the worker does not accept that statutory offer within 21 days after it is made, the worker, before the expiration of that period, makes a statutory counter offer in writing in settlement or compromise of the claim; and

(d) the Authority or self-insurer does not accept that statutory counter offer within 21 days after it is made; and

(e) the proceedings are commenced—

(i) not earlier than 21 days, and not more than 51 days, after the statutory counter offer is made; or

(ii) if a statutory counter offer is deemed to have been made under section 334(2), not more than 30 days after the day on which the statutory counter offer is deemed to have been made.

* * * * *

S. 332(2) repealed by No. 44/2014 s. 13(2).

334 Statutory offer and counter offer

(1) If the Authority or self-insurer does not make a statutory offer under section 333, the Authority or self-insurer is deemed, for the purposes of that section, to have made, on the 60th day after the response date, a statutory offer of nothing.

(2) If—

(a) the Authority or self-insurer makes a statutory offer under section 333; and

(b) the worker does not make a statutory counter offer under that section—

the worker is deemed, for the purposes of that section, to have made, on the 21st day after the statutory offer was made, a statutory counter offer of the maximum amounts that may be awarded as damages under section 340(a) and (b).

335 Proceedings for damages for serious injury

(1) If the assessment under Division 4 of Part 5 or under section 104B of the **Accident Compensation Act 1985**, made before an application under section 328(2) of this Act is made, of the degree of impairment of the worker as a result of the injury is 30 per cent or more, the injury is deemed to be a serious injury.

(2) If—

(a) the assessment under Division 4 of Part 5 or under section 104B of the **Accident Compensation Act 1985** of the degree of impairment of the worker as a result of the injury is less than 30 per cent; or

(b) the worker makes an application under section 328(2)(b)—

the worker may not bring proceedings for the recovery of damages in respect of the injury unless—

(c) the Authority or self-insurer—

(i) is satisfied that the injury is a serious injury; and

(ii) issues to the worker a certificate in writing consenting to the bringing of the proceedings; or

(d) a court, other than the Magistrates' Court, gives leave to bring the proceedings on the application of the worker made—

(i) within 30 days after the worker received advice under section 330(1); or

(ii) after that period, with the consent of the Authority under section 337(1).

(3) For the purposes of subsection (2), a worker who satisfies subparagraph (i) of section 325(2)(b) but not subparagraph (ii) of that subsection, is entitled to bring proceedings in accordance with subsection (2)(d) of this section for the recovery of damages for pain and suffering only.

(4) A copy of an application under subsection (2) must be served on the Authority or self-insurer and on each person against whom the applicant claims to have a cause of action.

(5) For the purposes of subsection (2)(d)—

(a) a court, other than the Magistrates' Court, must not give leave unless it is satisfied on the balance of probabilities that the injury is a serious injury; and

(b) for the purposes of proving a loss of earning capacity in accordance with subsection 325(2), a worker bears the onus of proving—

(i) any inability to be retrained or rehabilitated or to undertake suitable employment or any employment including alternative or further or additional employment; and

(ii) the extent of that inability.

336 Finding on an application does not give rise to issue estoppel

Any finding made on an application for leave to bring proceedings in respect of the injury does not give rise to an issue estoppel in any proceedings for the recovery of damages brought in accordance with this Division.

337 Authority may consent to bringing of proceedings

(1) If, on the application of a worker, the Authority is satisfied that—

(a) the worker is unable to commence proceedings in accordance with this Division because of the operation of section 335(2)(d); and

(b) the failure to comply with section 335(2)(d) was not due to any fault or omission of the worker or the worker's legal representative—

the Authority may consent to the bringing of an application under section 335(2)(d).

(2) If the Authority is satisfied that a worker is unable to commence proceedings in accordance with this Division because of the operation of section 333, on the application of the worker, the Authority may consent to the commencement of proceedings—

(a) either—

(i) earlier than 21 days after the date the statutory counter offer is made; or

(ii) later than 51 days, but no later than 81 days, after that date—

if the Authority is satisfied that the defence of the proceedings will not be prejudiced; or

(b) later than 81 days after the date the statutory counter offer is made if the Authority is satisfied that the failure to comply with section 333 was not due to any fault or omission of the worker or the worker's legal representative.

338 No further application allowed

If a worker makes an application under section 328(2) in respect of an injury, the worker must not make a further application under that subsection in respect of that injury.

339 Worker not entitled to recover damages for same injury despite review of degree of impairment

If, after a worker has failed to satisfy a court that an injury is a serious injury on an application for leave to bring proceedings in accordance with

section 335(2)(d), the worker obtains under Division 4 of Part 5 or under section 104B of the **Accident Compensation Act 1985** determinations that the degree of impairment of the worker in respect of that injury is 30 per cent or more, the worker is not entitled to recover damages for that injury.

340 Proceedings—limitations on awards

A court must not, in proceedings in accordance with this Division, award to a worker in respect of an injury—

(a) pecuniary loss damages—

(i) if the total pecuniary loss damages assessed, before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** and before the reduction (if any) under section 343(1), is less than $56 650 or that amount as varied in accordance with Division 1 of Part 13 as at the date of the award; or

(ii) in excess of $1 275 570 or that amount as varied in accordance with Division 1 of Part 13 as at the date of the award; or

(b) damages for pain and suffering—

(i) if the total damages for pain and suffering assessed, before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** and before the reduction (if any) under section 343(1), is less than $54 730 or that amount as varied in accordance with Division 1 of Part 13 as at the date of the award; or

(ii) in excess of $555 350 or that amount as varied in accordance with Division 1 of Part 13 as at the date of the award; or

(c) damages of any other kind, other than damages in the nature of interest.

341 Jury not to be informed of certain matters

In the trial of a proceeding brought under this Division, a jury must not be informed—

(a) of the monetary thresholds and statutory maximums specified by or under section 340; or

(b) that any injury in respect of which the proceeding has been brought has been deemed, found, or required to be found, to be a serious injury; or

(c) that the Authority or self-insurer has been satisfied that the injury is a serious injury; or

(d) that the Authority or self-insurer has issued a certificate under section 335(2)(c).

342 Limitation on damages in respect of pecuniary loss

Damages awarded under this Division in respect of pecuniary loss must not include damages in respect of—

(a) any loss suffered or that may be suffered as a result of the incurring of costs or expenses of a kind referred to in Division 7 of Part 5; or

(b) the value of services of a domestic nature or services relating to nursing and attendance—

(i) which have been or are to be provided by another person to the person in whose favour the award is made; and

(ii) for which the person in whose favour the award is made has not paid and is not and will not be liable to pay.

343 Judgments, order for damages, settlement or compromise to be reduced by certain amounts of compensation paid

S. 343 (Heading) amended by No. 44/2014 s. 24(12).

(1) If a judgment, order for damages, settlement or compromise is made or entered in favour of a worker or the dependants of a worker in respect of proceedings referred to in section 326 in respect of an injury, the amount of the judgment, order for damages, settlement or compromise must be reduced by—

S. 343(1)(a) amended by No. 44/2014 s. 24(13).

(a) to the extent that it is in respect of pecuniary loss, the amount of compensation (if any) paid in respect of the injury otherwise than under Division 5 of Part 5 or Division 7 of Part 5 or to the extent that section 93(10)(a) of the **Transport Accident Act 1986** applies, except any such compensation paid in respect of the whole or any part of the period of 18 months after the relevant transport accident;

(b) to the extent that it is in respect of non-pecuniary loss, the amount of compensation (if any) paid in respect of the injury under Division 5 of Part 5 or under section 98C or 98E of the **Accident Compensation Act 1985**.

(2) If the amount of a judgment is subject to a reduction under subsection (1), that reduction must be made before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** is made.

344 Costs

(1) Subject to the rules of the court—

(a) in proceedings relating to an application for leave of the court under section 335(2)(d), costs are to be awarded against a party against whom a decision is made; and

(b) unless subsection (2) applies in proceedings for the recovery of damages in accordance with this Division—

(i) if no liability to pay damages is established, costs are to be awarded against the claimant; and

(ii) if damages are assessed but cannot be awarded under this Division, each party bears its own costs; and

(iii) if damages are awarded, costs are to be awarded against the Authority or self-insurer.

(2) In proceedings for the recovery of damages commenced in accordance with this Division after a statutory offer was made, or deemed to have been made, under section 333 or 334—

S. 344(2)(a) amended by No. 10/2022 s. 83(1).

(a) if no liability to pay damages is established, the worker must pay the costs assessed on the standard basis of the employer, Authority or self-insurer and the worker's own costs; or

S. 344(2)(b) amended by No. 10/2022 s. 83(1).

(b) if judgment is obtained or a settlement or compromise is made in an amount not less than 90 per cent of the worker's statutory counter offer under section 333 and more than the statutory offer of the Authority or self-insurer, the Authority or self-insurer must pay the worker's costs assessed on the standard basis and its own costs; or

S. 344(2)(c) amended by No. 10/2022 s. 83(2).

(c) if judgment is obtained or a settlement or compromise is made in an amount not more than the statutory offer of the Authority or self-insurer under section 333, the worker must pay costs assessed on the standard basis of the Authority or self-insurer and the worker's own costs; or

(d) if judgment is obtained or a settlement or compromise is made in an amount that is more than the statutory offer of the Authority or self-insurer under section 333 but less than 90 per cent of the worker's statutory counter offer under that subsection, each party bears its own costs—

and the court must not otherwise make an order as to costs.

(3) For the purposes of determining a liability to pay costs, or an entitlement to be paid costs, under subsection (2)(b), (c) or (d), if the amount of a judgment, order for damages, settlement or compromise is required to be reduced under section 343(1), the amount of the reduction must be the amount of compensation paid—

(a) to the date of the statutory counter offer under section 333; or

(b) to the date of the deemed statutory counter offer under section 334(2).

(4) A reduction under subsection (3) must be made before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** is made.

(5) For the purpose of the taxing of costs in proceedings to which this Division applies, any applicable scale of costs has effect as if amounts in the scale were reduced by 20 per cent.

(6) A person who represents or acts on behalf of a worker is not entitled—

(a) to recover any costs from that worker in respect of any proceedings under this Division; or

(b) to claim a lien in respect of those costs; or

(c) to deduct those costs from any sum awarded as damages—

unless an award of costs has been made by the court in respect of those costs or those costs are payable in accordance with this Division by the worker.

(7) The court, on the application of—

(a) the worker; or

(b) the person representing or acting on behalf of the worker—

may determine the amount of costs to be awarded to the person representing or acting on behalf of the worker.

345 Present value of future loss to be qualified

(1) Where an award of damages in accordance with this Division is to include an amount, assessed as a lump sum, in respect of damages for future loss which is referable to—

(a) deprivation or impairment of earning capacity; or

(b) loss of the expectation of financial support; or

(c) a liability to incur expenditure in the future; or

(d) any loss suffered by a dependant—

the present value of the future loss must be qualified by adopting a discount rate of 6 per cent in order to make appropriate allowance for inflation, the income from investment of the sum awarded and the effect of taxation on that income.

(2) Except as provided by subsection (1), nothing in that subsection affects any other law relating to the discounting of sums awarded as damages.

346 Limitation on award of interest on an amount of damages

(1) A court must not, in relation to an award of damages in accordance with this Division, order the payment of interest, and interest is not payable, on any amount of damages, other than damages referable to loss actually suffered before the date of the award, in respect of the period from the date of the death of or injury to the person in respect of whom the award is made to date of the award.

(2) Except as provided by subsection (1), nothing in that subsection affects any other law relating to the payment of interest on any amount of damages, other than special damages.

347 When Authority, employer and self-insurer cease to be liable to pay weekly payments

(1) If judgment is obtained, or a compromise or settlement made in respect of proceedings referred to in section 326 in respect of an injury, the Authority, the employer or self-insurer is not liable—

(a) where pecuniary loss damages are awarded, to pay weekly payments in respect of the injury; or

(b) where damages for pain and suffering are awarded, to make payments under Division 5 of Part 5 or under section 98C of the **Accident Compensation Act 1985** in respect of the injury.

(2) If—

S. 347(2) amended by No. 15/2026 s. 53.

(a) judgment is obtained or a compromise or a settlement is made in respect of proceedings referred to in section 326; and

(b) the worker was, at the date of the judgment, compromise or settlement, still in receipt of compensation in the form of weekly payments; and

(c) pecuniary loss damages are awarded against the Authority, employer or self-insurer—

the Authority, employer or self-insurer must, until the date on which payment is issued to a worker for the purpose of payment of the judgment, compromise or settlement, pay to the worker a weekly amount equal to the net weekly amount that, but for subsection (1), would have been payable to the worker as compensation in the form of weekly payments in respect of the injury.

(3) Subsection (2) applies only in respect of proceedings referred to in section 326 against a sole defendant if that sole defendant was the worker's employer at the date of the injury the subject of the proceedings.

(4) An amount paid in accordance with subsection (2) is, to the extent of the payment, part satisfaction of the liability in respect of the judgment, settlement or compromise.

348 Determination of serious injury application after death of worker

(1) This section applies if—

(a) a worker dies; and

(b) before his or her death, the worker had made an application under section 328(2); and

(c) at the time of the worker's death—

(i) the application of the worker was pending; or

(ii) the worker had issued proceedings seeking the leave of the court to commence proceedings following the rejection of the application of the worker by the Authority or a self-insurer; or

(iii) the period specified in section 335(2)(d) within which a worker is required to institute proceedings had not expired; and

(d) the worker's death was not caused or materially contributed to by the injury which is the subject of the application under section 328(2); and

(e) the worker left a dependant or dependants.

(2) If this section applies—

(a) the legal personal representative of the deceased worker may take the same action as could have been taken by the worker had the worker not died—

(i) in respect of an application made by the worker under section 328(2) before his or her death; or

(ii) in respect of an application referred to in section 335(2)(d), within the unexpired period of time that would have been available to the deceased, or after that period with the consent of the Authority under section 337(1); and

(b) if an application under section 328(2) was pending at the time of the worker's death, the Authority or self-insurer, within the unexpired period of time in which it had to determine the application, must determine whether, as at the date the application was

served, the worker had a serious injury assessed in accordance with this section; and

(c) any right arising from a determination by a Court, the Authority or a self-insurer that a worker had a serious injury is deemed, for the purposes of section 29 of the **Administration and Probate Act 1958**, to have vested in the worker before the worker's death and survives for the benefit of the deceased worker's estate.

(3) For the purposes of the assessment of serious injury in respect of an application or proceedings commenced or continued under this section, the assessment must be made in accordance with section 325(2) except where this section otherwise provides.

(4) For the purposes of the assessment of serious injury under this section, the assessment must be made as at the date the application was served by the worker before his or her death under section 328(2).

(5) If it is determined that a worker referred to in subsection (1) had a serious injury as at the time he or she served the application under section 328(2), notwithstanding anything to the contrary in this Division, the legal personal representative of the deceased worker may bring proceedings for the recovery of—

(a) damages for pain and suffering in respect of the injury; and

(b) if the deceased worker's application established the matters specified in section 325(2)(e), (f) and (g), pecuniary loss damages in respect of the injury—

from the date the injury was sustained to the date of death of the worker.

(6) For the purposes of subsection (5)(b)—

(a) section 325(2)(e) applies as if a reference to "the date of the hearing of an application" were a reference to the date on which the application under section 328(2) was served; and

(b) section 325(2)(f) applies as if a reference to "that date" were a reference to the date on which the application under section 328(2) was served.

(7) The death of a worker does not affect the admissibility of—

(a) evidence obtained before or after the worker served an application under section 328(2); and

(b) evidence that would have otherwise been admissible under this Division.

(8) A reference to service of an application under section 328(2) in this section means the service of an application in accordance with directions given by the Minister under section 352.

(9) In this section, ***dependant*** means a person who at the time of the death of the worker referred to in subsection (1)—

(a) was wholly, mainly or partly dependent on the earnings of the worker; or

(b) would have been wholly, mainly or partly dependent on the earnings of the worker but for—

(i) the incapacity of the worker resulting from, or materially contributed to by, the serious injury the subject of the application; or

(ii) any incapacity of the worker due to the injury or disease which caused or materially contributed to the worker's death.

349 Calculation of limitation of actions period within which proceedings may be commenced

For the purpose of calculating the period of time under the **Limitation of Actions Act 1958** within which proceedings permitted by, and in accordance with, this Division may be commenced, the following periods of time are to be disregarded—

(a) if the degree of permanent impairment of the worker resulting from the injury is to be determined, the period of time commencing on the day a claim for compensation under Division 5 of Part 5 or under section 98C of the **Accident Compensation Act 1985** is lodged and ending 30 days after—

(i) the Authority or self-insurer advises the worker of the determination under section 201(1) or 206 or under section 104B of the **Accident Compensation Act 1985**; or

(ii) the Authority or self-insurer notifies the worker of the decision of the Medical Panel—

whichever is applicable;

(b) if the worker elects to make an application under section 328(2), the period of time commencing on the day on which the application is made and ending on the day on which proceedings are commenced in accordance with section 333(1)(e).

350 Division not to affect date of accrual of cause of action

For the avoidance of doubt, it is declared that, this Division does not affect the date of accrual of a cause of action for the purposes of the **Limitation of Actions Act 1958**.

* * * * *

S. 351 repealed by No. 62/2014 s. 24.

352 Directions

(1) The Minister may give directions in accordance with section 609 for or with respect to procedures under this Division.

(2) For the purposes of section 328(1)(b), the Minister may give directions in accordance with section 609 specifying or limiting the classes of cases or circumstances in which an election can be made under that section.

(3) The directions may include directions about the provision of information by affidavit and the attending of conferences.

(4) The directions may specify that a failure to comply with a particular provision of the directions has the effect of altering a period applicable under this Division.

(5) A person to whom a direction under this section applies, and the legal representatives and agents of such a person, must comply with the direction.

353 Legal practitioner may recover costs

A legal practitioner acting on behalf of a worker in respect of any claim, application or proceedings under this Division is entitled to be paid legal costs from the Authority or self-insurer of a kind specified in a legal costs order made under this Division.

354 Legal costs order

(1) The Governor in Council may by Order in Council published in the Government Gazette make a legal costs order—

(a) specifying the legal costs that may be recovered from the Authority or self-insurer by a legal practitioner acting on behalf of a worker in respect of any claim, application or proceedings under this Division, other than section 348; and

(b) prescribing or specifying any matter or thing required to give effect to the legal costs order.

(2) A legal costs order—

(a) takes effect on and from the date on which it is published in the Government Gazette or any later date specified in the order; and

(b) applies to legal costs incurred on or after the date of commencement of the order.

(3) A legal costs order may—

(a) apply generally or be limited in its application by reference to classes of proceedings, costs, circumstances or factors; and

(b) apply differently according to different circumstances or factors of a specified kind; and

(c) specify different methods of calculation whether by reference to formulas, scales, tables or other means; and

(d) apply, adopt or incorporate (with or without modification) the provisions of any document, code, standard, rule, specification or method whether as formulated, issued,

prescribed or published at the time the order is made; and

(e) authorise any specified person or body to determine or apply a specified matter or thing.

(4) Section 344(5) does not apply in proceedings to which a legal costs order applies.

S. 354(5) amended by No. 17/2014 s. 160(Sch. 2 item 113.2).

(5) This section and any legal costs order made under this section has full force and effect notwithstanding anything to the contrary in the Legal Profession Uniform Law (Victoria), the **Legal Profession Uniform Law Application Act 2014**, the **Supreme Court Act 1986**, the **County Court Act 1958** or the **Civil Procedure Act 2010** or in any regulation, rules, order or other document made under any of those Acts or Laws.

(6) Legal costs in respect of any claim, application or proceeding referred to in subsection (1)(a) cannot be recovered from the Authority or self-insurer except in accordance with an order under this section.

355 Litigated claims legal costs order—workers

(1) Subject to subsection (2), the Governor in Council may by Order in Council published in the Government Gazette make a litigated claims legal costs order—

(a) specifying the legal costs that may be recovered from the Authority or self-insurer by a legal practitioner acting on behalf of a worker in respect of any claim, application or proceedings under or in accordance with this Division, other than section 348; and

(b) prescribing or specifying any matter or thing required to give effect to the legal costs order including procedures for resolving any

dispute that arises in relation to the costs payable under the order.

(2) Before a litigated claims legal costs order is made under subsection (1), the Minister must consult with the Attorney-General and Treasurer.

(3) A litigated claims legal costs order—

(a) takes effect on and from the date on which it is published in the Government Gazette or, if a later date is specified in the order, that later date; and

(b) applies to legal costs incurred on or after the order takes effect; and

(c) must be reviewed by the Minister within 3 years after the order takes effect.

(4) Section 344(5) does not apply in proceedings to which a litigated claims legal costs order under subsection (1) applies.

(5) A litigated legal costs order under subsection (1) may provide for the amounts of costs specified in the order to be indexed in accordance with the all groups consumer price index for Melbourne as published by the Australian Bureau of Statistics.

(6) If a litigated claims legal costs order under subsection (1) is in force, legal costs in respect of any claim, application or proceeding referred to in subsection (1) to which the order applies cannot be recovered except in accordance with the order.

S. 355(7) amended by No. 17/2014 s. 160(Sch. 2 item 113.2).

(7) This section and any legal costs order made under this section has full force and effect notwithstanding anything to the contrary in the Legal Profession Uniform Law (Victoria), the **Legal Profession Uniform Law Application Act 2014**, the **Supreme Court Act 1986**, the **County Court Act 1958** or the **Civil Procedure**

Act 2010 or in any regulation, rules, order or other document made under any of those Acts or Laws.

356 Litigated claims legal costs order—Authority and self-insurers

(1) Subject to subsection (2), the Governor in Council may by Order in Council published in the Government Gazette make a litigated claims legal costs order—

(a) specifying the legal costs that may be recovered from a worker by a legal practitioner acting on behalf of the Authority or self-insurer in respect of any claim, application or proceedings under or in accordance with this Division, other than section 348; and

(b) prescribing or specifying any matter or thing required to give effect to the legal costs order including procedures for resolving any dispute that arises in relation to the costs payable under the Order.

(2) Before a litigated claims legal costs order is made under subsection (1), the Minister must consult with the Attorney-General and Treasurer.

(3) A litigated claims legal costs order—

(a) takes effect on and from the date on which it is published in the Government Gazette or, if a later date is specified in the order, that later date; and

(b) applies to legal costs incurred on or after the order takes effect; and

(c) must be reviewed by the Minister within 3 years after the order takes effect.

(4) Section 344(5) does not apply in proceedings to which a litigated claims legal costs order under subsection (1)(a) applies.

(5) If a litigated claims legal costs order under subsection (1)(a) is in force, legal costs in respect of any claim, application or proceeding referred to in subsection (1)(a) to which the order applies cannot be recovered except in accordance with the order.

S. 356(6) amended by No. 17/2014 s. 160(Sch. 2 item 113.2).

(6) This section and any legal costs order made under this section has full force and effect notwithstanding anything to the contrary in the Legal Profession Uniform Law (Victoria), the **Legal Profession Uniform Law Application Act 2014**, the **Supreme Court Act 1986**, the **County Court Act 1958** or the **Civil Procedure Act 2010** or in any regulation, rules, order or other document made under any of those Acts or Laws.

Pt 7 Div. 2 Subdiv. 3 (Heading and ss 356A–356F) inserted by No. 10/2022 s. 77.

Subdivision 3—Subsequent action for damages

S. 356A inserted by No. 10/2022 s. 77.

356A Definitions

In this Subdivision—

initial award has the meaning set out in section 356B(a);

serious silica-related condition means a condition that is—

(a) an eligible progressive disease; and

(b) a serious injury; and

(c) attributable or related to exposure to respirable crystalline silica;

subsequent action means an action for a subsequent award of damages for a serious silica-related condition;

subsequent award has the meaning set out in section 356B(b).

356B Initial and subsequent award of damages for serious silica-related conditions

S. 356B inserted by No. 10/2022 s. 77.

If it is proved or admitted in an action for damages in respect of a serious silica-related condition that the worker may at some time in the future develop another serious silica-related condition wholly or partly as a result of the act or omission giving rise to the cause of action, the court may—

(a) award, in the first instance, damages for the serious silica-related condition assessed on the assumption that the worker will not develop another serious silica-related condition (the ***initial award***); and

(b) award damages at a future date if the worker does develop another serious silica-related condition (the ***subsequent award***).

356C Only one subsequent award of damages permitted

S. 356C inserted by No. 10/2022 s. 77.

If an initial award of damages has been made to a worker in respect of a serious silica-related condition only one subsequent award of damages for another serious silica-related condition can be made to that worker.

356D Regard must be had to initial award of damages

S. 356D inserted by No. 10/2022 s. 77.

If an initial award of damages has been made to a worker for a serious silica-related condition, a court must have regard to those damages when assessing damages to be awarded in a subsequent action for damages for another serious silica-related condition suffered by that worker.

S. 356E inserted by No. 10/2022 s. 77.

356E Regard must be had to legal costs incurred in initial action

(1) If an initial award of damages has been made to a worker for a serious silica-related condition, a court must have regard to the legal costs incurred in respect of the action for those damages (the ***initial action***) when assessing the amount to be awarded as legal costs in a subsequent action for damages by that worker for another serious silica-related condition.

(2) The purpose of subsection (1) is to ensure that legal costs awarded in a subsequent action are not in respect of work undertaken for the purposes of the initial action.

(3) In considering any possible duplication of legal costs, the court must have regard to the following factors—

(a) any work undertaken in the initial action—

(i) to identify the party or parties to be named as defendants; and

(ii) to identify the circumstances of the worker's exposure to silica; and

(iii) in relation to the negligence or breach of duty of the party or parties to be named as defendants; and

(iv) as to the relationship and causal nexus between the worker's condition and the exposure to silica;

(b) any other factors that the court considers appropriate.

356F Total award of damages not to exceed relevant statutory maximum

S. 356F inserted by No. 10/2022 s. 77.

Despite anything to the contrary in this Division, a worker is not entitled to an amount of damages under this Subdivision to the extent that the total amount of damages from the initial award of damages and the subsequent award of damages exceeds any maximum amount payable under section 340, as in force at the date the subsequent award of damages is made.

Division 3—Actions by terminally ill workers or workers with asbestos-related conditions

357 Actions by terminally ill workers or workers with asbestos-related conditions

S. 357 (Heading) amended by No. 44/2014 s. 24(14).

(1) This section applies if a worker who may have an entitlement to recover damages in accordance with Division 2—

(a) in respect of an injury arising out of or in the course of, or due to the nature of, employment believes that that injury or an unrelated medical condition or injury gives rise to an imminent risk of death; or

(b) in respect of an injury that is an asbestos-related condition arising out of, or in the course of, or due to the nature of, employment.

S. 357(2) amended by No. 44/2014 s. 24(15).

(2) If this section applies, the worker may, subject to compliance with the requirements of this section, bring proceedings in accordance with Division 2 without complying with the requirements of sections 325(2), 326 to 338 and 344(1) and (2).

(3) If a worker commences proceedings under Division 2 on the basis that this section applies, the worker must within 30 days of the

commencement of the proceedings apply to an Associate Judge of the Supreme Court—

(a) for an order allowing leave for the worker to proceed nunc pro tunc; and

S. 357(3)(b) amended by No. 44/2014 s. 14.

(b) for an order allowing an expedited hearing of the proceedings if the injury or an unrelated medical condition or injury gives rise to an imminent risk of death of the worker.

Note

An order allowing leave to proceed nunc pro tunc deems proceedings to have commenced before the order was made.

(4) The Associate Judge of the Supreme Court must not grant the orders referred to in subsection (3) unless the Associate Judge of the Supreme Court is satisfied on the balance of probabilities that—

(a) if subsection (1)(a) applies, the injury arising out of or in the course of, or due to the nature of, employment or an unrelated medical condition or injury gives rise to an imminent risk of death of the worker; or

(b) if subsection (1)(b) applies, the injury arising out of, or in the course of, or due to the nature of, employment is an asbestos-related condition.

(5) If the Associate Judge of the Supreme Court does not grant the orders referred to in subsection (3), the Associate Judge of the Supreme Court must make an order that the proceedings be struck out on the grounds that this section does not apply and that the proceedings have not been brought in accordance with Division 2.

(6) If the Associate Judge of the Supreme Court does grant the orders referred to in subsection (3), the worker can only recover damages in accordance with Division 2 if the worker establishes that the

worker has a serious injury within the meaning of section 325(2).

(7) If the worker dies from the asbestos-related condition before the hearing of the proceeding, it is established for the purposes of subsection (6) that the worker had a serious injury within the meaning of section 325(2).

(8) In this section, ***asbestos-related condition*** has the same meaning as it has in the **Asbestos Diseases Compensation Act 2008**.

358 Actions by terminally ill workers continued after death of worker

(1) This section applies if—

(a) a worker dies after serving proceedings issued in reliance on section 357 to commence proceedings, in accordance with Division 2; and

(b) the worker's death was not caused or materially contributed to by the injury to which the proceedings relate; and

(c) at the time of the worker's death, the worker had a dependant or dependants within the meaning of section 348(9).

(2) If this section applies—

(a) the legal personal representative of the deceased worker may continue the proceedings referred to in subsection (1)(a); and

(b) proceedings referred to in subsection (1)(a) are taken to be, and are limited to, an application served under section 335(2)(d) by the worker before the worker's death; and

(c) subject to paragraph (d), section 348 applies to the proceedings referred to in subsection (1)(a); and

(d) despite section 348(3), (4) and (5), for the purposes of the assessment of serious injury, the assessment must be made as at the date the proceedings referred to in subsection (1)(a) were served.

Division 4—Administration by a trustee

359 Certain funds to be administered by trustee

If, on application to the County Court, the County Court considers that it would be in the best interests of a person that any payment of compensation under this Act be paid to a trustee, the compensation must be paid to a trustee determined by the Court to be invested, applied or otherwise dealt with for the benefit of the person as the trustee thinks fit.

Division 5—Conduct of common law proceedings

360 Definitions

(1) In this Division—

common law insurer means an insurer, other than the Authority, which is liable to indemnify a defendant in whole or in part in respect of or in relation to a common law proceeding;

common law proceeding means any suit or action by a worker to recover damages in respect of an injury, disease or death arising out of or in the course of employment or due to the nature of employment but does not include a claim, demand or application for compensation under this Act;

defendant means the employer against whom a common law proceeding has been brought or made (as the case may be) by a worker;

worker includes a dependant of a worker.

361 Application of Division

(1) This Division applies to and in relation to all common law proceedings brought or made (as the case may be) on or after 1 July 2014 in respect of which the Authority is liable to indemnify a defendant in whole or in part under this Act, in relation to an injury, disease or death caused to or suffered by a worker that has arisen out of, or in the course of any employment or is due to the nature of employment in which the worker was employed at any time.

(2) A defendant or a common law insurer may enter into an agreement with the Authority that the provisions of this Division do not apply to a common law proceeding to which this Division applies and the provisions of this Division do not thereafter apply to the extent that they are inconsistent with that agreement.

362 Apportionment of liability

Liability to pay damages and all costs recovered or recoverable by a worker in a common law proceeding must be apportioned between—

(a) the Authority; and

(b) all other persons under any legal liability in respect of the injury the subject of the proceeding; and

(c) any common law insurer who is liable to indemnify any such persons in respect of or in relation to the common law proceeding—

in such manner as is, and upon such terms as are, agreed or, in default of agreement, as are determined in accordance with the provisions of this Division by a court to be just and equitable.

363 Notice of proceedings

(1) The defendant in a common law proceeding made or brought (as the case may be) on or after 1 July 2014 must give to the Authority notice in writing of the proceeding within 14 days after the defendant receives notice of the proceeding.

(2) The common law insurer in respect of the common law proceeding must give to the Authority notice in writing of the proceeding within 14 days after the insurer receives notice of the proceeding.

364 Conduct of defence

(1) The defendant or the common law insurer is not entitled to conduct the defence of the common law proceeding unless the defendant or common law insurer, within 14 days after the last date for giving notice under section 363 undertakes to the Authority in writing that the defendant or common law insurer, as the case requires, will conduct the defence of the common law proceeding and—

(a) the Authority does not within 7 days after receiving the undertaking give notice in writing to the defendant or common law insurer objecting to the defendant or common law insurer conducting the defence; or

(b) the court in which the common law proceeding is brought at any time orders or directs that the defendant or common law

insurer is entitled to conduct the defence of the common law proceeding under this section.

(2) If the court considers that the interest of one of the Authority, defendant or common law insurer in conducting the defence in proceedings is substantially greater than the interest of the other of the Authority, defendant or common law insurer, any order or direction under subsection (1) must be in favour of the person with the greater interest, unless the court considers it just and equitable to provide otherwise.

(3) Subsection (1) does not prevent the defendant or common law insurer conducting the defence of the common law proceeding in accordance with its legal entitlement to do so from the date the defendant or common law insurer received notice of the common law proceeding until the expiration of the period set out in subsection (1)(a) but in so conducting the defence, the defendant and common law insurer must not settle or compromise the common law proceeding without the consent of the Authority.

(4) If a defendant or common law insurer is at any time not entitled to conduct the defence of a common law proceeding in accordance with this section, the Authority or self-insurer may conduct the defence.

(5) Subject to subsection (3), a person entitled to conduct, and which conducts, the defence of a common law proceeding in accordance with this section—

(a) is liable to make full payment of all costs and damages awarded or agreed to be paid to the worker or other person bringing or making (as the case may be) the common law proceeding; and

(b) is authorised by each person under any legal liability in respect of the injury the subject of the proceeding and each common law insurer which is liable to indemnify any such person in respect of or in relation to the proceeding to make admissions, including admissions of liability, and to agree to or compromise or settle the common law proceeding; and

(c) must, on behalf of the defendant, adopt a defence which has the intention of minimizing the damages payable to the worker, regardless of whether this defence advantages or disadvantages the Authority, the defendant or the common law insurer.

365 Order for apportionment of liability

(1) In default of agreement under section 362, the Authority, the defendant and any common law insurer may at any time before entry of judgment in a common law proceeding, apply to the court in which the common law proceeding is brought for orders apportioning liability in respect of all damages and costs recovered or recoverable in the common law proceeding in accordance with that section, including orders in respect of the payment of all amounts required to be paid as a consequence of any such apportionment.

(2) The court to which application is made under subsection (1)—

(a) may give such directions in relation to interlocutory orders for discovery, inspection and better particulars and for the filing of pleadings as it deems appropriate; and

(b) must hear and determine the application for apportionment in such manner and at such time as it deems appropriate.

(3) If an application is not made under subsection (1), the Authority, the defendant and any common law insurer may apply to any court of competent jurisdiction for orders apportioning liability in respect of all damages and costs recovered or recoverable in a common law proceeding in accordance with section 362, including orders in respect of the payment of all amounts required to be paid as a consequence of any such apportionment.

(4) The court to which application is brought under subsection (3)—

(a) may give such directions in relation to interlocutory orders for discovery, inspection and better particulars and for the filing of pleadings as it deems appropriate; and

(b) must hear and determine the claim for apportionment in such manner and at such time as it deems appropriate.

(5) An application to a court under subsection (3) must be made within 12 months after the person making the application received notice of the entry of judgment, settlement or compromise of the common law proceeding.

(6) An apportionment in accordance with this Division is an apportionment in relation to—

(a) the amount of damages and costs awarded or agreed to be paid in accordance with this Division; and

(b) the costs of the conduct of the defence of the common law proceedings.

Division 6—Other actions and rights

366 Damages under Part III of Wrongs Act 1958

(1) A dependant of a worker may recover damages under Part III of the **Wrongs Act 1958** in respect of the death of a worker arising otherwise than out of a transport accident within the meaning of the **Transport Accident Act 1986**.

(2) A court must not, in proceedings under Part III of the **Wrongs Act 1958**, award damages in accordance with subsection (1) in respect of the death of a person in excess of $886 330.

(3) If an award of damages in accordance with subsection (1) is to include an amount, assessed as a lump sum, in respect of damages for future loss which is referable to—

(a) deprivation or impairment of earning capacity; or

(b) loss of the expectation of financial support; or

(c) a liability to incur expenditure in the future; or

(d) any loss suffered by a dependant—

the present value of the future loss must be qualified by adopting a discount rate of 3 per cent in order to make appropriate allowance for inflation, the income from investment of the sum awarded and the effect of taxation on that income.

(4) Except as provided in subsection (3), nothing in that subsection affects any other law relating to the discounting of sums awarded as damages.

(5) A court must not, in relation to an award of damages in accordance with this section, order the payment of interest, and no interest is payable, on any amount of damages, other than damages referable to loss actually suffered before the date of the award, in respect of the period from the date of the death of the person in respect of whom the award is made, to the date of the award.

(6) Except as provided in subsection (5), nothing in that subsection affects any other law relating to the payment of interest on any amount of damages, other than special damages.

(7) If a judgment, order for damages, settlement or compromise is made or entered in favour of a dependant of a worker in respect of proceedings in respect of the death of the worker—

S. 366(7)(a) amended by No. 27/2025 s. 26.

(a) the amount of the judgment, order for damages, settlement or compromise must be reduced by the sum of the compensation (if any) paid under section 236, 237, 237AA, 237A, 239, 241 or 243 in respect of the death; and

(b) the Authority, the employer or self-insurer is not liable to pay compensation, or further compensation, in respect of the death.

367 Liability of Transport Accident Commission

(1) If—

(a) the Authority is required under this Act to pay an amount of compensation in respect of the death or injury of a worker arising out of a transport accident within the meaning of section 3 of the **Transport Accident Act 1986**; and

(b) the Transport Accident Commission would, if no compensation were payable under this Act in respect of the death or injury, have been liable to make payments in respect of that death or injury under the **Transport Accident Act 1986**—

the Transport Accident Commission, despite anything to the contrary in the **Transport Accident Act 1986**, is liable to make payment to the Authority of an amount equal to the total amount of compensation paid or payable under this Act and any amount paid or payable under an award of damages or in a settlement of a claim or action for damages in respect of that death or injury.

(2) If—

(a) a self-insurer has appointed the Transport Accident Commission to be its agent under section 392; and

(b) the self-insurer is required under this Act to pay an amount of compensation in respect of the death or injury of a worker arising out of a transport accident within the meaning of section 3 of the **Transport Accident Act 1986**; and

(c) the Transport Accident Commission would, if no compensation were payable under this Act in respect of the death or injury, have been liable to make payments in respect of that death or injury under the **Transport Accident Act 1986**—

the Transport Accident Commission, despite anything to the contrary in the **Transport Accident Act 1986**, is liable to make payment to the self-insurer of an amount equal to the total amount of compensation paid under this Act in

respect of that death or injury, less an amount equal to the employer's excess that would be applicable under section 72 if the self-insurer were not a self-insurer.

(3) The Transport Accident Fund under the **Transport Accident Act 1986** may be applied for the purpose of making any payment which the Transport Accident Commission is liable to make under this section.

368 Settlement between Transport Accident Commission and the Authority

(1) If—

(a) the Transport Accident Commission is liable to make a payment to the Authority in accordance with section 367(1); or

(b) it appears to the Authority and the Transport Accident Commission that the Transport Accident Commission may become liable to make further payments to the Authority in accordance with that section—

the Transport Accident Commission and the Authority may undertake a settlement of that liability or potential liability to make payments in accordance with that section.

(2) For the purposes of a settlement under subsection (1) of a liability or potential liability, the Authority and the Transport Accident Commission may, despite section 367(1), determine the value of that liability or potential liability in any manner they think fit.

369 Indemnity by third party

(1) Where an injury or a death for which compensation has been paid, or is or may be payable, by the Authority, a self-insurer or an employer was caused under circumstances

creating a liability in a third party to pay damages in respect of the injury or death or that would have created such a liability if the injury or death had been caused in Victoria, the Authority, self-insurer or employer is entitled to be indemnified by the third party in accordance with this section.

(2) In determining for the purposes of subsection (1) whether an injury or death was caused under circumstances creating a liability in a third party to pay damages or that would have created such a liability if the injury or death had been caused in Victoria in respect of the injury or death, Division 2 must not be taken into account.

(3) The amount which a third party is required to pay as indemnity under subsection (1) is the lesser of—

(a) the amount of compensation paid or payable under this Act in respect of the injury or death; and

(b) the amount calculated, were it not for the provisions of this Act, the **Transport Accident Act 1986** and Parts VB, VBA and X of the **Wrongs Act 1958**, in accordance with the formula—

$$[A - (B + C)] \times \frac{X}{100}$$

where—

A is the amount of damages (disregarding the extent, if any, whereby any other person's act, default or negligence caused or contributed to the injury or death) for pecuniary loss and non pecuniary loss which the third party is or would have been liable to pay in respect of the injury or death;

B is the amount recovered or recoverable by the Authority or self-insurer under section 367 from the Transport Accident Commission otherwise than under a settlement;

C is the amount paid by the third party in respect of the injury or death to the worker or the dependants of the worker under any settlement of, or judgment in, an action by the worker or dependants of the worker against the third party;

X is the extent, expressed as a percentage, whereby the third party's act, default or negligence caused or contributed to the injury or death.

(4) Judgment against or settlement by a third party in an action by a worker, or dependants of a worker, in respect of an injury or death referred to in subsection (1) does not eliminate or diminish the right of indemnity given by this section, except to the extent provided in this section.

(5) A term of any contract that requires the employer or has the effect of requiring the employer to indemnify the third party in respect of any liability that the third party has or may have under this section is void.

(6) If—

(a) the Transport Accident Commission is liable to make a payment to the Authority under section 367(1) or to a self-insurer under section 367(2) in respect of a death or injury; and

(b) the Authority or self-insurer is entitled under this section to be indemnified by a third party in respect of the liability—

the entitlement of the Authority or self-insurer is subrogated to the Transport Accident Commission by virtue of this subsection.

(7) The Authority may, in its discretion, seek to recover any indemnity that the employer is entitled to under this section, including an amount that represents the employer's liability to pay compensation under section 72(1), on the employer's behalf, if—

(a) the Authority advises the employer of the Authority's intention to seek the indemnity for the employer; and

(b) the employer gives the Authority the employer's written consent to seek the indemnity under this section on the employer's behalf.

(8) If the Authority recovers an amount from a third party on behalf of the employer that includes an amount that represents the employer's liability to pay compensation under section 72, the Authority may, in its absolute discretion, decide how that amount is to be disbursed.

(9) Any proceedings to seek review of a decision made by the Authority under subsection (7) or (8) in respect of recovery action taken on behalf of an employer (including a decision to not take recovery action on behalf of an employer) must not be brought, whether against the Authority or otherwise.

370 Substantive law

For the avoidance of doubt, it is hereby declared that all the provisions of Divisions 2 and 3 and this Division contain matters that are substantive law and are not procedural in nature.

371 Compensation for pain and suffering

(1) Despite anything to the contrary in Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991**, a court must not exercise the powers conferred by that Subdivision to make a compensation order within the meaning of that Subdivision if the compensation would be for—

(a) a matter arising from discriminatory conduct that constitutes an offence against section 575; or

(b) a matter—

(i) arising from an injury or death in respect of which it appears to the court that the person has an entitlement to any compensation under this Act; and

(ii) arising from an event that constitutes an offence only against the **Dangerous Goods Act 1985**, the **Occupational Health and Safety Act 2004** or the **Equipment (Public Safety) Act 1994** or any regulations made under any of those Acts.

(2) For the purposes of subsection (1)(b)(i), a person is not to be regarded as having an entitlement to any compensation under this Act if the entitlement would arise only under any or all of sections 224(1)(b) and (c) and 237 (only by virtue of subsection (3)).

Part 8—Self-insurers

Division 1—General

372 Definitions

In this Part—

eligible subsidiary means—

(a) in relation to a self-insurer that is the MAV, a participating corporation; and

(b) in relation to any other self-insurer or body corporate, a wholly owned subsidiary;

Note

Under section 409, if a body corporate that is an eligible subsidiary of a self-insurer becomes a non-WorkCover employer, for the purposes of this Part, the body corporate is taken not to be an eligible subsidiary of the self-insurer for the period that it is a non-WorkCover employer.

employer means an employer within the meaning of section 3 and includes a holding company which does not itself employ any workers but an eligible subsidiary of which does;

holding company means—

(a) in relation to a participating corporation, the MAV; and

(b) in relation to any other body corporate, the body corporate of which the first-mentioned body corporate is an eligible subsidiary;

S. 372 def. of *local government corporation* substituted by No. 9/2020 s. 390(Sch. 1 item 113.2).

local government corporation means—

(a) a Council within the meaning of the **Local Government Act 2020**; or

(b) a regional library established under section 196 of the **Local Government Act 1989** as in force immediately before the commencement of section 362 of the **Local Government Act 2020**; or

(c) an Authority within the meaning of the **Water Act 1989** the members of which must include a Councillor of a Council within the meaning of the **Local Government Act 2020**; or

(d) any other body corporate established or formed for local government purposes;

MAV means the body corporate known as the Municipal Association of Victoria established under the **Municipal Association Act 1907**;

participating corporation means a local government corporation participating in a scheme of self-insurance operated by the MAV as a self-insurer;

relevant remuneration, of an employer that is a body corporate, means the sum of the remuneration paid or payable by the employer and its eligible subsidiaries (if any) that would be rateable remuneration if the employer and those subsidiaries were required to pay premiums under Part 10;

subsidiary has the same meaning as in the Corporations Act;

wholly-owned subsidiary has the same meaning as in the Corporations Act.

373 Student workers

Unless the contrary intention appears, nothing in this Part applies in relation to the employment of a student worker.

374 Municipal Association of Victoria as self-insurer

(1) If the MAV is approved as a self-insurer under this Part, the MAV must establish a local government workers compensation self-insurance scheme for the benefit of—

(a) the MAV; and

(b) participating corporations—

on such terms and conditions, subject to this Act, that the MAV determines.

(2) The MAV must keep separate accounts of money received or expended with respect to the operation of the self-insurance scheme referred to in subsection (1).

(3) This section must be read as one with the **Municipal Association Act 1907**.

Division 2—Application for approval as self-insurer

375 Determination of eligibility to apply for approval as self-insurer

(1) On the application by a body corporate, the Authority may determine that the body corporate is eligible to apply under section 376(1) for approval as a self-insurer.

Note

A body corporate that is applying for the renewal of approval as a self-insurer does not require a determination from the Authority under subsection (1) if it is a self-insurer at the time of the application unless the body corporate has become an eligible subsidiary of another body corporate. See section 376(2)(b).

(2) An application referred to in subsection (1) must be in writing and accompanied by the fee calculated in accordance with Schedule 6.

(3) The Authority may only make a determination under subsection (1) if satisfied that the body corporate is and would be capable of meeting its claims liabilities as and when they fall due.

(4) The Authority must not make a determination under subsection (1) if the body corporate is the subsidiary of another body corporate (other than a foreign company within the meaning of the Corporations Act that, when the application is made, is not a registered foreign company within the meaning of that Act).

(5) A determination under this section remains in force for 12 months or such longer time as the Authority, in its discretion, determines unless, in the meantime—

(a) the Authority approves the body corporate as a self-insurer; or

(b) the Authority refuses to approve the body corporate as a self-insurer.

(6) In this section, ***claims liabilities*** means the value as estimated by the Authority of the existing and future financial liabilities of the body corporate and its eligible subsidiaries under this Act or in respect of damages at common law as permitted by and in accordance with Division 2 of Part 7 (other than sections 348 to 356 inclusive) or section 366 or any contribution in respect of such damages under section 23B of the **Wrongs Act 1958**, in respect of injuries or deaths incurred or suffered, or to be incurred or suffered, by workers employed by the employer and its eligible subsidiaries.

376 Application for approval as self-insurer

(1) Subject to subsection (2), a body corporate that is an employer may apply in writing to the Authority for approval as a self-insurer for—

(a) workers employed by the body corporate; and

(b) if the body corporate is a holding company, workers employed by eligible subsidiaries of the body corporate, other than a subsidiary that is a non-WorkCover employer.

(2) A body corporate may only make an application under subsection (1) if—

(a) a determination by the Authority under section 375 is in force stating that the body corporate is eligible to apply for approval as a self-insurer; or

(b) the application is for the renewal of approval as a self-insurer and the body corporate is—

(i) a self-insurer; and

(ii) not a subsidiary of another body corporate (other than a foreign company within the meaning of the Corporations Act that, when the application is made, is not a registered foreign company within the meaning of that Act); or

(c) the Authority has determined that the body corporate will imminently cease to be an eligible subsidiary of another body corporate that is currently approved as a self-insurer.

(3) The MAV may apply in writing to the Authority for approval as a self-insurer for—

(a) workers employed by it; and

(b) workers employed by local government corporations which are proposed to be participating corporations.

(4) An application under this section must be accompanied by any information required by the Authority and the fee calculated in accordance with Schedule 7.

Note

Under section 395(1), an employer may, in its application for approval as a self-insurer, elect to assume liability for, and responsibility for management of, its tail claims.

(5) In the case of an application by the MAV, the application must also be accompanied by—

(a) a copy of the proposed scheme of self-insurance; and

(b) the name of the local government corporations which are proposed to be participating corporations.

(6) An application under this section remains valid for a period of 12 months from the date the application is received by the Authority or, if the Authority determines that a longer period should apply, that longer period.

377 Estimated relevant remuneration

(1) For the purposes of determining the assessment remuneration of an employer under clause 2 of Schedule 7 the Authority may estimate the relevant remuneration that an employer and its eligible subsidiaries will pay during a specified period.

(2) The Authority may request from the employer any information required by the Authority to make the estimate, including the employer's own estimate of the relevant remuneration of the employer and its eligible subsidiaries.

(3) If the employer does not provide the information requested by the Authority under subsection (2) within 28 days of the request, the employer is deemed to have withdrawn its application for approval as a self-insurer.

378 Adjustment of application fee

(1) This section applies if an application fee paid by an employer for approval as a self-insurer was determined in accordance with Schedule 7 on the basis of the relevant remuneration of the applicant as estimated by the Authority under section 377.

(2) At any time after the expiry of the period in relation to which the estimate was made, the Authority may request from the employer any information required by the Authority to determine the relevant remuneration paid or payable by the applicant and its eligible subsidiaries during that period.

(3) An employer must provide any information requested by the Authority under subsection (2) within 28 days of the request or within such other period of time as the Authority allows.

(4) An adjustment to the application fee must be made in accordance with subsection (5) or (6), as appropriate, if—

(a) the relevant remuneration varies by 10 per cent or more from that estimated by the Authority; and

(b) either—

(i) the employer has made a written request to the Authority for an adjustment of the fee; or

(ii) the Authority, in its discretion, has decided to adjust the fee.

(5) If the fee paid is less than the amount that would have been payable had the relevant remuneration been used to calculate the application fee, the difference is payable by the employer to the Authority and may be recovered by the Authority as a debt payable to the Authority.

(6) If the fee paid is more than the amount that would have been payable had the relevant remuneration been used to calculate the application fee, the difference must be reimbursed by the Authority to the employer.

Division 3—Approval as self-insurer

379 Approval as self-insurer

(1) If an application is made by a body corporate under section 376, the Authority may approve the body corporate as a self-insurer for—

(a) workers employed by the body corporate; and

(b) if the body corporate is a holding company, workers employed by the eligible subsidiaries of the body corporate, other than an eligible subsidiary that is a non-WorkCover employer.

(2) If an application is made by the MAV under section 376, the Authority may approve the MAV as a self-insurer for—

(a) workers employed by the MAV; and

(b) workers employed by the local government corporations which are proposed to be participating corporations and are included in the application.

(3) The Authority must refuse to approve an employer as a self-insurer if the Authority is not satisfied that the employer is fit and proper to be a self-insurer.

(4) In determining whether an employer is fit and proper to be a self-insurer, the Authority must have regard to the following matters—

(a) whether the employer is, and is likely to continue to be, able to meet its liabilities as and when they fall due;

(b) the resources, including employees, that the employer has for the purpose of administering claims for compensation;

(c) the incidence of injuries to workers, including student workers, arising out of and in the course of employment by the employer and, if applicable, its eligible subsidiaries and the cost of claims in respect of such injuries;

(d) the safety of the working conditions for workers, including student workers, employed by the employer, and, if applicable, by its eligible subsidiaries;

(e) if the application is for renewal of approval as a self-insurer by an employer that is or has at any time been a self-insurer for the purposes of this Part, whether the employer has at any time failed to comply with—

(i) this Act or the regulations; or

(ii) any terms or conditions of its approval as a self-insurer; or

(iii) a Ministerial Order; or

(iv) any other subordinate instrument made under this Act or the regulations;

(f) such other matters as the Authority thinks fit.

380 Terms and conditions of approval

(1) An approval of an employer as a self-insurer—

(a) is subject to—

(i) the terms and conditions specified in a Ministerial Order made under subsection (3); and

(ii) the terms and conditions determined by the Authority from time to time; and

(b) may be subject to compliance with a condition precedent determined by the Authority; and

(c) may be subject to a term or condition which relates to the applicant before the applicant becomes a self-insurer.

(2) In addition, in the case of an employer other than the MAV, the approval of the employer as a self-insurer is subject to a deemed condition that the employer is under a contractual obligation that, if it becomes a non-WorkCover employer, it will make any payments in respect of tail claims liabilities required to be made in accordance with Part 9.

(3) The Minister may, by notice published in the Government Gazette, make a Ministerial Order setting out the terms and conditions to which the approval of an employer as a self-insurer is subject.

(4) Without limiting subsection (3), the Ministerial Order must specify the following—

(a) the surcharge to be applied under section 388(5);

(b) the information to be included in a return required to be submitted under section 389;

(c) the requirements of the contract of insurance a self-insurer must have in respect of the self-insurer's contingent liabilities.

381 Notice to be given to employer if application refused

(1) The Authority must not refuse to approve an employer as a self-insurer unless the Authority has given not less than 28 days notice in writing to the employer stating—

(a) the Authority's intention to refuse approval; and

(b) the reasons for the intended refusal; and

(c) that the employer may, within 28 days after receiving the notice, make a submission in writing to the Authority in further support of the application.

(2) If, within the time allowed under subsection (1)(c), the Authority receives a written submission from the employer in further support of the application, the Authority must—

(a) consider the submission before deciding whether or not to refuse to approve the employer as a self-insurer; and

(b) give notice in writing to the employer of its decision.

382 Period that approval has effect

(1) An approval of an employer as a self-insurer takes effect from the date determined by the Authority and notified in writing to the employer.

(2) Unless revoked sooner, the approval of an employer as a self-insurer has effect for—

(a) in the case of an employer that is not a self-insurer immediately before the date the approval takes effect, a period of 3 years; and

(b) in the case of an employer that is a self-insurer immediately before the approval takes effect, a period of 4 years, unless the Authority in its discretion determines that the approval has effect for a period of 6 years.

(3) If an employer that is approved as a self-insurer is undergoing a corporate restructure, the Authority in its discretion may extend the term of approval for a further period not exceeding 6 months.

(4) If an employer that is approved as a self-insurer becomes the subsidiary of another body corporate, the Authority in its discretion may continue the term of approval until such date as is determined by the Authority but not later than 6 months after the date on which the approval of the employer as a self-insurer would otherwise cease.

383 Approval of new holding company as self-insurer

(1) If a self-insurer (***the subsidiary***) becomes an eligible subsidiary of another body corporate (***the holding company***), the Authority, in its discretion, and on the application and request of the subsidiary and the holding company, may, subject to subsection (2)—

(a) approve the holding company as a self-insurer; and

(b) revoke the approval of the subsidiary as a self-insurer.

(2) Subsection (1) does not apply unless the Authority is satisfied that no substantive change has occurred, and is not likely to occur, in relation to the operation or management of the subsidiary as a result of—

(a) the subsidiary becoming an eligible subsidiary of the holding company; or

(b) the approval of the holding company as a self-insurer.

(3) If the Authority approves a holding company as a self-insurer under subsection (1)—

(a) the holding company is approved as a self-insurer with effect from the date determined by the Authority and notified to the holding company; and

(b) the approval has effect only for the balance of the period for which the subsidiary was approved as a self-insurer.

384 Review of approval

(1) The Authority, at any time, may review the approval of an employer as a self-insurer.

(2) Without limiting subsection (1), the Authority may review the approval of an employer as a self-insurer if—

(a) the employer is a holding company approved as a self-insurer under this Part for workers employed by its eligible subsidiaries and it ceases to be the holding company in relation to any of those eligible subsidiaries; or

(b) the employer is approved as a self-insurer for workers employed by an eligible subsidiary of the employer and that eligible subsidiary ceases to be an eligible subsidiary of the employer; or

(c) an eligible subsidiary of the employer—

(i) becomes a non-WorkCover employer; or

(ii) ceases to be a non-WorkCover employer; or

(iii) is partly acquired by another company; or

(ca) the employer or an eligible subsidiary of the employer ceases to employ all of its workers; or

S. 384(2)(ca) inserted by No. 48/2017 s. 32.

(d) the employer acquires an eligible subsidiary; or

(e) the employer acquires all the shares in a subsidiary in which it already holds shares; or

(f) the employer ceases to hold all the shares in a subsidiary; or

(g) the employer undergoes a corporate restructure; or

(h) the employer acquires the assets or the employees of another company but not the company itself.

(3) The Authority must review the approval of an employer as a self-insurer if—

(a) the Authority is of the opinion that the employer is no longer capable of meeting its claim liabilities as and when they fall due; or

(b) the employer becomes the subsidiary of another body corporate (other than a foreign company within the meaning of the Corporations Act that is not a registered foreign company within the meaning of that Act); or

(c) having regard to the matters specified in section 379(4), the Authority is no longer satisfied that the employer is fit and proper to be a self-insurer.

(4) The Authority must review the approval of an employer as a self-insurer if—

(a) the employer is under official management, is commenced to be wound up or has ceased to carry on business; or

(b) a receiver or receiver and manager is appointed in respect of the property or part of the property of the employer under the Corporations Act; or

(c) the employer enters into a compromise or scheme of arrangement with its creditors; or

(d) the employer is a target within the meaning of the Corporations Act.

(5) If any of the circumstances referred to in subsection (2), (3)(b) or (4) occur in relation to a self-insurer, or an eligible subsidiary of a self-insurer, the self-insurer must notify the Authority in writing within 28 days of the occurrence of the circumstances.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

385 Revocation of approval

(1) The Authority, in accordance with this section, may revoke the approval of an employer as a self-insurer if—

(a) the Authority is of the opinion that the employer is no longer capable of meeting its claims liabilities as and when they fall due; or

(b) the employer becomes the subsidiary of another body corporate (other than a foreign company within the meaning of the

Corporations Act that is not a registered foreign company within the meaning of that Act); or

(c) having regard to the matters specified in section 379(4), the Authority is not satisfied that the employer is fit and proper to be a self-insurer; or

(d) the employer by notice in writing given to the Authority, requests that the approval be revoked; or

(e) the employer has failed to comply with—

(i) this Act or the regulations; or

(ii) any terms or conditions of its approval as a self-insurer; or

(iii) a Ministerial Order; or

(iv) any other subordinate instrument made under this Act or the regulations.

(2) The Authority, in accordance with this section, may revoke the approval of an employer as a self-insurer if, on the basis of a review conducted under section 384, the Authority is of the opinion that the approval should be revoked.

(3) The Authority must not revoke the approval of an employer as a self-insurer unless the Authority has given not less than 28 days notice in writing to the employer stating—

(a) the Authority's intention to revoke the approval; and

(b) the reasons for the intended revocation; and

(c) that the employer may, within 28 days after receiving the notice, make a written submission to the Authority.

(4) If the approval of the employer is revoked at the request of the employer—

(a) subsection (3) does not apply; and

(b) the Authority may give the employer a written notice of revocation at any time after receiving the request.

(5) If, within the time allowed under subsection (3)(c), the Authority receives a written submission from the employer, the Authority must consider the submission before deciding whether or not to revoke the approval of the employer as a self-insurer.

(6) If, after the expiry of the 28 days notice and after considering any submission from the employer, the Authority decides to revoke the approval of the employer as a self-insurer, the Authority must give the employer a written notice of revocation.

(7) The revocation of an approval of an employer as a self-insurer takes effect immediately after the day on which the notice of the revocation is given to the employer.

386 Cost associated with revocation recoverable from employer

(1) If the Authority revokes the approval of an employer as a self-insurer under section 385, any costs incurred by the Authority in relation to the revocation are recoverable from the employer as a debt due to the Authority.

(2) Without limiting subsection (1), the costs incurred in relation to the revocation of the approval of an employer as a self-insurer include the cost of any actuarial services used to determine the outstanding liabilities of the employer at the time of revocation.

387 Non-WorkCover employer ceases to be a self-insurer

If an employer becomes a non-WorkCover employer, the approval of the employer as a self-insurer is revoked as from the date on which it becomes a non-WorkCover employer.

Division 4—Contributions to WorkCover Authority Fund

388 Payment of contribution

(1) A self-insurer must pay contributions into the WorkCover Authority Fund in accordance with this section.

(2) The Authority may, in accordance with the regulations, determine the amount of contributions payable by a self-insurer having regard to the relevant remuneration paid or payable during the financial year and preceding financial year in respect of that year and preceding year or any quarter of that year or preceding year by the self-insurer.

(3) Subject to subsection (4), a contribution by a self-insurer as determined by the Authority under subsection (2) is due on each of the following dates in each year—

(a) 1 August;

(b) 1 November;

(c) 1 February;

(d) 1 May.

(4) The Authority may vary the date on which a contribution by a self-insurer is due.

(5) If a contribution is not paid within 14 days of the due date, the amount of the contribution, together with interest at the prescribed rate and the

surcharge specified in a Ministerial Order in force under section 380(3), may be recovered as a debt due to the Authority.

(6) Contributions made by a self-insurer to the WorkCover Authority Fund must be applied towards the costs referred to in section 513(5)(c), (d), (f), (g) and (l) or towards the costs incurred by the Authority in the administration of Division 2 of Part 6 or in meeting any liability incurred under section 403.

389 Submission of return by self-insurer

(1) Each self-insurer must submit a return in accordance with the Ministerial Order under section 380(3) to enable the Authority to determine the amount of contributions payable.

(2) A self-insurer must submit the return by the date specified in the Ministerial Order.

Penalty: one penalty unit for each day the offender is in default.

(3) A self-insurer must not submit a return which contains any false material particulars.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

Division 5—Review of contributions by self-insurers

390 Review of contributions

The Minister may cause a review on any matter relating to self-insurer contributions to be undertaken by an independent expert body.

Division 6—Liability for claims for compensation

Subdivision 1—Liability of self-insurer

391 Self-insurer's liability to pay compensation

If—

(a) a worker, the dependants of a worker or the members of a worker's family are entitled to—

(i) compensation or any other payments, under this Act (other than section 576 or 578) or the **Accident Compensation Act 1985** (other than section 242AB or 242AD); or

(ii) damages at common law as permitted by and in accordance with Division 2 of Part 7 (other than sections 348 to 356 inclusive) or section 366 of this Act or section 134AB or 135C of the **Accident Compensation Act 1985**—

in respect of an injury or death incurred or suffered by the worker; and

(b) at the time of the injury or death, the worker's employer was a self-insurer or an eligible subsidiary of a self-insurer—

the self-insurer is, subject to sections 398 and 403, liable to pay the compensation or other payments.

392 Claims management

(1) A self-insurer may appoint a person approved by the Authority to act as the self-insurer's agent in relation to the carrying out of the functions and powers of the self-insurer under this Act or the **Accident Compensation Act 1985**.

(2) If a self-insurer has appointed the Transport Accident Commission as its agent and a right of recovery arises under section 367(2) of this Act or section 137(5B) of the **Accident Compensation Act 1985** in respect of an injury or death, the arrangement with the Transport Accident Commission in respect of the administration of claims for compensation for that injury or death is deemed to be irrevocable.

S. 392(3) amended by No. 44/2014 s. 15.

(3) Nothing in subsection (1) or any arrangement entered into under this section affects the liability of a self-insurer under this Act or the **Accident Compensation Act 1985**.

393 Liabilities of self-insurer to be guaranteed

(1) On and from the date that an employer's approval as a self-insurer takes effect and until such time as the Authority assumes liability for the tail claims of the employer under section 407, the employer must—

S. 393(1)(a) amended by No. 44/2014 s. 15.

(a) ensure that there is in force at all times a guarantee in respect of liabilities incurred by the Authority by reason of the failure of the employer to meet its liabilities under this Act or the **Accident Compensation Act 1985** or by reason that the employer has ceased to be an approved self-insurer; and

(b) have in force at all times a contract of insurance in respect of its contingent liabilities in accordance with the Ministerial Order made under section 380(3) and no other contract of insurance in respect of those liabilities.

(2) A guarantee referred to in subsection (1)(a), must—

(a) be given by an ADI to or in favour of the Authority; and

(b) be in a form approved by the Authority; and

(c) guarantee payment of amounts not less than—

(i) one and one-half times the assessed liability of the employer; or

(ii) $3 000 000—

whichever is the greater.

(3) For the purposes of subsection (2)(c)(i), the ***assessed liability of an employer*** means—

(a) the sum of the actuarial value of the current, non-current and contingent liabilities of the employer in respect of injuries and deaths for which the employer is liable under section 391 to pay compensation or make other payments; and

(b) the following amount—

(i) the sum of the actuarial value of the current, non-current and contingent liabilities of the employer for claims expected to arise in the 12 months after the assessment in respect of injuries and deaths for which the employer would be liable under section 391 to pay compensation or make other payments; less

(ii) the total amount expected to be paid by the employer and its eligible subsidiaries in relation to compensation payable under section 391 and compensation in respect of tail claims assumed by a self-insurer under section 395, 396, 397 or 398 in the 12 months after the assessment.

Note

In the event that the amount referred to in subparagraph (ii) exceeds the amount referred to in subparagraph (i), the amount referred to in paragraph (b) is $0.

(4) For the purposes of subsection (3), an assessment of the liabilities of the employer must be carried out at intervals of not more than one year—

(a) by an actuary approved by the Authority; and

(b) in accordance with guidelines made by the Authority under section 410(1).

(5) For the purposes of an assessment under subsection (4), the employer must—

(a) make provision in its accounts for current, non-current and contingent liabilities in respect of injuries or deaths referred to in subsection (3)(a); and

(b) permit an actuary appointed by the Authority to inspect the books of the employer.

(6) In this section, ***tail claim*** means—

(a) any claim for which an employer has assumed the liability for, and the responsibility for management of, under section 395 or 396; and

(b) any claim of a body corporate that becomes an eligible subsidiary of an employer for which the employer has assumed liability for, and responsibility for management of, under section 397; and

(c) any claim of a self-insurer that becomes a subsidiary of another self-insurer for which the second-mentioned self-insurer has assumed liability for, and management of, under section 398.

394 Payments by Authority

(1) This section applies if ACCS, VCAT or a court has directed or determined that—

S. 394(1) amended by No. 73/2016 s. 21(2).

(a) compensation under this Act (other than section 576 or 578) or the **Accident Compensation Act 1985** (other than section 242AB or 242AD); or

(b) damages at common law as permitted by and in accordance with Division 2 of Part 7 (other than sections 348 to 356 inclusive) or section 366 of this Act or section 134AB or 135C of the **Accident Compensation Act 1985** and any contribution in respect of such damages under section 23B of the **Wrongs Act 1958**—

for which a self-insurer is liable must be paid in relation to an injury or death.

(2) For the purposes of subsection (1), compensation does not include an amount required to be paid under section 576 or 578.

S. 394(2) amended by No. 44/2014 s. 24(16).

(3) If the self-insurer does not pay the compensation, damages or contribution within 28 days after the direction has been given or the determination has been made, the Authority—

(a) must assume the liability; and

(b) is entitled to recover from the self-insurer the amount paid by the Authority in discharge of the liability together with interest at the prescribed rate.

Subdivision 2—Election by self-insurer to assume liability for tail claims

395 Movement from scheme insurance to self-insurance

(1) When applying for approval as a self-insurer in accordance with section 376(2)(a) or (c) or (3), an employer may elect to assume the liability for, and the responsibility for management of, its tail claims.

S. 395(2) amended by No. 44/2014 s. 24(17).

(2) An employer who—

(a) makes an election under subsection (1); and

(b) gives the Authority a guarantee in accordance with section 399 in respect of its tail claims on or before the approval of the employer as a self-insurer takes effect under section 382(1)—

assumes liability for, and responsibility for management of, its tail claims.

Note

If a self-insurer assumes liability for its tail claims, the self-insurer may exercise its powers and functions under this Act or the **Accident Compensation Act 1985** in relation to the injury or death to which a tail claim relates as if the injury or death were one to which section 391 applies.

(3) If an employer that is approved as a self-insurer has not made an election under subsection (1), the Authority—

(a) retains the liability for, and the responsibility for management of, the tail claims of the employer; and

(b) if the employer—

(i) is the holding company of an eligible subsidiary that is a self-insurer; and

(ii) ceases to be a self-insurer—

assumes the liability for, and the responsibility for management of, the tail claims of the eligible subsidiary.

(4) In this section—

former self-insurer means an eligible subsidiary of an employer that was a self-insurer before it became an eligible subsidiary of the employer;

tail claim, of an employer, means a claim, whenever made—

(a) in respect of an injury or death incurred or suffered—

(i) by a worker employed by the employer, or an eligible subsidiary of the employer, before the date on which the approval of the employer as a self-insurer takes effect under section 382(1); or

(ii) by a worker employed by a former self-insurer before it became an eligible subsidiary of the employer; or

(iii) if the employer makes an election to assume the tail claims of a former self-insurer, by a worker employed by the former self-insurer before the transfer date or before the date on which a former self-insurer ceased to be a self-insurer, which ever first occurs; or

(iv) if the employer does not make an election, by a worker before the Authority assumed the tail claims

of a former self-insurer under section 403;

(v) by a worker that were assumed by a former self-insurer before it became an eligible subsidiary of the employer, whether by agreement with the Authority or under this section or section 396, 397 or 398 of this Act or section 150 or 150A of the **Accident Compensation Act 1985**; and

(b) that entitles the worker, the dependants of the worker or the members of the worker's family to—

(i) compensation or any other payments under this Act (other than section 576 or 578) or the **Accident Compensation Act 1985** (other than section 242AB or 242AD); or

(ii) damages at common law as permitted by and in accordance with Division 2 of Part 7 (other than sections 348 to 356 inclusive) or section 366 of this Act or section 134AB or 135C of the **Accident Compensation Act 1985**;

transfer date means the date agreed between the Authority and the employer as the date on which the liability for, and the responsibility of the management of, the tail claims of a former self-insurer are to be assumed by the employer.

396 When a self-insurer becomes an eligible subsidiary of a holding company

(1) If—

(a) a self-insurer (***the eligible subsidiary***) becomes an eligible subsidiary of a body corporate (***the holding company***); and

(b) the holding company applies for approval under section 383 as a self-insurer—

the holding company may elect, when applying for that approval, to assume the liability for, and the responsibility for management of, its tail claims and the tail claims of the eligible subsidiary.

(2) A holding company that makes an election under subsection (1), must, on or before its approval as a self-insurer takes effect, give the Authority a guarantee in accordance with section 399 in respect of its tail claims and the tail claims of the eligible subsidiary.

S. 396(3) amended by No. 44/2014 s. 24(17).

(3) If the holding company gives a guarantee in accordance with subsection (2), the holding company assumes the liability for, and the responsibility for management of, its tail claims and the tail claims of the eligible subsidiary on the date on which the approval of the holding company as a self-insurer takes effect under section 383(3)(a).

(4) If the holding company does not make an election under subsection (1), the Authority retains the liability for, and the responsibility for management of, the tail claims of the eligible subsidiary in accordance with section 403.

S. 396(5) amended by Nos 44/2014 s. 24(18), 21/2015 s. 3(Sch. 1 item 68).

(5) In this section—

tail claim, in relation to a self-insurer that becomes an eligible subsidiary of a holding company, means a claim, whenever made—

(a) in respect of an injury or death incurred or suffered—

(i) by a worker employed by the self-insurer before it became an eligible subsidiary of the holding company; or

(ii) by a worker employed by the holding company or an eligible subsidiary of the holding company before the holding company is approved as a self-insurer under section 383(1)(a); or

(iii) if the holding company makes an election to assume liability for the tail claims of an eligible subsidiary of the holding company, by a worker employed by the eligible subsidiary before the transfer date or the date on which the eligible subsidiary ceases to be a self-insurer, whichever first occurs; or

(iv) if the holding company does not make an election to assume liability for the tail claims of an eligible subsidiary of the holding company, by a worker employed by the eligible subsidiary before the Authority assumed liability for, and responsibility for the management of, the eligible subsidiary under section 403; or

(v) by a worker that was assumed by the self-insurer before it became an eligible subsidiary of the holding company, whether by agreement with the Authority or under this section or section 395, 397 or 398 of this Act or section 150 or 150A of the **Accident Compensation Act 1985**; and

(b) that entitles the worker, the dependants of the worker or the members of the worker's family to—

(i) compensation or any other payments under this Act (other than section 576 or 578) or the **Accident Compensation Act 1985** (other than section 242AB or 242AD); or

(ii) damages at common law as permitted by and in accordance with Division 2 of Part 7 (other than sections 348 to 356 inclusive) or section 366 of this Act or section 134AB or 135C of the **Accident Compensation Act 1985**;

transfer date means the date agreed between the Authority and the holding company as the date on which the liability for, and the responsibility of the management of, the tail claims of the eligible subsidiary are to be assumed by the holding company.

397 When an employer that is a body corporate becomes an eligible subsidiary of a self-insurer

(1) If an employer that is a body corporate to which section 434 applies becomes an eligible subsidiary of a self-insurer, the self-insurer must, within 28 days—

(a) notify the Authority in writing of the acquisition of the eligible subsidiary; and

(b) include in the notification whether or not the self-insurer elects to assume the liability for, and the responsibility for management of, the tail claims of the eligible subsidiary.

(2) If the self-insurer makes an election under subsection (1)(b), the self-insurer must, on or before the transfer date, give the Authority a guarantee in accordance with section 399 in respect of the tail claims of the eligible subsidiary.

(3) If the self-insurer gives the guarantee in accordance with subsection (2), the self-insurer assumes the liability for, and the responsibility for, management of, the tail claims of the eligible subsidiary on the transfer date.

(4) If the self-insurer does not make an election under subsection (1)(b), the Authority retains the liability for, and the responsibility for management of, the tail claims of the eligible subsidiary in accordance with section 403.

(5) In this section—

tail claim, in relation to an employer that is a body corporate to which section 434 applies that becomes an eligible subsidiary of a self-insurer, means a claim, whenever made—

(a) in respect of an injury or death incurred or suffered by a worker employed by the body corporate before it became an eligible subsidiary of the self-insurer; and

(b) that entitles the worker, the dependants of the worker and members of the worker's family to—

(i) compensation or other payments under this Act (other than section 576 or 578) or the **Accident Compensation Act 1985** (other than section 242AB or 242AD); or

(ii) damages at common law as permitted by and in accordance with Division 2 of Part 7 (other than sections 348 to 356 inclusive) or section 366 of this Act or section 134AB or 135C of the **Accident Compensation Act 1985**;

transfer date means the date agreed between the Authority and the self-insurer as the date on which the liability for, and the responsibility for management of, the tail claims of the eligible subsidiary are to be assumed by the self-insurer.

398 When a self-insurer becomes an eligible subsidiary of another self-insurer

(1) If a self-insurer becomes an eligible subsidiary (***the eligible subsidiary***) of another self-insurer (***the self-insurer***), the self-insurer must, within 28 days—

(a) notify the Authority in writing of the acquisition of the eligible subsidiary; and

(b) include in the notification whether or not the self-insurer elects to assume the liability for, and the responsibility for the management of, the tail claims of the eligible subsidiary.

(2) If the self-insurer makes an election under subsection (1)(b), the self-insurer must, on or before the transfer date, give the Authority a guarantee in accordance with section 399 in respect of the tail claims of the eligible subsidiary.

(3) If the self-insurer gives the guarantee in accordance with subsection (2), the self-insurer assumes the liability for, and the responsibility for, management of the tail claims of the eligible subsidiary on the transfer date.

(4) If the self-insurer does not make an election under subsection (1)(b), the Authority assumes the liability for, and the responsibility for the management of, the tail claims of the eligible subsidiary in accordance with section 403.

(5) In this section—

tail claim, in relation to a self-insurer (the ***first mentioned self-insurer***) that becomes an eligible subsidiary of another self-insurer, means a claim, whenever made—

(a) in respect of an injury or death—

(i) incurred or suffered by a worker employed by the first mentioned self-insurer before it became an eligible subsidiary of the other self-insurer; or

(ii) if the other self-insurer makes an election to assume the liability for, and the responsibility for the management of, the tail claims of the first mentioned self-insurer, incurred or suffered by a worker

employed by the first mentioned self-insurer before the transfer date or the date on which the first mentioned self-insurer ceases to be a self-insurer, whichever first occurs; or

(iii) if subparagraph (ii) does not apply, incurred or suffered by a worker employed by the first mentioned self-insurer before the Authority assumes the liability for, and the responsibility for the management of, the tail claims of the first mentioned self-insurer in accordance with section 403; or

(iv) incurred or suffered by a worker, being a claim the liability for, and responsibility for the management of, was assumed by the first mentioned self-insurer before it became an eligible subsidiary of the other self-insurer, whether by agreement (including an agreement entered into with the Authority before 1 July 2014) or under section 395, 396, 397 or this section or section 150 or 150A of the **Accident Compensation Act 1985**; and

(b) that entitles the worker, the dependants of the worker and members of the worker's family to—

(i) compensation or other payments under this Act (other than section 576 or 578) or the **Accident Compensation**

Act 1985 (other than section 242AB or 242AD); or

(ii) damages at common law as permitted by and in accordance with Division 2 of Part 7 (other than sections 348 to 356 inclusive) or section 366 of this Act or section 134AB or 135C of the **Accident Compensation Act 1985**;

transfer date means the date agreed by the Authority and the self-insurer as the date on which the liability for, and the responsibility for management of the tail claims of the eligible subsidiary are to be assumed by the self-insurer.

399 Guarantee of liability for tail claims

(1) This section applies if an employer that is approved as a self-insurer—

(a) has elected under section 395(1) or 396(1) to assume liability for its tail claims; or

(b) has elected under section 397(1)(b) to assume liability for the tail claims of an employer that is a body corporate to which section 434 applies that becomes an eligible subsidiary of the employer; or

(c) has elected under section 398(1)(b) to assume liability for the tail claims of another self-insurer that becomes an eligible subsidiary of the employer.

(2) On and from the date the employer assumes liability for the tail claims and until such time as the Authority assumes liability for the tail claims of the employer under section 407, the employer must ensure that there is in force at all times a guarantee in respect of liabilities relating to the

tail claims incurred by the Authority by reason of the failure of the employer to meet its liabilities in respect of those claims or by reason that the employer has ceased to be an approved self-insurer.

400 Requirement for guarantee

(1) For the purposes of section 399(2), the guarantee that must be provided to the Authority is a guarantee that—

(a) is given by an ADI to or in favour of the Authority; and

(b) is in a form approved by the Authority; and

(c) guarantees payment of an amount not less than one and one-half times the amount of the assessed tail claim liability of the employer or the eligible subsidiary, as the case may be.

S. 400(2) amended by No. 44/2014 s. 24(19).

(2) For the purposes of subsection (1)(c), the assessed tail claim liability of an employer or eligible subsidiary is the actuarial value of the current, non-current and contingent liabilities of the employer or the eligible subsidiary in respect of tail claims under this Act.

(3) For the purposes of subsection (2), an assessment of the tail claim liability of the employer or eligible subsidiary must be carried out by an actuary approved by the Authority under guidelines made by the Authority in accordance with section 410 at intervals of not more than one year.

(4) For the purposes of an assessment under subsection (3), the employer must—

(a) make provision in its accounts for current, non-current and contingent tail claim liabilities; and

(b) permit an actuary appointed by the Authority to inspect the books of the employer.

401 Arrangements for payments in respect of liability for tail claims

(1) The Minister may, by notice published in the Government Gazette, make a Ministerial Order regarding the arrangements that are to apply where—

(a) in accordance with section 395 or 396, an employer, as a self-insurer, assumes liability for its tail claims; or

(b) in accordance with section 397, a self-insurer assumes liability for the tail claims of an employer to which section 434 applies that is a body corporate that becomes an eligible subsidiary of the self-insurer.

(2) Without limiting subsection (1), the Ministerial Order may specify—

(a) the method of calculating a settlement amount that must be paid by the Authority to the self-insurer; and

(b) the manner in which the amount is to be paid.

(3) The Authority must make payment to the self-insurer of a settlement amount in accordance with the Ministerial Order.

402 Where an eligible subsidiary ceases to be an eligible subsidiary of a self-insurer

If—

(a) under section 395, 396, 397 or 398, a self-insurer (***the self-insurer***) assumed the liability for, and the responsibility for management of, the tail claims of

an eligible subsidiary of the self-insurer (***the subsidiary***); and

(b) the subsidiary ceases to be an eligible subsidiary of the self-insurer—

the self-insurer retains liability for, and the responsibility for management of, the tail claims of the subsidiary until the self-insurer ceases to be a self-insurer.

Subdivision 3—Employer that ceases to be self-insurer or otherwise to be liable for tail claims

403 Employer ceases to be self-insurer

(1) Subject to subsection (2), this section applies if—

(a) an employer ceases to be a self-insurer; or

(b) in the case of an employer that elected to retain liability under section 151(1) of the **Accident Compensation Act 1985** as in force before 15 August 2007, the Authority, by notice published in the Government Gazette, has declared that the employer has ceased to be liable for the tail claims of the employer.

(2) This section does not apply if the employer ceases to be a self-insurer because it becomes an eligible subsidiary of another self-insurer that, under section 396 or 398, has assumed the liability for, and responsibility for management of, the tail claims of the employer.

(3) Unless otherwise allowed by the Authority, on and from the exit date—

(a) the Authority assumes the liability for, and the responsibility for management of, the tail claims of the employer; and

(b) a person who, but for this section, would have been required by this Act to lodge a claim for compensation with the employer as a self-insurer, may lodge the claim with the Authority; and

(c) this Act and the **Accident Compensation Act 1985** apply to the Authority as if it were a self-insurer and, in relation to any proceedings to which the employer was a party as a self-insurer immediately before the Authority assumed the liability of the employer, as if the Authority were that party.

(4) Unless otherwise allowed by the Authority, the employer must give to the Authority all claims and other relevant documents relating to the tail claims that are in the possession of the employer no later than 28 days after the exit date.

Penalty: 500 penalty units.

(5) In this section—

exit date means—

(a) the date on which the employer ceases to be a self-insurer; or

(b) in the case of an employer referred to in subsection (1)(b), the date on which the notice is published in the Government Gazette.

S. 403(5) def. of *tail claim* amended by No. 44/2014 ss 16, 24(20).

tail claim, of an employer that ceases to be a self-insurer, means—

(a) a claim, regardless of when made, in respect of an injury or death—

(i) incurred or suffered by a worker employed by the employer or an eligible subsidiary of the employer while the employer was a self-insurer; and

(ii) which entitles that worker, the dependants of that worker or members of that worker's family to compensation or any other payments under this Act (other than section 576 or 578) or the **Accident Compensation Act 1985** or damages at common law as permitted by and in accordance with Division 2 of Part 7 (other than sections 348 to 356 inclusive) or section 366 or section 134AB or 135C of the **Accident Compensation Act 1985**; or

(b) a claim for which the employer assumed liability under section 395(2), 396(3), 397(3) or 398(3) of this Act or section 150(3) or 150A(5) of the **Accident Compensation Act 1985**; or

(c) a claim for which the employer assumed liability by agreement with the Authority.

404 General provisions applying to assessment by an actuary

(1) This section applies to any assessment of the tail claim liabilities of an employer conducted by an actuary under section 405 or 406.

(2) The actuary must provide the employer with a copy of the proposed assessment.

(3) The employer may provide comments to the actuary within 28 days of receiving a copy of the proposed assessment or within any further period as may be agreed between the Authority and the employer.

(4) Before finalising the assessment, the actuary must consider any comments received under subsection (3).

(5) The employer must pay the cost of conducting the assessment and any money owed to the actuary by the Authority in relation to the assessment.

(6) If the Authority pays the cost of conducting the assessment or other money owed to the actuary in relation to the assessment, the amount paid by the Authority together with interest at the prescribed rate is a debt of the employer due to the Authority.

405 Initial assessment of liability for tail claims

(1) This section applies if, under section 403, the Authority assumes the liability for the tail claims of an employer that has ceased to be a self-insurer.

(2) Within 28 days after the Authority has assumed liability for the tail claims, the amount of the tail claims liabilities of the employer must be assessed by an actuary appointed by the Authority.

(3) If the employer fails to permit the actuary to inspect the books of the employer to enable that assessment to be made, the liability for the tail claims of the employer is the amount determined by the Authority.

(4) The Authority must give notice in writing to the employer stating the amount of the tail claim liabilities assessed under subsection (2) or determined under subsection (3), as the case may be.

(5) The amount of the tail claim liabilities assessed under subsection (2) or determined under subsection (3) is a debt due to the Authority by the employer and is payable by the employer within—

(a) 28 days of receiving notice of the assessment or determination from the Authority; or

(b) any longer period as may be agreed between the Authority and the employer.

(6) If the employer fails to pay the amount due under subsection (5) within the period referred to in that subsection, the Authority may recover that amount under the guarantee provided under section 393 or 399.

(7) In this section, the ***tail claims liabilities*** of an employer means the sum of the actuarial value of the current, non-current and contingent liabilities immediately before the exit date of the employer in respect of tail claims.

406 Annual assessment of tail claims liabilities and adjustment of payments

(1) The Authority must ensure that an actuary appointed by the Authority undertakes an assessment of the tail claims liabilities of an employer assumed by the Authority under section 403 as at the end of each year during the liability period.

(2) The Authority must give notice in writing to the employer stating the amount of liability assessed under subsection (1).

(3) If the revised assessment of the tail claims liabilities as at the end of the third year of the liability period exceeds the initial assessment of the tail claims liabilities, the employer must pay the difference to the Authority.

(4) If the revised assessment of the tail claims liabilities as at the end of the third year of the liability period is less than the initial assessment of the tail claims liabilities, the Authority must pay the difference to the employer.

(5) If the revised assessment of the tail claims liabilities as at the end of the sixth year of the liability period exceeds the revised assessment of

the tail claims liabilities as assessed at the end of the third year of the liability period, the employer must pay the difference to the Authority.

(6) If the revised assessment of the tail claims liabilities as at the end of the sixth year of the liability period is less than the revised assessment of the tail claims liabilities as assessed at the end of the third year of the liability period, the Authority must pay the difference to the employer.

(7) If the employer is required under subsection (3) or (5) to pay an amount as a result of a revised assessment, the employer must pay the amount within—

(a) 28 days of receiving notice of the revised assessment from the Authority; or

(b) any further period as may be agreed between the Authority and the employer.

(8) If the amount is not paid to the Authority in accordance with subsection (7), the amount together with interest at the prescribed rate is a debt due to the Authority.

(9) In this section, ***liability period*** means the period of 6 years commencing from the exit date as defined in section 403.

407 Provision of guarantees

(1) This section applies if, under section 403, the Authority assumes the liability for the tail claims of an employer that has ceased to be a self-insurer.

(2) The employer must ensure that on or before the date the Authority assumes liability for the tail claims of the employer there is in force, until the final assessment date, a guarantee—

(a) against insolvency risk in respect of 50 per cent of—

(i) in relation to the first year of the liability period, the initial assessment of tail claims liabilities until the end of the first year after the exit date;

(ii) in relation to the second and subsequent years of the liability period, the revised amount of the tail claims liabilities still outstanding as assessed at the end of each subsequent year for the duration of the next year until the final assessment date; and

(b) against claims deterioration—

(i) in relation to the period from the exit date until the interim assessment date, for the amount, if any, by which the revised assessment of tail claims liabilities at the end of each year exceeds the initial assessment of tail claims liabilities;

(ii) in relation to the period from the end of the period referred to in subparagraph (i) until the final assessment date or, if a review is conducted under section 408, until the date on which the review is finalised, for the amount, if any, by which the revised assessment of tail claims liabilities at the end of each year exceeds the revised assessment of tail claims liabilities as assessed at the end of the third year.

(3) An employer must comply with subsection (2).

Penalty: In the case of a natural person, 240 penalty units;

In the case of a body corporate, 1200 penalty units.

(4) If, by virtue of section 600, a natural person commits an offence under subsection (3), that person is liable to a penalty of 120 penalty units.

(5) The guarantee referred to in subsection (2) must be—

(a) given by an ADI to or in favour of the Authority; and

(b) in a form approved by the Authority.

(6) If the employer receives a notice of assessment of tail claims liabilities conducted under section 406, the employer may, with the approval of the Authority, provide a new guarantee in a form approved by the Authority in lieu of a guarantee in force under subsection (2), to continue in force until the final assessment date.

(7) The Authority may recover under a guarantee under this section any loss suffered by the Authority if—

(a) the employer fails to make a payment required under section 406(3) or (5); or

(b) the employer is an externally-administered body corporate within the meaning of the Corporations Act.

(8) For the purpose of any proceeding commenced by the Authority to recover under a guarantee under this section, a certificate purporting to be signed by an officer or employee of the Authority certifying that—

(a) an event referred to in subsection (7)(a) or (7)(b) and specified in the certificate has occurred; and

(b) the Authority has suffered a loss of the amount specified in the certificate as a result of that event occurring—

is evidence of the matters stated in the certificate and, in the absence of evidence to the contrary, is proof of those matters.

(9) In this section—

final assessment date means—

(a) if a payment is required under section 406(5), the date the payment is made; or

(b) if no payment is required, the date which is 28 days after the notice of revised assessment is received under section 406 in relation to the assessment carried out in the sixth year of the liability period;

interim assessment date means—

(a) if a payment is required under section 406(3), the date the payment is made; or

(b) if no payment is required, the date which is 28 days after the notice of revised assessment is received under section 406 in relation to the assessment carried out in the third year of the liability period.

408 Review of final revised assessment at the end of the liability period

(1) If an employer disputes the final revised assessment made under section 406 as at the end of the liability period, the employer may appoint an actuary to review the final revised assessment.

(2) The employer must pay the cost of conducting the review.

(3) The actuary appointed by the employer must provide comments to the actuary who made the final revised assessment within 28 days of the employer receiving a copy of the final revised assessment.

(4) If the actuary appointed by the employer and the actuary who made the final revised assessment are unable to reach agreement, the employer and the Authority may agree—

(a) to jointly appoint another actuary to review the final revised assessment; and

(b) to be bound by the decision of that actuary.

(5) The costs of a review conducted under subsection (4) are to be borne equally by the employer and the Authority.

(6) If—

(a) the actuary appointed by the employer and the actuary who made the final revised assessment were unable to reach agreement; and

(b) the employer and the Authority do not enter into an agreement under subsection (4) within 28 days after the period referred to in subsection (3)—

the final revised assessment under section 406 is by virtue of this subsection binding on the employer and the Authority.

409 Eligible subsidiary of self-insurer becomes a non-WorkCover employer

(1) This section applies if an employer that is an eligible subsidiary of a self-insurer becomes a non-WorkCover employer within the meaning of Part 9.

(2) For the purposes of this Part, the employer is taken not to be an eligible subsidiary of the self-insurer for the period that it is a non-WorkCover employer.

S. 409(3) substituted by No. 48/2017 s. 33.

(3) On and from the date the employer becomes a non-WorkCover employer, the self-insurer retains liability for, and the responsibility for management of, the tail claims of the employer until the self-insurer ceases to be a self-insurer.

S. 409(4) substituted by No. 48/2017 s. 33.

(4) In this section, ***tail claim*** of an employer that ceases to be an eligible subsidiary of a self-insurer means—

(a) a claim, regardless of when made, in respect of an injury or death incurred or suffered by a worker employed by the employer while the employer was an eligible subsidiary of a self-insurer andwhich entitles that worker, the dependants of that worker or the members of that worker's family to compensation or any other payments under this Act (other than section 576 or 578) or the **Accident Compensation Act 1985** or damages at common law as permitted by and in accordance with Division 2 of Part 7 (other than sections 348 to 356 inclusive) or section 366 or section 134AB or 135C of the **Accident Compensation Act 1985**; or

(b) a claim of the employer that ceases to be an eligible subsidiary of the self-insurer for which the self-insurer assumed liability for, and the responsibility for management of, under section 395, 396, 397 or 398.

S. 409(5)(6) repealed by No. 48/2017 s. 33.

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Division 7—Miscellaneous

410 Guidelines

(1) The Authority may make guidelines for the purposes of this Part to provide guidance to self-insurers about matters to which self-insurers should have regard in relation to this Act or in relation to any regulations or Ministerial Orders made under this Act.

(2) Guidelines made under subsection (1) may indicate the way in which—

(a) a provision of this Part would, in the Authority's opinion, apply to a class of employers or to a set of circumstances; or

(b) a discretion of the Authority under a provision of this Part would be exercised.

(3) For the purposes of subsection (2)(b), the Authority exercises a discretion if the Authority—

(a) forms an opinion; or

(b) attains a state of mind; or

(c) makes a determination; or

(d) exercises a power; or

(e) refuses or fails to do any of those things.

(4) If the Authority proposes to make guidelines under subsection (1), it must—

(a) ensure notice of the proposed guidelines is published; and

(b) include in the notice a statement that written submissions or comments on the proposed guidelines may be made to the Authority within a specified period; and

(c) give a copy of the proposed guidelines to each person who requests it during that period.

(5) After considering the submissions and comments (if any) received by the Authority within the specified period, the Authority may make the guidelines (with or without modifications) by causing notice of them to be published.

(6) The Authority must ensure that guidelines made under this section are published and are generally available.

411 Effect of guidelines

Guidelines under section 410 do not give rise to—

(a) any liability of, or other claim against, the Authority; or

(b) any right, expectation, duty or obligation that would not otherwise be conferred or imposed on a person; or

(c) any defence that would not otherwise be available to that person.

412 Secrecy provisions

(1) This section applies to a person who—

(a) is, or has at any time been—

(i) appointed for the purposes of this Part; or

(ii) authorised to perform or exercise any function or power of the Authority under this Part; and

(b) has acquired information by reason of being or having been so appointed or authorised.

(2) A person to whom this section applies may—

(a) produce a document or divulge or communicate information to any of the following—

(i) a court in the course of criminal proceedings or in the course of any proceeding under this Act;

(ii) the Secretary to the Department of Treasury and Finance;

(iii) the Secretary to the Department of Innovation, Industry and Regional Development;

(iv) an authority, department or public body, within the meaning of the **Financial Management Act 1994**, which has functions in relation to particular accident compensation matters arising under this Act or any other Act;

(v) the Transport Accident Commission;

(vi) a person who has responsibility for the administration of a welfare, benefit or compensation scheme of another State or a Territory or the Commonwealth;

(vii) a corresponding Authority;

(viii) the National Occupational Health and Safety Commission;

(ix) the Australian Bureau of Statistics;

* * * * *

S. 412(2)(a)(x) repealed by No. 67/2014 s. 147(Sch. 2 item 46).

(xi) a person or body approved by the Governor in Council;

(xii) a committee of the Parliament; and

(b) produce a document or disclose information which is required or permitted to be produced or disclosed by or under this Act or any other Act.

(3) A person to whom this section applies must not—

(a) either directly or indirectly make a record of, or divulge or communicate to anyone else, any information referred to in subsection (1)(b), except to the extent necessary to perform official duties, or to perform or exercise a function or power referred to in subsection (1)(a)(ii); or

(b) make use of that information, for any purpose other than the performance of official duties or the performance or exercise of a function or power referred to in subsection (1)(a)(ii).

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(4) The Minister must cause a report of requests for the approval of persons or bodies by the Governor in Council under subsection (2)(a)(xi) to be laid before each House of the Parliament within 14 sitting days of that House after 30 June in each year.

(5) The report must include the following matters in respect of each request—

(a) the name of the person sought to be approved;

(b) the reason for the request;

(c) the date of the request;

(d) whether the request was approved or refused.

Part 9—Non-WorkCover employers

413 Definitions

In this Part—

actuary means a fellow or accredited member of the Institute of Actuaries of Australia approved by the Authority;

available assets means the portion of the Authority's total assets assessed by an actuary calculated, with reference to the last audited financial statements of the Authority, to be available to fund the tail claims liabilities;

exit date means the date on which an employer becomes a non-WorkCover employer;

initial assessment means the assessment of tail claims liabilities under section 415;

liability period means the period of 6 years commencing from the exit date;

non-WorkCover employer means an employer which—

(a) is licensed under Part VIII of the Safety, Rehabilitation and Compensation Act 1988 of the Commonwealth after a declaration of eligibility under that Part made on the basis that the employer is a corporation carrying on business in competition with a Commonwealth authority or with another corporation that was previously a Commonwealth authority; and

(b) would otherwise be required—

(i) to be a registered as an employer under section 434; or

(ii) to be approved as a self-insurer under Part 8; or

(iii) to be an eligible subsidiary of a holding company that is a self-insurer;

revised assessment means the assessment of tail claims liabilities under section 417;

S. 413 def. of *tail claims* amended by No. 5/2021 s. 24.

tail claims means claims whether made before, on or after the exit date—

(a) in respect of injuries or deaths incurred or suffered by workers employed by the non-WorkCover employer while the non-WorkCover employer was—

(i) insured under a WorkCover insurance policy or registered as an employer under section 434; or

(ii) a self-insurer; or

(iii) an eligible subsidiary of a self-insurer; and

(b) which entitle a worker or the dependants of a worker to compensation under this Act (other than section 576 or 578) or the **Accident Compensation Act 1985** (other than section 242AB or 242AD), provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**, or damages at common law as permitted by and in accordance with Division 2 of Part 7 (other than sections 348 to 356 inclusive) or

section 366 or section 134AB or 135C of the **Accident Compensation Act 1985**;

tail claims liabilities means the sum of the actuarial value of the current, non-current and contingent liabilities immediately before the exit date in respect of tail claims under this Act of the non-WorkCover employer while the non-WorkCover employer was—

(a) a registered employer; or

(b) a self-insurer; or

(c) an eligible subsidiary of a self-insurer.

414 Authority retains or assumes liability for tail claims

On the exit date the Authority—

(a) if the non-WorkCover employer was a registered employer, retains—

(i) the liability for; and

(ii) the responsibility for management of—

the tail claims of the non-WorkCover employer; or

(b) if the non-WorkCover employer was a self-insurer, assumes—

(i) the liability for; and

(ii) the responsibility for management of—

the tail claims of the non-WorkCover employer.

S. 414(b) amended by No. 48/2017 s. 34(a).

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S. 414(c) repealed by No. 48/2017 s. 34(b).

415 Actuary to assess tail claims liabilities

(1) If, immediately before the exit date, the non-WorkCover employer had a statutory contract of

insurance under section 435, an actuary appointed by the Authority must undertake an assessment of—

(a) the tail claims liabilities; and

(b) the available assets.

(2) If, immediately before the exit date, the non-WorkCover employer was a self-insurer or an eligible subsidiary of a self-insurer to which this Part applies, an actuary appointed by the Authority must assess the tail claims liabilities.

(3) If a non-WorkCover employer referred to in subsection (2) fails to permit the actuary to inspect the books of the non-WorkCover employer to enable that assessment to be made, the tail claims liabilities are deemed to be the amount that the actuary determines to be the tail claims liabilities of the non-WorkCover employer.

(4) The non-WorkCover employer must pay the cost of conducting the assessment.

(5) The actuary must provide the non-WorkCover employer with a copy of the proposed assessment.

(6) The non-WorkCover employer may provide comments to the actuary within 28 days of receiving a copy of the proposed assessment or within any further period as may be agreed between the Authority and the non-WorkCover employer.

(7) The actuary must finalise the assessment after considering any comments received under subsection (6).

416 Obligation of non-WorkCover employer

(1) If, immediately before the exit date, the non-WorkCover employer had a statutory contract of insurance under section 435 and the initial assessment is that the tail claims liabilities exceed

the available assets, the non-WorkCover employer must pay the amount of the difference to the Authority.

(2) If, immediately before the exit date, the non-WorkCover employer was a self-insurer or an eligible subsidiary of a self-insurer, the non-WorkCover employer must pay the amount of the tail claims liabilities as assessed in the initial assessment to the Authority.

(3) The non-WorkCover employer must pay the amount under subsection (1) or (2) within 28 days of receiving a notice of that initial assessment from the Authority or within any further period as may be agreed between the Authority and the non-WorkCover employer.

(4) If the amount under subsection (1) or (2) is not paid to the Authority in accordance with subsection (3), the amount together with interest at the prescribed rate may be recovered by the Authority as a civil debt recoverable summarily.

417 Annual assessment of tail claims liabilities

(1) The Authority must ensure that an actuary appointed by the Authority undertakes an assessment of the tail claims liabilities as at the end of each year during the liability period.

Note

Section 44(6)(c) of the **Interpretation of Legislation Act 1984** provides that a reference, without qualification, to a year shall be construed as a reference to a period of 12 months.

(2) The non-WorkCover employer must pay the cost of conducting the assessment.

(3) The actuary must provide the non-WorkCover employer with a copy of the proposed assessment.

(4) The non-WorkCover employer may provide comments to the actuary within 28 days of receiving a copy of the proposed assessment or within any further period as may be agreed between the Authority and the non-WorkCover employer.

(5) The actuary must finalise the assessment after considering any comments received under subsection (4).

418 Adjustment of payments as at the end of the third year

(1) If the revised assessment of the tail claims liabilities as at the end of the third year of the liability period exceeds the initial assessment of the tail claims liabilities, the non-WorkCover employer must pay the amount of the difference to the Authority.

(2) If the revised assessment of the tail claims liabilities as at the end of the third year of the liability period is less than the initial assessment of the tail claims liabilities, the Authority must pay the amount of the difference to the non-WorkCover employer in accordance with section 420.

419 Adjustment of payments as at the end of the sixth year

(1) If the revised assessment of the tail claims liabilities as at the end of the sixth year of the liability period exceeds the revised assessment of the tail claims liabilities as assessed at the end of the third year of the liability period, the non-WorkCover employer must pay the amount of the difference to the Authority.

(2) If the revised assessment of the tail claims liabilities as at the end of the sixth year of the liability period is less than the revised assessment

of the tail claims liabilities as assessed at the end of the third year of the liability period, the Authority must pay the amount of the difference to the non-WorkCover employer in accordance with section 420.

420 Payments of tail claims

(1) The non-WorkCover employer must pay the amount under section 418 or 419 within 28 days of receiving a notice of that revised assessment from the Authority or within any further period as may be agreed between the Authority and the non-WorkCover employer.

(2) If the amount under section 418 or 419 is not paid to the Authority in accordance with subsection (1), the amount together with interest at the prescribed rate may be recovered by the Authority as a civil debt recoverable summarily.

421 Provision of guarantees

A non-WorkCover employer must ensure that there is in force—

(a) until the date a payment if required under section 419 is made; or

(b) if no payment is required, until the date which is 28 days after the notice of revised assessment is received under section 419—

a guarantee—

(c) against insolvency risk given by an ADI to or in favour of the Authority in a form approved by the Authority in respect of 50 per cent of—

(i) in relation to the first year of the liability period, the initial assessment of tail claims liabilities until the end of the first year after the exit date;

(ii) in relation to the second and subsequent years of the liability period, the revised amount of the tail claims liabilities still outstanding as assessed at the end of each subsequent year for the duration of the next year until the date a payment (if any) is made under section 419; and

(d) against claims deterioration given by an ADI to or in favour of the Authority in a form approved by the Authority—

(i) in relation to the period from the exit date until the date a payment is made under section 418 or if no payment is required, until the date which is 28 days after the notice of assessment is received under section 418, for the amount, if any, by which the revised assessment of tail claims liabilities at the end of each year exceeds the initial assessment of tail claims liabilities;

(ii) in relation to the period from the end of the period referred to in subparagraph (i) until the date a payment is made under section 419 or if no payment is required, until the date which is 28 days after the notice of assessment is received under section 419, or if a review is conducted under section 425, until the date on which the review is finalised, for the amount, if any, by which the revised assessment of tail claims liabilities at the end of each year exceeds the revised assessment of tail claims liabilities as assessed at the end of the third year.

422 Provision of new guarantee

If a non-WorkCover employer receives a notice of assessment of tail claims liabilities under section 417, the non-WorkCover employer may, with the approval of the Authority, provide a new guarantee in a form approved by the Authority in lieu of a guarantee in force under section 421, to continue in force until the date a payment if required under section 419 is made or, if no payment is required, until the date which is 28 days after the notice of revised assessment is received under section 419.

423 Recovery under guarantees

(1) If—

(a) the non-WorkCover employer fails to make a payment required under section 418 or 419; or

(b) the non-WorkCover employer is an externally-administered body corporate within the meaning of the Corporations Act—

the Authority may recover under a guarantee under section 421 or 422 any loss suffered by the Authority.

(2) For the purpose of any proceeding commenced by the Authority to recover under a guarantee under subsection (1), a certificate purporting to be signed by an officer or employee of the Authority certifying that—

(a) an event referred to in subsection (1) and specified in the certificate has occurred; and

(b) the Authority has suffered a loss of the amount specified in the certificate as a result of that event occurring—

is evidence of the matters stated in the certificate and, in the absence of evidence to the contrary, is proof of those matters.

424 Review of final revised assessment at the end of the liability period

(1) If a non-WorkCover employer disputes the final revised assessment made under section 417 as at the end of the liability period, the non-WorkCover employer may appoint an actuary to review the final revised assessment.

(2) The non-WorkCover employer must pay the cost of conducting the review.

(3) The actuary appointed by the non-WorkCover employer must provide comments to the actuary who made the final revised assessment within 28 days of the non-WorkCover employer receiving a copy of the final revised assessment.

(4) If the actuary appointed by the non-WorkCover employer and the actuary who made the final revised assessment are unable to reach agreement, the non-WorkCover employer and the Authority may agree—

(a) to jointly appoint another actuary to review the final revised assessment; and

(b) to be bound by the decision of that actuary.

(5) The costs of a review conducted under subsection (4) are to be borne equally by the non-WorkCover employer and the Authority.

(6) If—

(a) the actuary appointed by the non-WorkCover employer and the actuary who made the final revised assessment were unable to reach agreement; and

(b) the non-WorkCover employer and the Authority do not enter into an agreement under subsection (4) within 28 days after the period referred to in subsection (3)—

the final revised assessment under section 417 is by virtue of this subsection binding on the non-WorkCover employer and the Authority.

425 Liability of Authority under this Part

Except as is otherwise expressly provided in this Part, the Authority is not liable to make any payment or repayment to a non-WorkCover employer under this Part.

426 Legal proceedings excluded

No proceedings may be brought against the Authority, an actuary or any other person in respect of any assessment under this Part or any other act, matter or thing incidental to the conduct of such an assessment.

427 Application of Part if non-WorkCover employer ceases to be a non-WorkCover employer

This Part continues to apply until the end of the liability period in respect of the tail claims of a non-WorkCover employer who ceases to be a non-WorkCover employer and becomes—

(a) a registered employer; or

(b) a self-insurer; or

(c) an eligible subsidiary of a self-insurer.

428 Failure to comply with a provision of this Part

A non-WorkCover employer must comply with this Part.

Penalty: In the case of a natural person, 240 penalty units;

In the case of a body corporate, 1200 penalty units.

Part 10—Premiums and registration of employers

Division 1—Preliminary

429 Application

(1) This Part does not apply to—

(a) an employer which is a self-insurer; or

(b) a non-WorkCover employer; or

(c) an employer which, in a financial year, does not employ a worker other than a worker whose employment, because of section 37, is not connected with this State and either—

(i) the worker has workers compensation cover in respect of the worker's employment under the law of the State or Territory with which the worker's employment is connected; or

(ii) the worker is employed to work outside Australia and works outside Australia.

(2) In this section, ***worker*** includes an apprentice.

430 Liability to pay premium

(1) An employer which—

(a) in a financial year—

(i) employs one or more workers; and

(ii) pays or is liable to pay rateable remuneration in respect of the financial year that exceeds the exemption limit; or

(b) in a financial year, employs an apprentice (whether or not the employer's rateable remuneration in the financial year exceeds the exemption limit)—

is liable under this Part to pay a premium in accordance with this Part in respect of the financial year.

(2) Subsection (1) applies to an employer whether or not the employer is registered under section 434.

(3) In this section, ***worker*** includes an apprentice.

431 Groups

(1) For the purposes of this Part, if—

(a) an employer that is a body corporate and another body corporate (***related person***) are, by reason of section 50 of the Corporations Act, related to each other; or

(b) one or more workers of an employer perform duties for or in connection with one or more businesses carried on by the employer and one or more other persons (***associates***); or

(c) one or more workers of an employer are employed solely or mainly to perform duties for or in connection with one or more businesses carried on by one or more other persons (***associates***); or

(d) one or more workers of an employer perform duties for or in connection with one or more businesses carried on by one or more other persons (***associates***), being duties performed in connection with, or in fulfilment of, the employer's obligation under, an agreement, arrangement or undertaking for the provision of services to any one or more of the associates in connection with that business or those businesses—

(i) whether the agreement, arrangement or undertaking is formal or informal, express or implied; and

(ii) whether or not the agreement, arrangement or undertaking provides for duties to be performed by the workers or specifies the duties to be performed by them—

the employer and all persons who are related persons or associates in relation to that employer together constitute a group and each is a member of that group.

Note

Subsection (10) allows the Authority to exclude members from a group constituted under this subsection in certain circumstances.

(2) If a person or 2 or more persons have a controlling interest in each of 2 businesses under subsection (3), the persons who carry on those businesses constitute a group and each person is a member of the group.

Note

Subsection (10) allows the Authority to exclude members from a group constituted under this subsection in certain circumstances.

(3) For the purposes of subsection (2), a person or 2 or more persons have a controlling interest in a business if—

(a) in the case of a business carried on by a corporation—

(i) the person or each of the persons is a director of the corporation and the person or persons are entitled to exercise more than 50 per cent of the voting power at meetings of the directors of the corporation; or

(ii) a director or 2 or more directors of the corporation that are entitled to exercise more than 50 per cent of the voting power at meetings of the directors of the corporation are under an obligation, whether formal or informal, to act in accordance with the direction, instructions or wishes of that person or those persons; or

(b) in the case of a business carried on by a corporation that has a share capital, that person or those persons can, directly or indirectly, exercise, control the exercise of, or substantially influence the exercise of, more than 50 per cent of the voting power attached to the voting shares, or any class of voting shares, issued by the corporation; or

(c) in the case of a business carried on by a body corporate or unincorporate, that person or those persons constitute more than 50 per cent of the board of management (by whatever name called) of the body or control the composition of the board; or

(d) in the case of a business carried on by a partnership, that person or those persons—

(i) own (whether beneficially or not) more than 50 per cent of the capital of the partnership; or

(ii) are entitled (whether beneficially or not) to more than 50 per cent of the profits of the partnership; or

(e) in the case of a business carried on under a trust, the person or persons (whether or not as a trustee of, or beneficiary under, another trust) are the beneficiary in respect of more

than 50 per cent of the value of the interests in the first-mentioned trust; or

(f) in the case of one person, the person is the sole owner (whether or not as trustee) of the business; or

(g) in the case of 2 or more persons, the persons are together as trustees the sole owners of the business.

(4) A person who may benefit from a discretionary trust as a result of the trustee or another person, or the trustee and another person, exercising or failing to exercise a power or discretion, is taken, for the purposes of this Act, to be a beneficiary in respect of more than 50 per cent of the value of the interests in the trust.

(5) If—

(a) 2 corporations are related bodies corporate within the meaning of the Corporations Act; and

(b) one of the corporations has a controlling interest in a business—

the other corporation has a controlling interest in the business.

(6) If—

(a) a person or 2 or more persons have a controlling interest in a business; and

(b) a person or 2 or more persons who carry on the business have a controlling interest in another business—

the person or persons referred to in paragraph (a) have a controlling interest in that other business.

(7) If—

(a) a person or 2 or more persons are the beneficiary of a trust in respect of more than 50 per cent of the value of the interests in the trust; and

(b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of another trust—

the person or persons have a controlling interest in the business.

(8) If—

(a) a person or 2 or more persons have a controlling interest in the business of a trust; and

(b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a corporation—

the person or persons are deemed to have a controlling interest in the business of the corporation.

(9) If—

(a) a person or 2 or more persons have a controlling interest in the business of a trust; and

(b) the trustee of the trust (whether alone or together with another trustee or trustees) has a controlling interest in the business of a partnership—

the person or persons are deemed to have a controlling interest in the business of the partnership.

(10) If the Authority is satisfied that, having regard to—

(a) the nature and degree of ownership and control of the businesses; and

(b) the nature of the businesses; and

(c) any other matters the Authority considers relevant—

a business carried on by a member of a group, other than a group constituted by reason of subsection (12), is carried on independently of, and is not connected with, the carrying on of a business carried on by any other member of that group, the Authority may exclude the member from that group.

(11) The Authority must not, under subsection (10), exclude a person from a group if the person is a body corporate that, by reason of section 50 of the Corporations Act, is related to another body corporate that is a member of that group.

(12) Subject to subsection (13), for the purposes of this section, if an employer is a member of a group and that person or another member of that group is a member of another group, a person who is a member of that other group is—

(a) deemed to be a member of the first-mentioned group; and

(b) called an ***associate***.

(13) Subsection (12) does not apply if a person satisfies the Authority that—

(a) the trade, business or profession carried on by that person is carried on independently of, and is not connected with, the carrying on of a trade, business or profession carried on by a member of the first-mentioned group; and

(b) that trade, business or profession is not carried on with an intention, either directly or indirectly, of reducing the amount of premium payable by that person or another member of the group.

(14) In this section—

business includes—

(a) a profession or trade; and

(b) any other activity carried on for fee, gain or reward; and

(c) the activity of employing one or more persons who perform duties for or in connection with another business; and

(d) the carrying on of a trust (including a dormant trust); and

(e) the activity of holding any money or property used for or in connection with another business—

whether carried on by one person or 2 or more persons together;

person includes an unincorporated body and a partnership.

432 Joint and several liability of group members

(1) A person who, during a period, is or was a member of a group within the meaning of section 431 is jointly and severally liable with the other persons who are or were members of the group during that period to pay premium and penalties payable by members of that group in respect of that period.

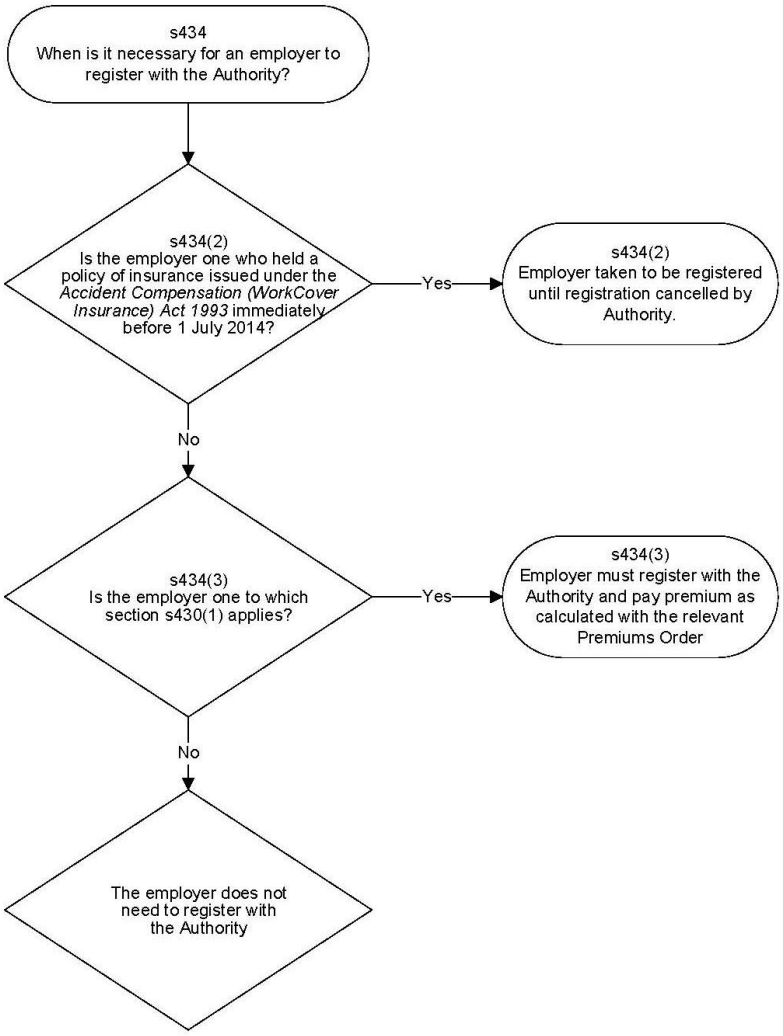
(2) For the avoidance of doubt, subsection (1) applies whether or not the person was an employer during the relevant period.

(3) If the Authority has been paid premium in excess of what is payable by an employer who is a member of a group within the meaning of section 431, the Authority may offset some or all of that excess against any premium owed by another employer who is a member of that group.

(4) In this section ***person*** includes an unincorporated body and a partnership.

Division 2—Registration

433 Flow chart 9—registration of employer



434 Registration of employers

(1) The Authority must maintain a register of employers for the purposes of this Act.

S, 434(2) amended by No, 44/2014 s. 24(21).

(2) An employer which, immediately before 1 July 2014, was the holder of a WorkCover insurance policy within the meaning of section 7(1) of the **Accident Compensation (WorkCover Insurance) Act 1993**, as in force immediately before that date, issued to the employer under that Act and in force immediately before that date, is taken, on and after that date, to be registered under this section until the registration is cancelled by the Authority.

(3) An employer to which section 430(1) applies which is not registered, and is not taken to be registered by reason of subsection (2), must apply for registration as an employer under this Act to the Authority in a form and manner approved by the Authority within 60 days after the employer becomes aware, or reasonably ought to have become aware, that section 430(1) applies to the employer.

Penalty: In the case of a natural person, 240 penalty units;

In the case of a body corporate, 1200 penalty units.

(4) The Authority must register the applicant as an employer.

(5) The Authority may cancel the registration of a person as an employer if satisfied that the person is not an employer to which section 430(1) applies.

(6) If the Authority is satisfied that—

(a) an employer is a trustee of 2 or more trusts; and

(b) 2 or more of the trusts for which the employer is trustee carry on separate businesses; and

(c) the employer employs workers in relation to the businesses carried on by the trusts; and

(d) at least one of the businesses is carried on independently of, and is not connected with, the carrying on of the other business or businesses—

the Authority may make—

(e) one entry in the register in respect of the businesses that are connected; and

(f) another entry in the register in respect of a business carried on independently of the other businesses.

(7) Except as provided in subsection (6), the Authority must not make more than one entry in the register for the same employer.

(8) In this section—

holder of a WorkCover insurance policy does not include an employer deemed under section 7(3A) of the **Accident Compensation (WorkCover Insurance) Act 1993** to have in force a policy of insurance under subsection (1)(a) of that section;

worker includes an apprentice.

435 Statutory contract of insurance

Subject to and in accordance with this Act, an employer has a statutory contract of insurance under which—

(a) the Authority is liable to indemnify the employer in accordance with section 71; and

(b) the employer is required to pay premiums in accordance with this Act and comply with the provisions of this Act.

Note

Sections 70, 71 and 72 contain provisions about the liability of the Authority and the employer to pay compensation to a worker, the Authority's liability to indemnify the employer and the employer's excess and section 34 contains provisions for the recovery of amounts from employers to which section 430(1) applies but which are not registered under section 434 at the relevant time.

436 Registered employer to notify change of circumstances

(1) A registered employer must give the Authority written notice of change of circumstances, including details of the change and the date on which it occurred of any of the following, after—

(a) any change in the employer's—

(i) name; or

(ii) trading name; or

(iii) postal address; or

(b) any change in the activities carried on in a workplace occupied by the employer;

(c) any place becoming, or ceasing to be, a workplace occupied by the employer;

(d) ceasing to be—

(i) an employer; or

(ii) an employer to which section 430(1) applies;

(e) becoming a member of a group within the meaning of section 431;

(f) ceasing to be a member of a group within the meaning of section 431.

(2) A registered employer which does not give the Authority written notice of change of circumstances in accordance with subsection (1) within 14 days after the change occurs is guilty of an offence and liable to a fine not exceeding 20 penalty units in the case of a natural person or 100 penalty units in the case of a body corporate.

437 Evidence that employer is registered under this Part

A certificate issued by the Authority or a person authorised by the Authority for the purposes of this section certifying that, on a date, or during a period, specified in the certificate, a specified employer was or was not a registered employer is admissible in any proceedings and is evidence of the particulars certified in the certificate.

438 Books and accounts to be preserved

(1) A person who is or was an employer to which section 430(1) applies must keep proper books and preserve those books for a period of not less than 5 years after the completion of the transactions to which they relate.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) This section does not apply so as to require the preservation of any books—

(a) in respect of which the Authority has notified the employer that preservation is not required; or

(b) of a corporation that has gone into liquidation and has been finally dissolved.

Division 3—Rateable remuneration

439 Employer to give estimate of rateable remuneration

If the Authority gives an employer to which section 430(1) applies a notice in writing requesting an estimate by the employer of rateable remuneration payable by the employer in respect of a premium period specified in the notice, the employer must, within 28 days or such longer period as is specified in the notice, give the Authority an estimate of that rateable remuneration, in a form approved by the Authority.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

440 Authority may estimate rateable remuneration of employer

(1) The Authority may, for the purposes of this Act, estimate the amount of rateable remuneration an employer is liable to pay in respect of a premium period.

(2) The Authority must give notice in writing to the employer of the amount of rateable remuneration estimated under subsection (1).

441 Certified statement of rateable remuneration

The Authority may, by notice in writing given to an employer, require the employer to give the Authority a certified statement, in a form approved by the Authority, of rateable remuneration paid or payable by the employer in respect of a premium period specified in the notice.

442 Employer to give certified statement

(1) An employer must give the certified statement required under section 441 to the Authority within 28 days after receiving the notice or such longer period as is specified in the notice.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(2) For the purposes of subsection (1), if the rateable remuneration specified in a certified statement given by an employer under that subsection is incorrect, the provision of the certified statement is not compliance with that subsection.

(3) If—

(a) an employer does not comply with subsection (1); or

(b) the Authority considers that a certified statement given by an employer is incorrect—

the Authority may estimate the rateable remuneration paid or payable by the employer in respect of a specified premium period.

443 Revised estimates of rateable remuneration

(1) If, as a result of changed circumstances, an employer becomes aware that the actual rateable remuneration paid or payable by the employer in respect of a premium period exceeds, or is likely to exceed, by more than 20 per cent or such other percentage as is prescribed, the estimate of rateable remuneration given by the employer or made by the Authority in respect of that period, the employer must—

(a) advise the Authority of the changed circumstances; and

(b) give the Authority a revised estimate of rateable remuneration in a form approved by the Authority—

within 28 days of becoming aware of the changed circumstances.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(2) If the actual rateable remuneration paid or payable by an employer as at any time before the last 2 months of a premium period exceeds the estimate of rateable remuneration given by the employer or made by the Authority in respect of that premium period, the employer must—

(a) advise the Authority; and

(b) give the Authority a revised estimate of rateable remuneration in a form approved by the Authority—

within 28 days of the actual rateable remuneration exceeding the estimate.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

444 Where employer fails to provide accurate information about rateable remuneration

(1) If—

(a) an employer does not comply with section 439, 441 or 443; or

(b) an employer gives an incorrect statement under section 441; or

(c) the amount specified in a certified statement of rateable remuneration under section 442(1) or estimated under section 442(3) is more than 20 per cent, or such other percentage as is prescribed, higher than the previous estimate of rateable remuneration (if any) provided by the employer—

the employer is, if the Authority gives the employer a notice of penalty, liable to pay, in addition to the difference between the premium that ought to have been payable by the employer and the premium calculated on the basis of the employer's remuneration previously estimated or certified, as the case requires, a default penalty of an amount equal to that difference.

(2) A default penalty under subsection (1) is due and payable within 28 days after the notice of penalty.

(3) The Authority may remit the whole or a part of a default penalty imposed under this section.

445 Worker employed under Transport Accident Commission program

If an employer, other than the Transport Accident Commission—

(a) employs a worker in a program designed under section 12(3) of the **Transport Accident Act 1986**; and

(b) gives notice in writing to the Authority, in a form approved by the Authority, of the worker so employed and the remuneration paid or payable to the worker—

remuneration paid or payable by the employer in respect of the worker—

(c) is not, for the purposes of this Act, to be taken to be rateable remuneration paid or payable by the employer; and

(d) is to be taken to be rateable remuneration paid or payable by the Transport Accident Commission as if the worker were employed by the Commission.

446 Superannuation benefits and calculation of premiums

(1) For the purposes of the calculation of premiums under this Part, amounts paid by an employer as a superannuation benefit that is alleged by the employer to be paid in respect of services performed or rendered by a worker before 1 January 1998, must be shown in the employer's records, together with the manner of calculation of the benefit and any actuarial basis for it, to the satisfaction of the Authority.

(2) For the purposes of subsection (1)—

(a) the certificate of a Fellow or Accredited Member of the Institute of Actuaries of Australia to the effect that the actuarial basis on which an amount is calculated is justified is evidence and, in the absence of evidence to the contrary, proof of that fact; and

(b) if records are not kept as required by subsection (1), the Authority is entitled to assume, for the purposes of the calculation of premiums, that a payment by an employer as a superannuation benefit on or after 1 January 1998 is an amount payable in respect of services performed or rendered by a worker on or after that date.

(3) For the purposes of any calculation of premiums, the Authority may determine—

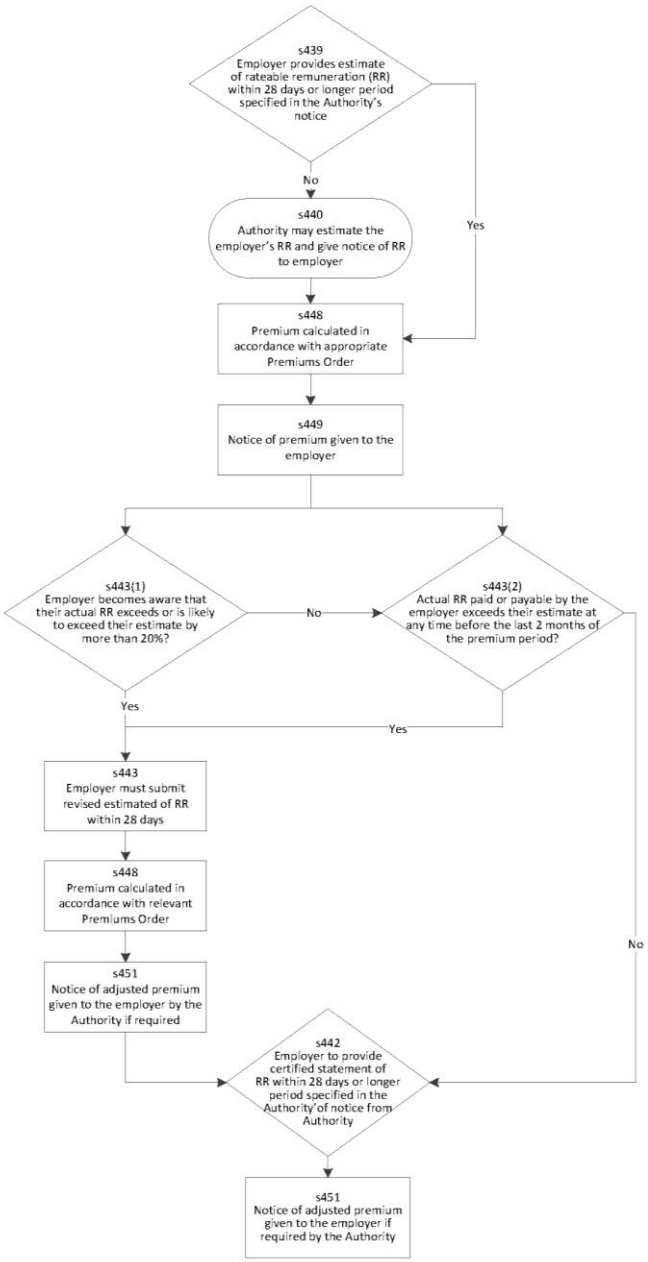
(a) whether, and the extent to which, any money paid or payable by an employer to a superannuation, provident or retirement fund or scheme that is not identified by the employer as paid or payable in respect of a particular worker; and

(b) whether or not purporting to be so paid or payable on any actuarial basis—

is to be regarded as a superannuation benefit paid or payable in respect of a particular worker.

Division 4—Premiums

447 Flow chart 10—Determination of premium process



448 Premiums order

(1) The Governor in Council may, on the recommendation of the Authority, by Order in Council published in the Government Gazette, make a premiums order for a premium period specifying—

(a) the methods to be used in calculating premiums payable by employers; and

(b) any matter or thing required or permitted by this Act to be specified in a premiums order.

(2) A premiums order takes effect on and from the date on which it is published or, if a later date is specified in the order, that later date.

(3) A premiums order may—

(a) apply generally or be limited in its application by reference to specified exceptions or factors; and

(b) apply differently according to different factors of a specified kind; and

(c) specify different methods of calculation whether by reference to formulas, scales, tables or other means; and

(d) apply, adopt or incorporate (with or without modification) the provisions of any document, code, standard, rule, specification or method as formulated, issued, prescribed or published at or before the date on which the order is made; and

(e) authorise a specified person to determine or apply a specified matter or thing.

(4) The premium payable by an employer to which section 430(1) applies in respect of a premium period must be calculated in accordance with the premiums order for that premium period.

449 Authority may give notice of premium

(1) Subject to subsection (3), the Authority may give an employer a notice of premium payable by the employer.

(2) The Authority may include a notice of penalty in accordance with this Part in a notice of premium given to an employer under subsection (1).

(3) The Authority may give a notice of premium to an employer in respect of a premium period that is—

(a) the current premium period; or

(b) the premium period last before the current premium period during which the employer was an employer to which section 430(1) applied; or

(c) one of the 3 premium periods immediately preceding the premium period referred to in paragraph (b); or

(d) any other premium period if the Authority reasonably believes that there is, or was, fraud on the part of the employer or of any person acting, or apparently acting, on the employer's behalf in relation to the calculation or payment of premium.

450 Premium payable where employer not registered for whole of premium period

A premium payable by an employer to which section 430(1) applies but was not registered under section 434 during a part of a premium period is to be calculated in accordance with the relevant premiums order and this Part and the formula—

$$P = D \times \frac{E}{F}$$

where—

P is the premium or portion of the premium payable for the part of the premium period in respect of which the employer was not registered under section 434;

D is the amount of premium payable for the full premium period calculated in accordance with the premiums order for the premium period;

E is the number of days in the premium period during which the employer was not registered under section 434;

F is the number of days in the premium period during which the employer was an employer to which section 430(1) applies.

451 Adjustment of premium in certain circumstances

(1) If the Authority considers that the premium payable by an employer to which section 430(1) applies should be adjusted because circumstances specified in section 442, 443 or 444 apply, the Authority may give the employer a notice of adjusted premium.

(2) The Authority may, by notice in writing given to an employer, adjust the amount of the premium payable by an employer so that the amount is the amount calculated in accordance with the relevant premiums order.

(3) The Authority may give a notice of penalty in accordance with section 444 if it gives a notice of adjusted premium to an employer under subsection (1) or (2).

452 Default penalty

(1) If an employer to which section 430(1) applies fails to pay the premium for a premium period, or a part of a premium period, in accordance with a notice of premium, the employer is liable to pay a default penalty, as set out in a notice of penalty given to the employer by the Authority, of an amount equal to the premium payable in respect of the premium period or part of the premium period, as set out in the notice of premium given by the Authority under section 449(1) that has not been paid.

(2) If an employer to which section 430(1) applies for the whole or a part of a premium period was not registered under section 434 for the whole or that part of the premium period, the employer is liable to pay a default penalty equal to the premium payable for the period during which the employer was not so registered calculated in accordance with section 450 and set out in a notice of penalty given to the employer by the Authority.

453 Payment and recovery of penalties

(1) A default penalty under section 452 is due and payable—

(a) on the date specified by the Authority in the notice of penalty; or

(b) if no date is so specified, within 28 days after the date of the notice.

(2) The Authority may recover a default penalty and a late payment penalty within the meaning of section 460 from an employer whether or not the employer has been proceeded against for, or convicted or found guilty of, an offence against this Division and whether or not a review under this Part is in process or pending.

(3) The Authority may remit the whole or a part of a default penalty or late payment penalty.

454 Late payment penalty

S. 454(1) amended by No. 44/2014 s. 17(1).

(1) If a premium default occurs, the employer is liable to pay a late payment penalty within the meaning of section 460.

(2) If an amount payable in accordance with a notice of penalty given under section 444, 452, 455 or 457 is not so paid in full, the employer is liable to pay a late payment penalty within the meaning of section 460 on the unpaid part of the amount payable in accordance with the notice of penalty.

S. 454(2A) inserted by No. 44/2014 s. 17(2).

(2A) If an amount of late payment penalty imposed under this section is not paid in full, the employer is liable to pay a late payment penalty within the meaning of section 460 on the unpaid part of that amount.

(3) The Authority may remit the whole or a part of late payment penalty imposed under this section.

(4) In this section, ***premium default*** means a failure by an employer to which section 430(1) applies to pay the whole or a part of the amount of a premium that the employer is liable to pay.

455 Default penalty where failure to provide full and true disclosure

(1) If—

(a) the Authority gives a notice of adjustment of premium under section 473; and

(b) the notice states an amount of premium that is different from any premium that was previously calculated for the employer for the premium period to which the notice relates; and

(c) the Authority is satisfied that the premium was miscalculated because the employer or a person acting on behalf of the employer failed to provide full and true disclosure to the Authority in respect of matters relevant to the calculation of the premium—

the employer, upon being given the notice adjustment of premium under this section and a notice of penalty, is liable to pay a default penalty of an amount equal to the difference between the premium stated in the notice of adjustment and the premium that was previously calculated as payable by the employer.

(2) The amount of the default penalty imposed under subsection (1) is increased by 20 per cent if, after the Authority commences a review under section 461 or 472, the employer, or a person acting on behalf of the employer, took steps to prevent or hinder the Authority from properly calculating the premium payable by the employer.

(3) A default penalty under this section is due and payable within 28 days after the date of the notice of adjustment of premium.

(4) The Authority may remit the whole or any part of a default penalty imposed under this section.

456 Application for refund of premium

(1) Proceedings for the refund of premium must not be brought, except as provided in this section.

(2) If an employer claims to be entitled to receive a refund of premium, the employer may give the Authority an application for the refund in a form approved by the Authority.

(3) An application under subsection (2) must be made to the Authority within 5 years after the commencement of the premium period to which the application relates.

(4) If—

(a) an employer has made an application under subsection (3); and

(b) within the period of 4 months after the application was made, the Authority—

(i) by notice in writing to the employer refuses the application; or

(ii) fails to determine the application; or

(iii) determines that the employer is entitled to a refund but fails to make the refund—

the employer may bring proceedings for the refund within the period of 4 months commencing after—

(c) the expiration of 4 months after the application was made; or

(d) if the Authority refuses the application, the date of the notice of refusal—

whichever first occurs.

457 Premium avoidance schemes

(1) The Authority may determine that the premium payable by an employer in respect of a period is the amount that would have been calculated, or might reasonably be expected to have been calculated, as the premium payable by the employer if a premium avoidance scheme had not been entered into or carried out.

(2) If the Authority makes a determination in relation to an employer under subsection (1), it must give the employer—

(a) a notice that the premium payable by the employer is the amount specified in the determination; and

(b) a notice of penalty stating that the penalty referred to in subsection (3) is payable.

(3) If an employer obtained or, but for subsection (1), would have obtained, a premium benefit in connection with a premium avoidance scheme, the employer is liable to pay a default penalty equal to twice the difference between the premium determined under subsection (1) and the premium paid or payable by the employer but for that determination.

(4) A default penalty under subsection (3) is due and payable within 28 days after the date of the notice given under subsection (2).

(5) The Authority may remit the whole or any part of a default penalty imposed under subsection (3).

(6) In this section—

premium avoidance scheme means a scheme in respect of which it could reasonably be concluded that a person entering into, or carrying out, the scheme or any part of the scheme, does so for the purpose of enabling an employer to obtain a premium benefit in connection with the scheme, whether or not the person entering into or carrying out the scheme, or any part of the scheme, is an employer;

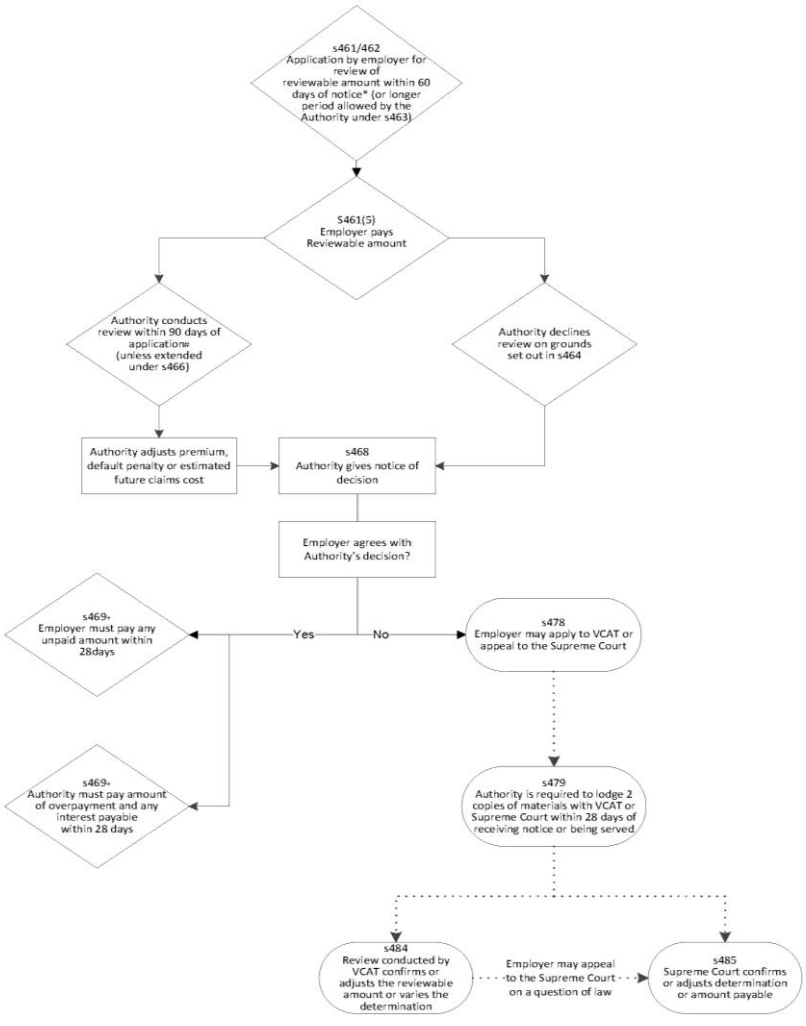
premium benefit, under a premium avoidance scheme, means a premium the amount of which is less than the amount that would, or might reasonably be expected to, have been calculated under a premiums order as the premium payable if the premium avoidance scheme had not been entered into or carried out.

458 Proceedings not to be brought

Except as provided in this Part, proceedings in respect of any question concerning a reviewable amount within the meaning of Division 5 must not be brought, whether against the Authority or otherwise.

Division 5—Premium review

459 Flow chart 11—premium review process



* Employer may withdraw application at any time prior to determination
\# Authority may suspend review if employer fails to provide information requested by the Authority within specified timeframe
\+ Recovery of premium by Authority or employer is limited under s468

460 Definitions

In this Division—

default penalty means an amount payable in accordance with, and set out in, a notice of penalty given under section 444, 452, 455 or 457;

estimated future claim cost means an estimate specified in a claims statement made available to an employer, against which one or more claims have been made within a relevant claims reporting period as determined in accordance with the relevant premiums order, of the future cost of claims of the employer;

S. 460 def. of *late payment penalty* substituted by No. 44/2014 s. 17(3).

late payment penalty, in relation to—

(a) an amount of premium unpaid, or the whole or a part of an amount payable in accordance with a notice of penalty and unpaid, means interest at the rate from time to time applying under section 25 of the **Taxation Administration Act 1997**, with interest compounding monthly, calculated on a daily basis from the end of the 28th day after the date of the relevant notice given under section 449 or 451 or the notice of penalty given under section 444, 452, 455 or 457;

(b) the late payment penalty applied under section 454 and unpaid, means interest at the rate from time to time applying under section 25 of the **Taxation Administration Act 1997**, with interest compounding monthly, calculated on a daily basis from the date on which the late payment penalty applied;

premium means an amount specified in a notice of premium, or of adjusted premium, given under this Part and paid or payable, or purportedly paid or payable, as premium;

reviewable amount means—

(a) premium; or

(b) default penalty; or

(c) late payment penalty; or

(d) estimated future claim cost.

461 Employer may apply for review of a reviewable amount under this Division

(1) Subject to subsection (2), an employer may apply to the Authority for a review of a reviewable amount.

(2) The review of a reviewable amount that is an estimated future claim cost is limited to the question whether the estimate is erroneous in respect of a coding error or other data entry error.

(3) An application for a review of a reviewable amount that is an estimated future claim cost must include details of the error the employer claims was made in its calculation.

(4) On receiving an application under this section for a review of a reviewable amount, the Authority must—

(a) review the reviewable amount in accordance with this Division; or

(b) in accordance with section 464, decline to review the reviewable amount.

(5) Nothing in this section affects an employer's obligation to pay a reviewable amount as and when due.

462 Time for making, and form of, application for review

(1) An application for review made under section 461(1) must—

(a) be in writing in a form approved by the Authority; and

(b) state the grounds for review; and

(c) attach any document relevant for the purposes of the review; and

(d) unless section 463 applies, be lodged with the Authority within 60 days after the date of service of the notice that is the subject of the application.

(2) An application for review is taken to have been lodged with the Authority when it is received by the Authority.

463 Application for review made out of time

(1) The Authority may permit an employer to make an application for review after the 60 day period.

(2) The employer seeking to make an application for review out of time must state, in writing, the circumstances concerning, and the reasons for, the failure to make the application within the 60 day period.

(3) The Authority may grant permission to make an application out of time unconditionally or subject to conditions.

(4) Proceedings to seek review of a decision made by the Authority under this section not to grant permission to make an application out of time or to grant permission to make an application out of time subject to conditions, must not be brought, whether against the Authority or otherwise.

464 Authority may decline application for review

(1) The Authority may decline to conduct a review of a reviewable amount under this Division if—

(a) the application made under section 461 is in respect of matters that have been reviewed by the Authority on a prior occasion and the employer—

(i) has been provided with the Authority's written reasons for the decision following that review; and

(ii) has not provided the Authority with any new relevant information in or with the application for review; or

(b) the Authority considers that the application made under section 461 is misconceived or lacking in substance.

(2) If the Authority declines to conduct a review under subsection (1), the Authority must notify the employer of the Authority's decision, in writing, within 28 days of receiving the application under section 461.

465 Withdrawal of application for review

An employer may, in writing, withdraw an application for review of a reviewable amount under this Division at any time before the Authority has made a determination under section 468.

466 Time period for review

(1) Subject to sections 464 and 468, the Authority must, within 90 days after receiving an application under section 462 for review of a reviewable amount, conduct the review and make a determination under section 468.

(2) The period specified in subsection (1) may be extended—

(a) by agreement between the Authority and the employer; or

(b) if the Authority authorises a person under section 553 to conduct an inspection, by any further period as is specified by the Authority in a notice in writing given to the employer before the end of that period.

467 Request for information and suspension of review

(1) The Authority may, by written notice, request an employer to provide information relevant to the review to the Authority within the time specified in the notice.

(2) The Authority may suspend a review if the employer fails to provide information relevant to the review that the Authority has requested in a notice under subsection (1) by the time specified in that notice.

(3) If the Authority suspends a review under subsection (2), the Authority must give the employer written notice of the suspension (***suspension notice***) which states the following—

(a) that the suspension takes effect on service of the suspension notice;

(b) the period of the suspension;

(c) that the review has been suspended pending the provision of the information relevant to the review that the Authority has requested;

(d) the details of the requested information;

(e) that the review will remain suspended until the earlier of—

(i) the period for suspension specified in the suspension notice is complete; or

(ii) the employer provides the Authority with the requested information.

(4) If an employer does not provide the Authority with information requested by the Authority by the completion of the stated period of suspension in the suspension notice, the employer is deemed to have withdrawn the application for review.

(5) If an employer is deemed to have withdrawn an application for review under subsection (4), the employer may again apply for review of the same matter that was the subject of the deemed withdrawn application.

(6) An application made under subsection (5) will not be accepted by the Authority unless the application—

(a) is made within 60 days of the date on which the application was deemed to be withdrawn under subsection (4); and

(b) is accompanied by the information specified in the suspension notice.

468 Determination of review

(1) The Authority must, after reviewing an application under section 462 determine that—

(a) the reviewable amount is confirmed; or

(b) the reviewable amount be adjusted as specified in the determination.

(2) The Authority, in making a determination under this section, may consider any relevant information.

(3) The Authority must—

(a) give notice to the employer of the determination made under this section; and

(b) in the notice, give the employer reasons for the determination.

(4) If the determination relates to a reviewable amount that is premium, the Authority is entitled to recover only the amount of any increased premium resulting from an adjustment under subsection (1) if the premium relates to one or more of the following—

(a) the premium period current at the date of the application for review under section 461;

(b) any of the 4 premium periods immediately preceding the premium period referred to in paragraph (a);

(c) any other premium period if the Authority reasonably believes that there is, or was, fraud on the part of the employer or of any person acting, or apparently acting, on the employer's behalf in relation to the calculation or payment of premium.

(5) If the determination under subsection (1) makes an adjustment to a reviewable amount that is premium that results in an employer recovering premium, the recovery is limited to—

(a) the premium period current at the date of the application for review under section 461; and

(b) any of the 4 completed premium periods before that period.

469 Payments following review of reviewable amount

(1) If—

(a) under section 468, the Authority adjusts a reviewable amount that is premium in respect of a premium period; and

(b) the premium is higher than the premium previously paid by the employer in respect of that premium period—

the employer is liable to pay the Authority the difference between the premium paid and the adjusted premium, within 28 days after receiving notice of the determination under section 468.

(2) If—

(a) under section 468, the Authority adjusts a reviewable amount that is premium in respect of a premium period; and

(b) the adjusted premium is lower than the premium previously paid by the employer in respect of that period—

the Authority is liable to pay the employer the difference between the premium paid and the adjusted premium, with interest in accordance with section 470, within 28 days after the notice of determination under section 468.

470 Interest payable following review of reviewable amount

(1) Subject to subsection (2), if it is determined, following review under section 461, that the Authority is liable to pay the employer an amount, the Authority must pay the employer interest, at the prescribed rate, on that amount.

(2) The Authority is not required to pay interest on an amount referred to in subsection (1) if that amount is only payable because the employer provided information to the Authority that—

(a) was inaccurate or incomplete; or

(b) was revised by the employer after the Authority gave the notice of premium.

(3) The interest must be calculated—

(a) from the date on which the premium paid by the employer exceeded the lower amount of premium the Authority determined to be payable following review under section 461; and

(b) to the date of that determination by the Authority.

(4) In this section, ***prescribed rate*** means the interest rate specified in section 7(2) of the **Taxation (Interest on Overpayments) Act 1986**.

471 Deemed determinations of the Authority

(1) Subject to subsection (2), if the Authority does not, within 90 days of receiving an application by an employer under section 461 for a review of a reviewable amount—

(a) give a notice under section 464; or

(b) give a notice of suspension under section 467; or

(c) make a determination under section 468—

the Authority is deemed to have made a determination under section 468 to confirm the reviewable amount.

(2) If—

(a) the period for review by the Authority has been extended under section 466(2); and

(b) at the end of that extended period, the Authority has not given a notice referred to in subsection (1)(a) or (b) or made a determination referred to in subsection (1)(c)—

the Authority is deemed to have made a determination under section 468 to confirm the reviewable amount.

Note

Division 6 provides a right of review or appeal within 60 days after a deemed determination has effect.

472 Review of premium by Authority at its discretion

(1) The Authority may, in its absolute discretion, review the amount calculated as premium in respect of one or more premium periods.

(2) In conducting the review, the Authority may have regard to any matter relevant to the determination or calculation of the premium.

473 Adjustment of premium after review

(1) This section applies if, as the result of a review of a premium under section 472, the Authority is of the opinion that the amount calculated as the premium was not, or is not, calculated in accordance with the relevant premiums order.

(2) The Authority must, by notice in writing given to the employer, adjust the amount of the premium so that the amount is the amount calculated in accordance with the relevant premiums order.

(3) A notice to an employer under subsection (2) must state the amount of premium that is payable, or that should have been paid, for the relevant premium period.

(4) On the giving of the notice to the employer, the amount stated under subsection (2) becomes the premium payable by the employer.

474 Application of adjustment powers under section 473

The Authority may recover the amount of any increased premium resulting from an adjustment under section 473 only if the premium relates to one or more of the following—

(a) the premium period to which the notice under section 473 relates;

(b) any of the 4 premium periods immediately before that period;

(c) any other premium period if the Authority reasonably believes that there is, or was, fraud on the part of the employer or of any person acting, or apparently acting, on the employer's behalf in relation to the calculation or payment of the premium.

475 Recovery of increased premium

The Authority is entitled to recover the amount of any increased premium resulting from a determination made by the Authority under section 457 if the premium relates to the current premium period or any premium period before the current premium period.

476 Refund of premium may be offset

If the Authority has been paid premium in excess of what is payable by an employer, the Authority may—

(a) refund the excess, including any interest, to the employer; or

(b) offset the excess, including any interest, against any amount of premium owed by the employer to the Authority for any premium period.

477 Exercise of review and adjustment powers

Subject to this Division, the Authority may exercise its powers under this Part to review or adjust a premium whether or not—

(a) notice of the premium has been given to the employer or the premium has been paid;

(b) the review or adjustment applies to the current premium period or any other period;

(c) the Authority has previously reviewed or adjusted the premium;

(d) any circumstances exist that would, but for this paragraph, estop the Authority from conducting a review of, or adjusting the amount of, the premium.

Division 6—Review by VCAT and appeal to Supreme Court

478 Right of review and appeal

S. 478 substituted by No. 44/2014 s. 18.

(1) This section applies if—

(a) an employer is dissatisfied with—

(i) a determination made by the Authority under section 468(1); or

(ii) a determination deemed under section 471 to have been made by the Authority; or

(b) an employer has received notice that the Authority has declined to conduct a review under section 464; or

(c) 90 days have passed since an employer's application under section 461 was received by the Authority and the Authority has not—

(i) suspended the review under section 467; or

(ii) made a determination under section 468; or

(iii) given notice of a decision to decline to conduct a review under section 464.

(2) If this section applies, the employer may—

(a) make an application to VCAT under section 67 of the **Victorian Civil and Administrative Tribunal Act 1998** for a review of the determination; or

(b) appeal to the Supreme Court and cause the matter to be set down for hearing at the next sittings of the Supreme Court.

(3) The employer's application or appeal—

(a) in the circumstances referred to in subsection (1)(a) or (b), must be made within 60 days after the date of the notice given to the employer of the Authority's determination under section 468(1) or 471; or

(b) in the circumstances referred to in subsection (1)(c), may be made at any time after the 90 day period referred to in subsection (1)(c).

479 Authority to lodge material

S. 479 substituted by No. 44/2014 s. 18.

Within 28 days of receiving notice from VCAT under section 49 of the **Victorian Civil and Administrative Tribunal Act 1998** or being served in the proceedings relating to the appeal to the Supreme Court, the Authority must lodge with VCAT or the Supreme Court 2 copies of all documents relating to—

(a) the Authority's determination; and

(b) the employer's objection; and

(c) the disallowance of the employer's objection.

* * * * *

Ss 480, 481 repealed by No. 44/2014 s. 18.

482 Grounds of review

On a review by VCAT or an appeal to the Supreme Court—

(a) the employer's case is limited to the grounds set out in the employer's application for review by the Authority under section 461; and

(b) the Authority's case is limited to the grounds on which—

(i) the Authority made a decision on an application by an employer under section 461; or

(ii) the Authority declined to conduct a review of a decision under section 464—

as the case requires or VCAT or the Supreme Court otherwise orders.

483 Onus on review or appeal

On a review or an appeal relating to a determination referred to in section 478, the employer has the onus of proving the employer's case.

484 Review by VCAT

(1) If an application concerning a determination is made to VCAT, VCAT—

(a) must review the determination; and

(b) subject to subsection (2), may confirm or adjust the reviewable amount or vary the determination.

(2) If the employer does not appear before VCAT, VCAT must confirm the reviewable amount or determination.

(3) Despite subsection (2), if good cause is shown, VCAT may, within the time prescribed by the regulations, re-open and review the matter.

Note

For costs, see section 109 of the **Victorian Civil Administration Act 1998**.

485 Supreme Court appeals

(1) An appeal to the Supreme Court against a determination of the Authority referred to in section 478 is to be heard de novo and the Court may—

(a) by order confirm the reviewable amount; or

(b) adjust the reviewable amount in accordance with this Part; or

(c) vary the determination; or

(d) make any other order it thinks fit.

(2) The costs of the appeal are in the discretion of the Supreme Court.

486 Authority to give effect to decision on review

Within 60 days after a decision or order of VCAT or the Supreme Court becomes final, the Authority must take any action that is necessary to give effect to the decision or order.

487 If no appeal from a decision or order

If no appeal to a court from—

(a) a decision of VCAT under this Division; or

(b) a decision of the Supreme Court on an appeal—

is instituted within 30 days after the day on which the decision is made, the decision is taken, for the purposes of section 486, to have become final at the end of that period.

Division 7—Recovery of premium or penalty

488 Recovery of premium or penalty

(1) Any premium or penalty imposed by or under this Part and which is unpaid may be sued for and recovered, irrespective of the amount of the premium or penalty, in any court of competent jurisdiction by the Authority suing in the name of the Authority or by a person employed in the administration of this Act and authorised to sue for and recover premium or penalty on behalf of the Authority suing in the name of the Authority.

(2) For the purposes of section 5 of the **Limitations of Actions Act 1958**, the date on which a cause of action accrues in respect of the recovery of a premium or penalty imposed under this Part is—

(a) if the Authority and employer have entered into a payment arrangement in respect of the premium or penalty, any day or date on which the premium or penalty is payable under that arrangement; or

(b) otherwise, the date specified in a notice given by the Authority under this Part as the date on which the premium or penalty is payable.

(3) Proceedings under this section brought in the name of the Authority are, in the absence of evidence to the contrary, deemed to have been brought by authority of the Authority.

(4) The person referred to in subsection (1) may appear in proceedings brought under this section on behalf of the Authority.

(5) Despite any Act or any rule of the court to the contrary, in any proceedings for the recovery of a premium or penalty against any person it is sufficient to disclose a cause of action in those proceedings if the statement of claim specifies, in respect of what remuneration the premium or penalty is payable—

(a) the amount sought to be recovered; and

(b) the date on which the amount was payable; and

(c) any further or other particulars as the Authority thinks necessary to fully inform the defendant of the nature of the statement of claim.

(6) In this section, ***penalty*** includes default penalty and late payment penalty within the meaning of section 460.

489 Evidence

(1) For the purposes of proceedings against a person for the recovery of a premium, a certificate purporting to be issued by the Authority certifying that—

(a) the person named in the certificate was liable to pay the premium in respect of the period specified in the certificate; or

(b) an assessment of the premium was duly made against the person; or

(c) the particulars of the assessment are as stated in the certificate; or

(d) notice of premium or adjusted premium was given to the person; or

(e) the amount specified in the certificate was at the date of the certificate payable as the premium by the person named in the certificate—

is evidence of the matters so certified.

(2) The production of—

(a) a notice of premium or adjusted premium; or

(b) a document purporting to be executed in accordance with section 504 and purporting to be a copy of a notice of premium or adjusted premium—

is evidence of the due making of an assessment and that the amount and all particulars of the assessment are correct, except in review or appeal proceedings (in which it is proof in the absence of proof to the contrary).

(3) The production of a document purporting to be executed in accordance with section 504, being a document purporting to be a copy of, or extract from, any document or return furnished to, or issued by, the Authority is, for all purposes, sufficient evidence of the matter contained in it, without producing the original.

Division 8—Reviews by Minister

490 Review of setting of premiums

S. 490(1) amended by No. 44/2014 s. 19.

(1) The Minister must, before 1 July 2015 and once in each period of 5 years after that date, cause a review to be undertaken by an independent expert review body on any matter relating to the setting of premiums under this Part.

(2) The Minister must, before 1 July 2017 cause a review to be undertaken by an expert review body on the operation of Division 6.

Part 11—The Victorian WorkCover Authority

Division 1—Constitution

491 The Authority

(1) The Victorian WorkCover Authority established under section 18 of the **Accident Compensation Act 1985** as in force immediately before 1 July 2014 continues in existence.

(2) The Authority—

(a) is a body corporate with perpetual succession; and

(b) may sue and be sued; and

(c) may acquire, hold and dispose of real and personal property; and

(d) may do and suffer all acts and things that a body corporate may by law do or suffer.

492 Objectives of the Authority

The objectives of the Authority are to—

(a) manage the accident compensation scheme as effectively, efficiently and economically as is possible; and

(b) manage the accident compensation scheme in a financially viable manner; and

(ba) manage the accident compensation scheme—

S. 492(ba) inserted by No. 27/2025 s. 27.

(i) in a manner that ensures a high-quality service is provided to all claimants and users of the scheme; and

(ii) in a way that ensures all claimants and users of the scheme are treated fairly, respectfully and with dignity; and

S. 492(c) amended by No. 5/2021 s. 25.

(c) ensure that appropriate compensation and provisional payments are paid to injured workers in the most socially and economically appropriate manner and as expeditiously as possible; and

(d) develop such internal management structures and procedures as will enable the Authority to perform its functions and exercise its powers effectively, efficiently and economically; and

(e) administer this Act, the **Accident Compensation Act 1985**, the **Workers Compensation Act 1958**, the **Occupational Health and Safety Act 2004**, the **Equipment (Public Safety) Act 1994** and the **Dangerous Goods Act 1985**.

493 Functions of the Authority

(1) The functions of the Authority are to—

(a) receive and assess and accept or reject claims for compensation; and

(b) pay compensation to persons entitled to compensation under this Act or the **Accident Compensation Act 1985**; and

S. 493(1)(ba) inserted by No. 5/2021 s. 26.

(ba) pay provisional payments to persons entitled to provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**.

(c) assist employers and workers in achieving healthy and safe working environments; and

(d) promote the effective occupational rehabilitation of injured workers and their early return to work; and

(e) encourage the provision of suitable employment opportunities to workers who have been injured; and

(f) provide insurance in accordance with this Act and to determine, collect and recover premiums in accordance with this Act; and

(g) ensure that the accident compensation scheme is competitive and fully-funded; and

(h) regulate and make recommendations to the Minister in relation to self-insurers; and

(i) continue to fund a WorkCover Advisory Service; and

(j) administer the WorkCover Authority Fund; and

(k) implement measures to deter and detect fraudulent workers compensation claims; and

(l) conduct or defend proceedings before a court or tribunal; and

(m) defend actions against employers under this Act or the **Accident Compensation Act 1985** and at common law; and

(n) arrange or facilitate the provision of interpreter services to assist injured workers; and

(o) monitor the operation of occupational health and safety, rehabilitation and accident compensation arrangements; and

(p) identify (and as far as practicable minimise or remove) disincentives for injured workers to return to work or for employers to employ injured workers; and

(q) develop and implement programs to provide incentives to employers and to assist

employers in implementing measures to prevent injuries and diseases at workplaces and to improve occupational health and safety and return to work results; and

(r) provide assistance in relation to the establishment and operation of occupational rehabilitation programs of employers and to facilitate the development of rehabilitation plans and facilities to assist injured workers; and

(s) encourage liaison between employers, occupational rehabilitation service providers, medical practitioners and other health professionals in the interests of early and effective rehabilitation of injured workers; and

(t) undertake, and to provide funds for the undertaking of, research and educational programs for the purpose of assisting the Authority in achieving its objectives or performing its functions; and

(u) initiate and encourage research to identify efficient and effective strategies for the prevention of occupational injury and disease and for the rehabilitation of persons who suffer occupational injury or disease; and

(v) ensure the availability of high quality education and training for the prevention and rehabilitation of occupational injury and disease and for the rehabilitation of persons who suffer occupational injury or disease; and

(w) develop equitable and effective programs to identify and reduce areas of unnecessarily high cost to the accident compensation

scheme and, as far as possible, reduce those costs; and

(x) develop programs to meet the special needs of target groups, including workers who suffer severe injuries, and injured workers who are unable to return to their pre-injury occupation; and

(y) foster a co-operative consultative relationship between management and labour in relation to the health, safety and welfare of persons at work; and

(z) collect and publish statistics and to conduct statistical analysis of occupational injuries and diseases; and

(za) provide information services to workers, employers, and the general community; and

(zb) collaborate with other bodies and provide funds for the purposes of—

(i) developing national policies in relation to occupational health and safety and workers' compensation; and

(ii) enhancing co-operation between Australian jurisdictions in relation to the health and safety of Australian workers; and

S. 493(1)(zb)(ii) amended by No. 48/2017 s. 35.

(iii) improving occupational health and safety outcomes and workers' compensation arrangements in Australia; and

(iv) harmonising workers' compensation arrangements across the Commonwealth, States and Territories; and

(zc) carry out other functions specified under this Act, the **Accident Compensation Act 1985**

or the **Workers Compensation Act 1958**, or the regulations or under any other Act or regulations under any other Act.

(2) In performing its functions, the Authority must—

(a) promote the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces; and

(b) ensure the efficient, effective and equitable occupational rehabilitation and compensation of persons injured at work; and

(c) ensure the financial viability and efficient operation of the accident compensation scheme; and

(d) provide advice to the Minister in relation to matters specifically referred to the Authority by the Minister and generally in relation to the administration of this Act, the **Accident Compensation Act 1985**, the **Workers Compensation Act 1958** and the accident compensation scheme.

(3) The function of the Authority under subsection (1)(q) does not create any obligation that gives rise to any liability of, or a claim against, the Authority or its agents.

494 Powers of the Authority

(1) Subject to this Act, the Authority has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions and to enable it to achieve its objectives.

(2) Without limiting or derogating from the generality of subsection (1), the Authority may undertake and carry on in Victoria or elsewhere the business of insurance for the purpose of providing accident insurance.

(3) For the purposes of subsection (2), ***accident insurance*** means insurance under and for the purposes of this Act or the **Accident Compensation Act 1985** and is not limited by reference to the practices, usages, form and procedure for the time being followed by other persons engaged in the general business of insurance.

(4) Without limiting or derogating from the generality of the powers of the Authority under this Act, the powers of the Authority include—

(a) the power to enter into agreements or arrangements with—

(i) employers liable to pay compensation under the **Workers Compensation Act 1958**; and

(ii) employers liable to pay damages in respect of injury or disease; and

(iii) insurers liable to indemnify employers in whole or in part in respect of that liability—

upon such terms as the Authority deems appropriate, and without limiting or derogating from the generality of the foregoing, agreements or arrangements under which the Authority undertakes to assume or discharge that liability or any part of that liability; and

S. 494(4)(b) amended by No. 44/2014 s. 24(22).

(b) the power to do all things necessary or convenient to be done for or in connection with the performance of its functions under Division 5 of Part 7 of this Act or Division 6A or 6B of Part IV of the **Accident Compensation Act 1985**; and

(c) the power to enter into agreements or contracts with a corresponding Authority for or with respect to—

(i) the Authority performing the functions or exercising the powers of the corresponding Authority as its agent; and

(ii) the Authority performing any works or providing services for the corresponding Authority; and

(iii) the Authority providing the corresponding Authority with the use of its facilities or the services of its staff; and

(iv) the corresponding Authority performing the functions or exercising the powers of the Authority as its agent; and

(v) the corresponding Authority performing any works or providing services for the Authority; and

(vi) the corresponding Authority providing the Authority with the use of its facilities or the services of its staff; and

(d) in addition to, and not limited by, any other power under this section, the power to provide related and ancillary services.

495 Accountability of the Authority

(1) The Authority is subject to—

(a) the general direction and control of the Minister; and

(b) any specific directions given by the Minister.

(2) If the Authority has been given a specific direction by the Minister, the Authority may publish the direction in the Government Gazette.

496 Guidelines, forms and advisory practice notes

(1) The Authority may make or issue guidelines, forms or advisory practice notes for the purposes of—

(a) improving the management of claims; and

(b) assisting in the prevention of injuries; and

(c) the return to work of injured workers—

within the accident compensation scheme generally.

(2) The Authority must ensure that guidelines, forms or advisory practice notes made or issued under this section are published and are generally available.

497 Power to give advice on compliance

(1) The Authority may give advice to a person who has an obligation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** about complying with that obligation.

(2) The giving of such advice by the Authority does not give rise to—

(a) any right, expectation, duty or obligation that would not otherwise be conferred or imposed on the person given the advice; or

(b) any defence that would not otherwise be available to that person.

(3) The Authority's power under this section to give advice may also be exercised by an inspector within the meaning of section 126 or, if the

Authority authorises any other person to exercise the power, that other person.

Note

An inspector or other person exercising this power may not be liable for things done or omitted to be done in good faith (see section 499(3)).

498 Chief Executive Officer

S. 498(1) amended by No. 27/2025 s. 28(1).

(1) There is to be a Chief Executive Officer of the Authority appointed by the Board with the approval of the Minister.

S. 498(2) substituted by No. 50/2019 s. 11.

(2) A Director is ineligible to be appointed as the Chief Executive Officer.

(3) Subject to this Part, the Chief Executive Officer holds office for the term, not exceeding 5 years, specified in the instrument of appointment.

(4) The Chief Executive Officer is eligible for re-appointment.

S. 498(4A) inserted by No. 27/2025 s. 28(2).

(4A) The Chief Executive Officer may resign from office by delivering a signed letter of resignation to the Chairperson of the Board.

(5) The terms and conditions of appointment of the Chief Executive Officer are as specified in the instrument of appointment.

(6) The Chief Executive Officer is to manage and control the affairs of the Authority in accordance with the policies of the Board.

(7) Any act, matter or thing done in the name of, or on behalf of, the Authority, by the Chief Executive Officer is to be taken to have been done by the Authority.

S. 498(8) inserted by No. 27/2025 s. 28(3).

(8) The Board may appoint a person to act in the office of the Chief Executive Officer for a period not exceeding 12 months—

(a) during a vacancy in the office of the Chief Executive Officer; or

(b) during any period when the Chief Executive Officer is unable, whether because of illness, suspension, absence or otherwise, to perform the duties of the office of Chief Executive Officer.

(9) A person appointed under subsection (8)— S. 498(9) inserted by No. 27/2025 s. 28(3).

(a) has all the rights and powers, and must perform all the duties, of the Chief Executive Officer; and

(b) is entitled to be paid any remuneration and travelling or other allowances fixed by the Board from time to time, having regard to the rate of remuneration and allowances for the time being payable to the Chief Executive Officer.

(10) The Board may at any time terminate an appointment under subsection (8). S. 498(10) inserted by No. 27/2025 s. 28(3).

499 Officers and employees

(1) The Authority—

(a) must appoint such officers and employees as are necessary to enable the Authority to perform its functions, exercise its powers and achieve its objectives; and

(b) may employ any other persons for the purposes of enabling the Authority to perform its objectives and functions and exercise its powers.

(2) If a person at the date of appointment as the Chief Executive Officer of the Authority or as an officer or employee of the Authority is an officer within the meaning of the **State Superannuation**

Act 1988, that person continues to be such an officer while serving with the Authority.

(3) An employee of the Authority (including a person appointed as casual staff or a consultant) is not subject to any action, liability, claim or demand for any matter or thing done or omitted to be done or contract entered into by the Authority if the matter or thing is done or omitted to be done or the contract is entered into in good faith for the purposes of performing a duty or carrying out a power or function of the Authority under this or any other Act.

(4) Any liability resulting from an act or omission that, but for subsection (3), would attach to an employee, attaches instead to the Authority.

500 Delegation

S. 500(1) amended by No. 48/2017 s. 36(1).

(1) The Authority may, by instrument, delegate to any person any function or power of the Authority under this Act or any other Act, or regulations made under this Act or any other Act, including, subject to subsection (2), this power of delegation.

S. 500(1A) inserted by No. 48/2017 s. 36(2).

(1A) A delegation under subsection (1) may be made to a person, a class of persons, the holder of an office or position or the holder of each office in a class of offices specified in the instrument of delegation.

(2) A person to whom a function or power has been delegated under subsection (1) may, subject to and in accordance with the approval of the Authority given generally or in a particular case, by instrument in writing, authorise another person to perform the function or exercise the power so delegated.

(3) An authorisation under subsection (2) may be made subject to such conditions or limitations as are specified in the instrument of authorisation.

(4) A function or power performed or exercised by a person authorised under subsection (2) is to be taken to have been performed or exercised by the Authority.

(5) An authority given by a delegate of the Authority under subsection (2) may be revoked at any time by the delegate by instrument in writing and, where a delegation under which the authority was given is revoked, the authority is revoked.

(6) A delegation must not be made under this section to any person, other than the Chief Executive Officer appointed under section 498 or a Director of the Board appointed under section 503 or an officer or employee of the Authority, in respect of any power, function, authority or discretion to which section 10B of the **Dangerous Goods Act 1985** applies.

(7) If a person purports to perform a function or exercise a power under this Act, it is to be presumed, unless the contrary is established, that the person is duly authorised by a delegation under subsection (1) or by an authority under subsection (2) given pursuant to a delegation to perform the function or exercise the power.

(8) The giving of an authority under subsection (2) does not prevent a performance of the function or the exercise of the power by the person by whom the authority was given.

501 Authorised agents

(1) The Authority may for the purposes of this Act and the **Accident Compensation Act 1985** appoint by an instrument any person to be an authorised agent of the Authority.

(2) An authorised agent must act as an agent subject to—

(a) such terms and conditions as are specified in the instrument of appointment; and

(b) such directions as are given in writing to the authorised agent by the Authority.

(3) An authorised agent is entitled to receive from the Authority such remuneration as is agreed between the Authority and the authorised agent for acting as an agent.

(4) The Authority may terminate the appointment of an authorised agent who contravenes or fails to comply with any of the terms and conditions specified in the instrument of appointment or a direction given under subsection (2)(b).

(5) Subsection (4) does not in any way limit the right of the Authority to take any other action against a person who is, or has been, an authorised agent and who has contravened or failed to comply with any of the terms and conditions specified in the instrument of appointment or a direction given under subsection (2)(b).

(6) An authorised agent must keep accounting records relating to transactions and affairs of the authorised agent under this section in the manner and form specified by the Authority and must retain those records for 7 years.

(7) For the purposes of this section the Authority—

(a) may at any time, by notice in writing give a direction to an authorised agent or a person who has been an authorised agent, requiring the production, at such time and place as are specified in the direction, of such accounting records relating to the transactions and affairs of the authorised agent or of the person while an authorised agent, as are so

specified and in such form as is so specified; and

(b) may audit and inspect the accounting records and require the giving of information by authorised agents to the Authority or any person authorised by the Authority.

Division 2—Board of Management

502 Establishment of Board

(1) The Board of Management of the Authority established under section 24 of the **Accident Compensation Act 1985** as in force immediately before 1 July 2014 continues in existence.

(2) The Board—

(a) may exercise all the powers of the Authority; and

(b) must give general directions as to the carrying out of the objectives and functions of the Authority; and

(c) must ensure that the Authority is managed and operated in an efficient and economic manner.

503 Constitution of Board

S. 503 amended by No. 50/2019 s. 12 (ILA s. 39B(1)).

(1) The Board is to consist of not more than 8 Directors appointed by the Governor in Council on the nomination of the Minister.

S. 503(2) inserted by No. 50/2019 s. 12.

(2) The Chief Executive Officer is ineligible to be appointed as a Director.

504 Execution of documents

(1) A document is executed by the Authority if the document is signed by—

(a) 2 Directors; or

(b) one Director and the person designated by the Board to be the Secretary of the Board.

(2) A person may assume that a document has been duly executed by the Authority if the document appears to have been signed in accordance with subsection (1).

505 Judicial notice of signatures

All courts, judges and persons acting judicially must take judicial notice of the signatures on a document which appears to have been signed in accordance with section 504(1).

506 Directors generally

S. 506(1) substituted by No. 27/2025 s. 29(1).

(1) Subject to this Part, a Director holds office—

(a) for a term not exceeding 5 years, as specified in the instrument of appointment; and

(b) subject to the terms and conditions determined by the Minister.

(2) A Director is eligible for re-appointment.

(3) A Director, other than a Director who is an officer or employee who holds a full-time statutory office within the meaning of the **Public Administration Act 2004** or a full-time office with a statutory corporation, is entitled to be paid—

S. 506(3)(a) amended by No. 27/2025 s. 29(2).

(a) the remuneration as is specified in the instrument of appointment or as may be fixed from time to time by the Minister; and

S. 506(3)(b) amended by No. 27/2025 s. 29(2).

(b) the travelling and other allowances and expenses as may be fixed from time to time by the Minister.

(4) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a Director in respect of the office of Director.

507 Acting Directors

(1) The Governor in Council may appoint a person to act in the office of a Director during any period when—

(a) the Director—

(i) is absent from duty; or

(ii) for any reason is unable to perform the duties of the office; or

(b) the office is vacant.

(2) A person appointed under this section while acting in the office of a Director—

(a) has and may exercise the powers and perform the duties of that office; and

(b) unless that person is an officer or employee who holds a full-time statutory office within the meaning of the **Public Administration Act 2004** or a full-time office with a statutory corporation, is entitled to be paid the remuneration and allowances to which a holder of the office would have been entitled.

(3) The Governor in Council may at any time terminate an appointment under subsection (1).

(4) If a person has been appointed under subsection (1) to act in the place of a Director during a period of inability of the Director and the Director ceases to hold office without having resumed the performance of the duties of the office, the period of appointment of the person is deemed to continue until—

(a) the appointment is terminated by the Governor in Council; or

(b) the expiration of the period of 12 months after the date on which the Director ceased to hold office—

whichever first occurs.

508 Vacancy, resignation and termination

(1) A Director ceases to hold office if he or she—

(a) becomes an insolvent under administration; or

(b) is convicted, or found guilty, of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence.

S. 508(2) amended by No. 27/2025 s. 30.

(2) A Director may resign his or her office by writing signed by him or her and delivered to the Minister.

(3) The Governor in Council may remove a Director from office—

(a) if the Director is absent from 3 consecutive meetings in any year without leave granted by the Minister; or

(b) on any ground on which the Governor in Council is satisfied that the Director is unfit to hold office.

509 Chairperson

S. 509(1) amended by No. 50/2019 s. 13.

(1) The Governor in Council may, by instrument, appoint one of the Directors to be Chairperson of the Board for such period, and on such terms and conditions, as are specified in the instrument of appointment.

(2) The Governor in Council may at any time terminate an appointment of a person under subsection (1), by notice in writing given to the person.

(3) If—

(a) the Chairperson—

(i) is absent from duty; or

(ii) is unable, whether by reason of illness or otherwise, to perform the duties of the office; or

(b) the office of Chairperson is vacant—

the Governor in Council may appoint another Director to act in the office of the Chairperson.

(4) A Director appointed under subsection (3) while acting in the office of the Chairperson—

(a) has all the rights and powers, and must perform all the duties, of the Chairperson; and

(b) unless the Director is an officer or employee who holds a full-time statutory office within the meaning of the **Public Administration Act 2004** or a full-time office with a statutory corporation, the Director is entitled to be paid—

(i) such remuneration as is specified in the instrument of appointment or as may be fixed from time to time by the Governor in Council; and

(ii) such travelling and other allowances as may be fixed from time to time by the Governor in Council.

(5) If a Director has been appointed under subsection (3) to act in the place of the Chairperson during a period of inability of the Chairperson and the Chairperson ceases to hold office without having resumed the performance of the duties of the office, the period of appointment

of the Director so appointed is deemed to continue until—

(a) the appointment is terminated by the Governor in Council; or

(b) the expiration of the period of 12 months after the date on which the Chairperson ceases to hold office—

whichever first occurs.

510 Meetings of the Board

(1) The Chairperson—

(a) may at any time; and

(b) must, if requested to do so by a Director—

convene a meeting of the Board to be held at a place and time determined by the Chairperson.

(2) The Board may transact any of its business at a meeting at which the Directors or any of the Directors participate by telephone, closed-circuit television or any other means of communication that does not require the presence of each director in the same place.

(3) The Chairperson must preside at any meeting of the Board at which the Chairperson is present.

(4) If the Chairperson is not present at the time fixed for the commencement of a meeting of the Board—

(a) the acting Chairperson must preside; or

(b) if there is no acting Chairperson, the Directors present at the meeting must elect a Director to preside.

(5) A majority of Directors in office at the time constitute a quorum at a meeting of the Board.

(6) Subject to the presence of a quorum, the Board may act notwithstanding any vacancy in the office of a Director.

(7) A question arising at a meeting of the Board is to be determined by a majority of votes of the Directors present and voting on the question.

(8) In the event of an equality of votes on a question at a meeting of the Board, the Chairperson or other person presiding at that meeting has a second or casting vote.

(9) Subject to this Act, the Board may regulate its own procedure.

(10) An act or decision of the Board is not invalid by reason only—

(a) of a vacancy in the office of a Director; or

(b) of any defect or irregularity in or in connection with the appointment of a Director; or

(c) in the case of a person appointed to act as Chairperson or as a Director, that the occasion for so acting has not arisen or has ceased.

511 Pecuniary interests of Directors

(1) A Director who has any pecuniary interest in a matter being considered or about to be considered by the Board or in any other matter in which the Authority is concerned must as soon as practicable after the relevant facts have come to the Director's knowledge, declare the nature of that interest at a meeting of the Board.

(2) The requirements of subsection (1) do not apply in any case where the interest of the Director consists only of being a member or creditor of a company which has an interest in a contract or proposed contract with the Authority if the interest

of the Director may properly be regarded as not being a material interest.

(3) The person presiding at a meeting at which a declaration is made under subsection (1) must cause a record of the declaration to be made in the minutes of the meeting.

(4) After a declaration is made by a Director under subsection (1)—

(a) the Director must not be present during any deliberation of the Board with respect to that matter; and

(b) the Director is not entitled to vote on the matter; and

(c) if the Director does vote on the matter, the vote must be disallowed.

Division 3—WorkCover Advisory Committee

512 WorkCover Advisory Committee

(1) The WorkCover Advisory Committee established under section 31A of the **Accident Compensation Act 1985** as in force immediately before 1 July 2014 continues in existence.

(2) The WorkCover Advisory Committee is to advise the Board in relation to its objectives—

(a) to ensure that appropriate compensation is paid to injured workers in the most socially and economically appropriate manner and as expeditiously as possible; and

(b) to promote the occupational rehabilitation and early return to work of injured workers.

(3) The functions of the WorkCover Advisory Committee are—

(a) to examine, review and make recommendations to the Board in relation to—

(i) workers' entitlement to compensation, the compensation payable to injured workers, the making of claims for compensation by injured workers and the conciliation of any disputes arising from such claims; and

(ii) the establishment, administration and operation of occupational rehabilitation, vocational re-education facilities and programs available to injured workers; and

(b) to make recommendations to the Board with respect to—

(i) the operation and administration of this Act, the **Accident Compensation Act 1985** and the **Workers Compensation Act 1958** and regulations under those Acts; and

(ii) regulations which the Board or the Minister proposes should be made or approved; and

(c) any other matters referred to it by the Board.

(4) The WorkCover Advisory Committee is to consist of members appointed by the Minister, including—

(a) persons with a sound knowledge of the law relating to accident compensation; and

(b) persons with experience in the provision of hospital services or medical services; and

(c) persons with experience in accident compensation who are nominated by Victorian employer and employee groups; and

S. 512(4)(d) amended by No. 27/2025 s. 31(a).

(d) persons with knowledge and experience in occupational rehabilitation; and

S. 512(4)(e) inserted by No. 27/2025 s. 31(b).

(e) persons who have been affected, directly or indirectly, by a workplace incident that involves death or a serious injury or illness.

(5) Subject to this Act, the Board may regulate the procedures of the WorkCover Advisory Committee.

S. 512(6) inserted by No. 8/2024 s. 21A.

(6) The WorkCover Advisory Committee must establish a Return to Work Advisory Subcommittee.

S. 512(7) inserted by No. 8/2024 s. 21A.

(7) The Return to Work Advisory Subcommittee must be chaired by the Chairperson of the Board.

S. 512(8) inserted by No. 8/2024 s. 21A.

(8) The function of the Return to Work Advisory Subcommittee is to advise the Board in relation to the following—

(a) ways to promote the occupational rehabilitation and early return to work of injured workers;

(b) the establishment, administration and operation of occupational rehabilitation services, vocational re-education facilities and return to work programs available to injured workers.

S. 512(9) inserted by No. 8/2024 s. 21A.

(9) In this section—

Chairperson of the Board means the Chairperson appointed under section 509.

Division 4—Financial matters

513 WorkCover Authority Fund

S. 513(1) amended by No. 44/2014 s. 24(23).

(1) The WorkCover Authority Fund established under section 32 of the **Accident Compensation Act 1985** as in force immediately before 1 July 2014 continues in existence.

(2) The Authority must maintain the WorkCover Authority Fund.

(3) There must be paid into the Fund—

(a) any amount received or recovered by or on behalf of the Authority as a fee or as a penalty for an offence under this Act, the **Accident Compensation Act 1985**, the **Workers Compensation Act 1958**, the **Occupational Health and Safety Act 2004**, the **Equipment (Public Safety) Act 1994** or the **Dangerous Goods Act 1985** or any regulations under any of those Acts, unless the regulations expressly provide otherwise; and

(b) any amount certified by the Treasurer, after consultation with the Minister, as a contribution to the costs and expenses of or incidental to the administration by the Authority of the **Occupational Health and Safety Act 2004**, the **Equipment (Public Safety) Act 1994** and the **Dangerous Goods Act 1985**; and

(c) any income from the investment of any money credited to the Fund and the proceeds of the sale of any investment; and

(d) any money that the Authority borrows; and

(e) any money required or permitted to be paid into the Fund under this Act or any other Act; and

(f) all other money that the Authority receives under or for the purposes of occupational health and safety, accident compensation or occupational rehabilitation; and

(g) premiums and any other amount or penalty paid in accordance with Part 10; and

(h) all other money that the Authority receives under or for the purposes of this Act or any other Act.

(4) The Consolidated Fund is appropriated to the necessary extent for the purposes of subsection (3)(b).

(5) There may be paid out of the Fund—

(a) payments of compensation or any other payments required under this Act or any other Act or under any regulation made under this or any other Act to be paid out of the Fund; and

(b) payments to the Consolidated Fund of amounts certified by the Treasurer, after consultation with the Minister, representing the costs incurred, or to be incurred, annually by the Ombudsman in enquiring into or investigating administrative actions in accordance with the **Ombudsman Act 1973** of the Authority, authorised agents and self-insurers under this Act and the **Accident Compensation Act 1985** and of delegates in administering claims under the **Workers Compensation Act 1958**; and

(c) payments to the Consolidated Fund of amounts certified by the Treasurer, after consultation with the Minister, representing the costs incurred, or to be incurred, annually by the County Court, the Magistrates' Court or VCAT arising out of the operation of this

Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; and

(d) any payment required or authorised to be made or which is for or towards the costs and expenses of or incidental to the performance of the functions or the exercise of the powers of the Authority; and

(e) any payment of an amount under section 515 or 516; and

(f) the remuneration (including allowances) of members of the Board and staff of the Authority and, where appropriate, any member of the WorkCover Advisory Committee under Division 3 or the Occupational Health and Safety Advisory Committee (within the meaning of the **Occupational Health and Safety Act 2004**); and

S. 513(5)(g) substituted by No. 73/2016 s. 14.

(g) any payment required to meet the obligation imposed on the Authority by section 537B to fund Medical Panels; and

(h) any remuneration payable to authorised agents and any payment whether for the whole or part of the cost of studies or programs approved by the Authority carried out or developed for or in respect of employers or industries by authorised agents appointed under section 501; and

S. 513(5)(i) amended by No. 73/2016 s. 21(14).

(i) any payment required to meet the obligation imposed on the Authority by section 536D to fund ACCS; and

(j) amounts required for the repayment of borrowings by the Authority and for the payment of interest payable in respect of such borrowings; and

(k) any payment arising under or in connection with a premiums order; and

(l) any other costs and expenses incurred by the Authority under this Act or any other Act.

(6) For the purposes of this section, the Authority may open and maintain one or more accounts in the name of the Authority with any ADI.

(7) The Authority may invest any money standing to the credit of the WorkCover Authority Fund in accordance with the powers conferred on it under the **Borrowing and Investment Powers Act 1987**.

(8) If money is invested in accordance with subsection (7) in the purchase of land or the construction or alteration of buildings, the whole or part of the land or buildings may be used by the Authority in connection with its powers, duties or functions under this Act or any other Act.

514 Borrowing powers

The Authority may obtain financial accommodation subject to and in accordance with the powers conferred on it under the **Borrowing and Investment Powers Act 1987**.

515 Repayment of capital

(1) The capital of the Authority is repayable to the State at the times and in the amounts determined by the Treasurer after consultation with the Authority and the Minister.

(2) In making a determination under this section, the Treasurer must have regard to any advice that the Authority has given to the Treasurer in relation to the Authority's affairs.

516 Dividends

(1) The Authority must pay to the State a dividend at the time and in the manner determined by the Treasurer after consultation with the Authority and the Minister.

(2) In determining the dividend policy that applies to the Authority, the Treasurer must have regard to the solvency margin determined to maintain the long term financial viability of the accident compensation scheme.

517 Budget

The Authority must, before a date to be fixed by the Minister each year, submit to the Minister an operating budget for the next financial year in a form, and containing such matters, as may be required by the Minister.

518 Operating and financial report

(1) The Authority must as soon as possible after 31 December in each year but not later than 28 February next following submit to the Minister an operating and financial report.

(2) The operating and financial report must be in a form and contain such matters as may be required by the Minister.

(3) The Authority must ensure that the operating and financial report is publicly available within 14 days after it is submitted to the Minister.

Part 12—Other bodies

Division 1—Accident Compensation Conciliation Service

Pt 12 Div. 1 (Heading and ss 519–536) substituted as Pt 12 Div. 1 (Heading and ss 519–536E) by No. 73/2016 s. 15.

S. 519 substituted by No. 73/2016 s. 15.

519 Accident Compensation Conciliation Service

(1) The Accident Compensation Conciliation Service is established.

(2) ACCS—

(a) is a body corporate with perpetual succession; and

(b) has an official seal; and

(c) may sue and be sued; and

(d) may acquire, hold and dispose of real and personal property; and

(e) subject to this Act, may do and suffer all acts and things that a body corporate may by law do and suffer.

S. 520 substituted by No. 73/2016 s. 15.

520 Official seal

(1) The official seal of ACCS must—

(a) be kept in such custody as ACCS directs; and

(b) not be used except as authorised by ACCS.

(2) All courts must take judicial notice of the official seal of ACCS affixed to any document.

521 ACCS does not represent the Crown

S. 521 substituted by No. 73/2016 s. 15.

In performing its functions and exercising its powers, ACCS does not represent the Crown.

522 Functions

S. 522 substituted by No. 73/2016 s. 15.

The functions of ACCS are—

(a) to provide independent conciliation and arbitration services for the purposes of this Act and the **Accident Compensation Act 1985**; and

S. 522(a) amended by No. 15/2021 s. 37(a).

(b) to ensure that conciliations and arbitrations are conducted by ACCS in an expeditious and consistent manner; and

S. 522(b) amended by No. 15/2021 s. 37(b).

(c) to ensure that ACCS and its employees, contractors and agents operate in a transparent and accountable manner; and

(d) to monitor and manage the performance of ACCS and its employees, contractors and agents; and

(e) to ensure that ACCS and its employees, contractors and agents comply with the policies and procedures of ACCS and with any guidelines made by the Minister; and

(f) to carry out any other functions conferred on ACCS by or under this Act.

523 Powers

S. 523 substituted by No. 73/2016 s. 15.

Subject to this Act, ACCS has power to do all things necessary or convenient in connection with, or as incidental to, the performance of its functions.

524 Board of directors

S. 524 substituted by No. 73/2016 s. 15.

(1) ACCS must have a board of directors.

(2) The board consists of not less than 5 directors and not more than 7 directors.

(3) Members of the board are appointed by the Minister including—

(a) one director who is to be appointed as the chairperson; and

(b) one director who is to be appointed as the deputy chairperson.

(4) The Minister must not appoint a director under subsection (3) unless the Minister is satisfied the person is—

(a) an Australian legal practitioner within the meaning of the Legal Profession Uniform Law (Victoria); or

(b) a member of Chartered Accountants Australia & New Zealand, Certified Practising Accountants Australia or the Institute of Public Accountants; or

(c) a person holding a professional certificate from the Resolution Institute or another formal qualification in alternative dispute resolution; or

(d) a fellow, graduate member or member of the Australian Institute of Company Directors; or

(e) a person with significant experience in working with a workers' compensation scheme or a statutory no-fault insurance scheme.

S. 525 substituted by No. 73/2016 s. 15.

525 Conditions of appointment of directors

(1) A director—

(a) holds office for a fixed term as specified in the instrument of appointment; and

(b) holds office on the terms and conditions (including remuneration and allowances) that are specified in the instrument of appointment; and

(c) may be reappointed; and

(d) may resign from office by delivering a signed letter of resignation to the Minister; and

(e) in respect of the office of director, is subject to the **Public Administration Act 2004** (other than Part 3 of that Act).

(2) The office of a director becomes vacant if the director—

(a) becomes insolvent under administration; or

(b) is found guilty of an indictable offence; or

(c) is absent from 3 consecutive board meetings without the approval of the board; or

(d) retires, resigns or dies.

526 Acting appointments

S. 526 substituted by No. 73/2016 s. 15.

(1) The deputy chairperson must act as chairperson—

(a) if the office of chairperson is vacant; or

(b) during any period when the chairperson is absent; or

(c) if the chairperson is for any other reason unable to attend board meetings or otherwise unable to perform the duties of the office.

(2) While the deputy chairperson is acting as chairperson, the deputy chairperson—

(a) has and may exercise all the powers, and must perform all the functions and duties, of the chairperson; and

(b) is entitled to be paid the remuneration and allowances which the chairperson would have been entitled to.

(3) The Minister may appoint a director to act as deputy chairperson—

(a) during a vacancy in the office of deputy chairperson; or

(b) during any period when the deputy chairperson is absent; or

(c) during any period when the deputy chairperson is acting as chairperson; or

(d) if the deputy chairperson is, for any other reason, unable to attend meetings of the board or otherwise unable to perform the duties of the office.

(4) While a director is acting as deputy chairperson, the director has and may exercise all the powers, and must perform all the functions and duties, of the deputy chairperson.

(5) The Minister may appoint a person to act as a director (other than the chairperson or deputy chairperson)—

(a) during a vacancy in the office of a director; or

(b) during any period when the director is absent; or

(c) during any period when the director is acting as deputy chairperson; or

(d) if the director is, for any other reason, unable to attend meetings of the board or otherwise unable to perform the duties of the office.

(6) While a person is acting as director, the person—

(a) has and may exercise all the powers, and must perform all the functions and duties, of the director; and

(b) is entitled to be paid the remuneration and allowances which the director would have been entitled to.

(7) The Minister must not appoint a person to act as director unless the Minister is satisfied that the person is—

(a) an Australian legal practitioner within the meaning of the Legal Profession Uniform Law (Victoria); or

(b) a member of Chartered Accountants Australia & New Zealand, Certified Practising Accountants Australia or the Institute of Public Accountants; or

(c) a person holding a professional certificate from the Resolution Institute or another formal qualification in alternative dispute resolution; or

(d) a fellow, graduate member or member of the Australian Institute of Company Directors; or

(e) a person with significant experience in working with a workers' compensation scheme or a statutory no-fault insurance scheme.

527 Validity of acts or decisions

S. 527 substituted by No. 73/2016 s. 15.

An act or a decision of the board is not invalid only—

(a) because of a vacancy in the membership of the board, including a vacancy arising from the failure to appoint a director; or

(b) because of a defect or irregularity in, or in connection with, the appointment of a director or an acting director; or

(c) in the case of an acting director, on the grounds that the occasion for the person to act had not arisen or had ceased.

S. 528 substituted by No. 73/2016 s. 15.

528 Proceedings of board

(1) Subject to subsection (2), meetings of the board must be held no less than 3 times a year, at the times and places determined by the board.

(2) The chairperson—

(a) may at any time convene a meeting of the board; and

(b) must convene a meeting of the board when requested by a director to do so.

(3) Three of the directors constitute a quorum of the board.

(4) A question arising at a meeting of the board is determined by a majority of votes.

(5) The board must ensure that accurate minutes are kept of its meetings.

(6) The person presiding at a meeting of the board has—

(a) a deliberative vote; and

(b) in the case of an equality of votes, a second or casting vote.

(7) The board may permit directors to participate in a particular meeting by any means of communication that does not require the physical presence of each director in the same place.

(8) Subject to this Act, the board may regulate its own proceedings.

529 Resolutions without meetings

S. 529 substituted by No. 73/2016 s. 15.

(1) If the directors for the time being (other than a director who is absent from Australia when the other directors sign) sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the board held—

(a) on the day on which the document is signed; or

(b) if the directors do not sign the document on the same day, on the day on which the last director to sign signs the document.

(2) If a resolution is taken under subsection (1) to have been passed at a meeting of the board, each director must be—

(a) advised as soon as practicable; and

(b) given a copy of the terms of the resolution.

(3) For the purposes of subsection (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more directors, are taken to constitute one document.

530 Chief Executive Officer

S. 530 (Heading) amended by No. 15/2021 s. 38(1).

S. 530 substituted by No. 73/2016 s. 15.

(1) The board, with the approval of the Minister, may appoint a person as the Chief Executive Officer.

S. 530(1) amended by No. 15/2021 s. 38(2).

S. 530(2) amended by No. 15/2021 s. 38(3).

(2) The Chief Executive Officer of ACCS is responsible for the management of the affairs of ACCS in accordance with the general policies and strategic direction determined by the board.

S. 530(3) amended by No. 15/2021 s. 38(4).

(3) The Chief Executive Officer holds office, subject to this Act, on a full-time basis and on such terms and conditions as are determined by the board and specified in the instrument of appointment.

S. 530(4) amended by No. 15/2021 s. 38(4).

(4) The Chief Executive Officer may resign from office by delivering a signed letter of resignation to the chairperson.

S. 530(5) amended by No. 15/2021 s. 38(4).

(5) The Chief Executive Officer may be a director of ACCS, other than the chairperson.

S. 530(6) amended by No. 15/2021 s. 38(4).

(6) The Chief Executive Officer may act as a Conciliation Officer.

S. 530(6A) inserted by No. 15/2021 s. 38(5).

(6A) The Chief Executive Officer may act as an Arbitration Officer.

S. 530(7) amended by No. 15/2021 s. 38(6).

(7) If the Chief Executive Officer is unable, whether because of illness, suspension, absence or otherwise, to perform the duties of the office of Chief Executive Officer, the board may appoint another person to act in the place of the Chief Executive Officer during the period of the inability.

S. 530(8) amended by No. 15/2021 s. 38(6).

(8) A person appointed under this section to act in the place of the Chief Executive Officer while so acting—

S. 530(8)(a) amended by No. 15/2021 s. 38(6).

(a) has all the rights and powers, and must perform all the duties, of the Chief Executive Officer; and

(b) is to be paid any remuneration and travelling or other allowances fixed by the board from time to time, having regard to the rate of remuneration and allowances for the time being payable to the Chief Executive Officer.

S. 530(8)(b) amended by No. 15/2021 s. 38(6).

531 Staff of ACCS

S. 531 substituted by No. 73/2016 s. 15.

(1) ACCS may employ such number of—

(a) Conciliation Officers to conduct conciliations; and

(ab) Arbitration Officers to conduct arbitrations; and

S. 531(1)(ab) inserted by No. 15/2021 s. 39(1).

(b) other employees—

as it considers necessary to enable ACCS to perform its functions.

(2) ACCS may enter into agreements or arrangements for the use of the services of any staff of a public entity or public service body.

(3) A person employed by ACCS as an Arbitration Officer must have appropriate qualifications and experience, as determined by ACCS.

S. 531(3) inserted by No. 15/2021 s. 39(2).

532 No interference in individual conciliations or arbitrations

S. 532 substituted by Nos 73/2016 s. 15, 15/2021 s. 40.

The powers of ACCS to monitor and manage its employees, or to ensure that its employees comply with policies and procedures of ACCS and with any guidelines made by the Minister, do not include the power to direct—

(a) a Conciliation Officer as to the outcome of a specific conciliation or conciliations; or

(b) an Arbitration Officer as to the outcome of a specific arbitration or arbitrations.

S. 533 (Heading) amended by No. 15/2021 s. 41(1).

533 Data to be collected by the Chief Executive Officer

S. 533 substituted by No. 73/2016 s. 15.

S. 533(1) amended by No. 15/2021 s. 41(2)(a).

(1) The Chief Executive Officer must, on or before 1 September each year, collect and provide the Minister with the following data in respect of the year ending on the preceding 30 June—

(a) the number of disputes referred for conciliation;

S. 533(1)(ab) inserted by No. 15/2021 s. 41(2)(b).

(ab) the number of disputes referred for arbitration;

(b) the number of matters referred to a Medical Panel;

(c) the number and nature of complaints referred to ACCS about the conduct of ACCS;

(d) the number and nature of the outcomes of the disputes referred for conciliation;

S. 533(1)(da) inserted by No. 15/2021 s. 41(2)(c).

(da) the number and nature of the outcomes of the disputes referred for arbitration;

S. 533(1)(db) inserted by No. 15/2021 s. 41(2)(c).

(db) the number of extensions of time granted by ACCS under section 301P;

(e) the number of medical reports received or requested by ACCS under section 289;

S. 533(1)(f) amended by No. 15/2021 s. 41(2)(d).

(f) the number of instances the Chief Executive Officer allowed an extension of time for lodging an application or allowed an

application to be lodged out of time under section 289B;

(g) any other information that the Minister requests be provided.

(2) A person may, in writing, request the Chief Executive Officer to make the data collected under subsection (1) publicly available.

S. 533(2) amended by No. 15/2021 s. 41(3).

(3) If the Chief Executive Officer receives a request under subsection (2), the Chief Executive Officer must publish the data as soon as reasonably possible on an Internet site maintained by ACCS.

S. 533(3) amended by No. 15/2021 s. 41(3).

534 Indemnity, borrowing and guarantees

S. 534 substituted by No. 73/2016 s. 15.

The powers of ACCS do not include a power—

(a) to exempt (whether directly or indirectly) a director from, or to indemnify (whether by paying a premium in respect of a contract of insurance or otherwise) a director against, any liability that by law would otherwise attach to the director in respect of a wilful breach of duty or breach of trust of which the director may be guilty in relation to ACCS; or

(b) to borrow or invest money; or

(c) to give guarantees; or

(d) to make loans to directors.

535 Extra territoriality

S. 535 substituted by No. 73/2016 s. 15.

ACCS may perform its functions and exercise its powers within or outside Victoria.

536 Delegation

S. 536 substituted by No. 73/2016 s. 15.

(1) Subject to subsection (2), ACCS, by instrument, may delegate any power, function or duty of ACCS under any Act or regulations under any Act to—

S. 536(1)(a) amended by No. 15/2021 s. 42.

(a) the Chief Executive Officer; or

(b) an employee of ACCS; or

(c) a person engaged by ACCS to assist in the performance of its functions.

S. 536(2) amended by No. 15/2021 s. 42.

(2) ACCS may not delegate the power to appoint the Chief Executive Officer under section 530.

S. 536A (Heading) amended by No. 15/2021 s. 43(1).

S. 536A inserted by No. 73/2016 s. 15.

536A Protection against liability

S. 536A(1) amended by No. 15/2021 s. 43(2).

(1) The Chief Executive Officer, a Conciliation Officer or an Arbitration Officer is not personally liable for anything done or omitted to be done in good faith—

(a) in the exercise of a power or the discharge of a duty under this Act; or

(b) in the reasonable belief that the act or omission was in the exercise of a power or the discharge of a duty under this Act.

S. 536A(2) amended by No. 15/2021 s. 43(2).

(2) Any liability resulting from an act or omission that, but for subsection (1) would attach to the Chief Executive Officer, a Conciliation Officer or an Arbitration Officer, attaches instead to ACCS.

S. 536B inserted by No. 73/2016 s. 15.

536B Direction by Minister

(1) Subject to subsection (2), ACCS is subject to the general direction and control of the Minister.

(2) The Minister must not direct ACCS or any of its employees as to the exercising of their discretionary powers under this Act, or the outcome of—

S. 536B(2) amended by No. 15/2021 s. 44.

(a) a specific conciliation or conciliations; or

S. 536B(2)(a) inserted by No. 15/2021 s. 44.

(b) a specific arbitration or arbitrations.

S. 536B(2)(b) inserted by No. 15/2021 s. 44.

(3) If the Minister gives ACCS a written direction, ACCS may publish the direction in the Government Gazette.

536C ACCS budget

S. 536C inserted by No. 73/2016 s. 15.

(1) Each year, on or before the date specified by the Minister, ACCS must submit to the Minister a proposed annual budget for its operations for the coming financial year.

(2) The Minister must either approve the proposed budget or request that the proposed budget be amended.

536D Authority to fund ACCS

S. 536D inserted by No. 73/2016 s. 15.

In each financial year, the Authority must make payments from the WorkCover Authority Fund to ACCS, subject to and in accordance with the budget approved by the Minister under section 536C for that financial year or, if the Minister approves an increase in that budget, that budget as so varied, to enable ACCS to meet expenses incurred by it in respect of that financial year.

536E Signature

S. 536E inserted by No. 73/2016 s. 15.

(1) Any document or copy of a document issuing out of the office of ACCS and bearing the written, stamped or printed signature of—

(a) a Conciliation Officer; or

S. 536E(1)(ab) inserted by No. 15/2021 s. 45(1)(a).

(ab) an Arbitration Officer; or

S. 536E(1)(b) amended by No. 15/2021 s. 45(1)(b).

(b) a person authorised by ACCS or the Chief Executive Officer—

is, until the contrary is proved, deemed to have been duly signed by the person by whom it purports to have been signed.

S. 536E(2) amended by No. 15/2021 s. 45(2).

(2) Judicial notice is to be taken of every signature referred to in subsection (1) and of the fact that the person whose signature it purports to be holds or has held the office of Conciliation Officer or Arbitration Officer (as the case requires) or is or has been a person authorised by ACCS or the Chief Executive Officer.

Division 2—Medical Panels

537 Establishment and constitution

(1) Medical Panels must be constituted as necessary for the purposes of this Act, the **Accident Compensation Act 1985** and Part VBA of the **Wrongs Act 1958** to carry out such functions as may be conferred on a Medical Panel.

(2) For the purpose of constituting Medical Panels, there is to be a list of members consisting of medical practitioners nominated by the Minister on the recommendation of the Convenor and appointed by the Governor in Council.

(3) From the list of members under subsection (2), the Minister—

(a) must appoint a Convenor; and

(b) may appoint one or more Deputy Convenors.

(4) The Convenor must designate a Deputy Convenor to act as Convenor in the temporary absence of the Convenor.

(5) In the temporary absence of the Convenor—

(a) a Deputy Convenor designated under subsection (4); or

(b) if there is no such designated Deputy Convenor, a Deputy Convenor designated by the Minister—

has, and may exercise, the functions and powers conferred on the Convenor.

(6) The Convenor may delegate to a Deputy Convenor the exercise of any function or power conferred on the Convenor by or under this Act.

(7) The Convenor may—

(a) convene a Medical Panel; and

(b) determine the number of members that are to constitute a Medical Panel based on what he or she considers to be appropriate in each particular case.

(8) If a medical practitioner on the list of members has treated or examined or been engaged to treat or examine a worker (otherwise than in his or her role as a member of a Medical Panel) he or she must not be a member of a Medical Panel examining the worker.

(9) A matter or thing done or omitted to be done in the provision of expert advice to a Medical Panel by a consultant engaged for that purpose does not, if the matter or thing was done or omitted in good faith, subject the consultant personally to any action, liability, claim or demand.

(10) A member of a Medical Panel is entitled to be paid remuneration (if any) and the travelling and other allowances specified in the instrument of appointment.

(11) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

(12) An instrument of appointment of a member may specify other terms and conditions not inconsistent with this Act.

(13) The Authority must appoint such officers and employees as are necessary for the proper functioning of medical panels.

S. 537A inserted by No. 73/2016 s. 16.

537A Medical Panels budget

(1) Each year, on or before the date specified by the Minister, the Convenor must submit to the Minister a proposed annual budget for costs and expenses to enable the proper functioning of Medical Panels in connection with the operation of Division 3 of Part 6 and Division 2 of Part 12 for the coming financial year.

(2) The Minister must either approve the proposed budget or request that the proposed budget be amended.

S. 537B inserted by No. 73/2016 s. 16.

537B Authority to fund Medical Panels

In each financial year, the Authority must make payments from the WorkCover Authority Fund—

(a) subject to and in accordance with the budget approved by the Minister under section 537A for that financial year or, if the Minister approves an increase in that budget, that budget as so varied, to enable the Convenor to meet costs and expenses for the proper functioning of Medical Panels in connection with the operation of Division 3 of Part 6 and

Division 2 of Part 12 in respect of that financial year; and

(b) to pay remuneration (including allowances) of members of Medical Panels in connection with the operation of Division 3 of Part 6 and Division 2 of Part 12 in respect of that financial year.

538 Term, resignation and termination

(1) Subject to this Division, a person is on the list of members for the term not exceeding 3 years specified in the instrument of appointment.

(2) A member may resign from the list of members by writing signed by the member and delivered to the Minister.

(3) The Governor in Council may remove or suspend a member from the list of members if, in the opinion of the Governor in Council, the member—

(a) becomes incapable of performing official duties; or

(b) neglects to perform those duties.

(4) A person ceases to be a member of a Medical Panel if he or she—

(a) ceases to be a medical practitioner; or

(b) becomes an insolvent under administration; or

(c) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence.

539 Advisory functions

(1) The Convenor—

(a) must advise the Minister in relation to any matter referred to the Convenor by the Minister; and

(b) may advise the Minister in relation to the operation and procedures of Medical Panels.

(2) The Convenor may constitute a Medical Panel consisting of such number of members as the Convenor considers appropriate, for the purpose of providing a report to the Convenor in respect of any matter referred to the Convenor of the Medical Panels under subsection (1)(a).

540 Validity of acts or decisions

An act or decision of a Medical Panel is not invalid by reason only of any defect or irregularity in or in connection with the appointment of a member.

541 Protection for Convenor and members of a Medical Panel

The Convenor and a member of a Medical Panel has, in the performance of his or her duties as the Convenor or as a member of a Medical Panel, the same protection and immunity as a Judge of the Supreme Court has in the performance of his or her duties as a Judge.

Part 13—General

Division 1—Indexation[2]

542 Indexation—weekly payments

(1) Subject to this section, the amount of a weekly payment to a worker in respect of an injury under Part 5 must be varied, in respect of each year beginning on the anniversary of the day on which the worker became entitled to weekly payments in respect of that injury, by varying the amount of the worker's pre-injury average weekly earnings for the purposes of the calculation of the amount of the weekly payment in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount of the worker's pre-injury average weekly earnings within the meaning of section 153 or, if that amount has been varied in accordance with this section, that amount as last so varied;

B is the average weekly total earnings of all employees in Victoria in original terms for the most recent reference period published by the Australian Bureau of Statistics as at the 15th day of the month preceding the month in which the date on which the variation is made falls;

C is the average weekly total earnings of all employees in Victoria in original terms for the corresponding reference period one year earlier than the reference period referred to in B published by the Australian Bureau of

Statistics as at the 15th day of the same month referred to in B.

(2) A variation of an amount of a worker's pre-injury average weekly earnings under this section does not take effect to the extent (if any) to which it increases that amount to more than 100 per cent of the worker's ordinary earnings (calculated in accordance with Division 1 of Part 5) expressed as a weekly sum to which the worker would be entitled if he or she were employed in the same position or positions (if it or they can be identified) as he or she was employed in immediately before the injury, being the position or positions on the basis of which the calculation of the worker's pre-injury average weekly earnings was made.

543 Indexation of weekly pensions for dependants of a worker who dies

(1) Subject to subsection (2), the amount of any compensation in the form of weekly payments of pension payable under section 241 to a deceased worker's dependants must be varied—

(a) on 1 July 2014 in respect of the financial year commencing on that date; and

(b) on 1 July in each subsequent year in respect of the financial year commencing on that date—

by varying the amount of the worker's pre-injury average weekly earnings for the purposes of the calculation of the amount of the weekly pension in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount of the worker's pre-injury average weekly earnings within the meaning of section 153 or, if that amount has been varied in accordance with this section, that amount as last so varied;

B is the average weekly total earnings of all employees in Victoria in original terms for the most recent reference period in the preceding calendar year published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made;

C is the average weekly total earnings of all employees in Victoria in original terms for the corresponding reference period in the calendar year preceding the calendar year referred to in B published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

(2) If a worker's death resulted from or was materially contributed to by an injury arising out of or in the course of employment and the deceased worker died more than one year after the date of the injury, the amount of any compensation in the form of weekly payments of pension payable to the dependants of the deceased worker under section 241 must be varied on the anniversary date of the injury in respect of the year beginning on that date by varying the amount of the deceased worker's pre-injury average weekly earnings for the purposes of the calculation of the amount of the weekly pension in accordance with the formula—

$$D \times \frac{E}{F}$$

where—

D is the amount of the worker's pre-injury average weekly earnings within the meaning of section 153 or, if that amount has been varied in accordance with this section, that amount as last so varied;

E is the average weekly total earnings of all employees in Victoria in original terms for the most recent reference period published by the Australian Bureau of Statistics as at the 15th day of the month preceding the month in which the date on which the variation is made falls;

F is the average weekly total earnings of all employees for Victoria in original terms for the corresponding reference period one year earlier than the reference period referred to in E published by the Australian Bureau of Statistics as at the 15th day of the same month referred to in E.

544 Indexation of certain amounts—according to average weekly earnings

An amount specified in column 2 of the Table to this section must be varied, in respect of the financial year beginning on 1 July 2014 and each subsequent financial year, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount specified in column 2 of that item or, if that amount has been varied in accordance with this section, that amount as last so varied;

B is the average weekly total earnings of all employees in Victoria in original terms for the most recent reference period in the preceding calendar year published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made;

C is the average weekly total earnings of all employees in Victoria in original terms for the corresponding reference period in the calendar year preceding the calendar year referred to in B published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

TABLE

Column 1 *Item*	*Column 2* *Amount*
1	Section 164(1)(c)—$177
2	Section 165(4)(a)—$177
3	Section 166(1)(d)—$177
4	Section 366(2)—$886 330
5	Schedule 2, item 11(b)—$1210
6	Schedule 7, clause 3(1)—$55 330
7	Schedule 7, clause 3(2)—$55 330

545 Indexation of certain amounts—consumer price index

Subject to section 229(5), an amount in dollars specified in column 2 of an item in the Table to this section must be varied, in respect of the financial year beginning on 1 July 2014 and each subsequent financial year, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount specified in column 2 of that item or, if that amount has been varied in accordance with this section, that amount as last so varied;

B is the all groups consumer price index for Melbourne in original terms for the most recent reference period in the preceding calendar year most recently published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made;

C is the all groups consumer price index for Melbourne in original terms for the corresponding reference period one year earlier than the reference period referred to in B published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

TABLE

S. 545 (Table) amended by Nos 48/2017 s. 37, 49/2018 s. 37, 27/2025 s. 32.

Column 1 *Item*	*Column 2* *Amount*
1	Section 72(1)(c)—$642
2	Section 211(2)(b)(i)—$11 670 and $9940
3	Section 211(2)(b)(ii)—$11 670 and $9940
4	Section 211(2)(c)(i)—$18 810 and $2830
5	Section 211(2)(c)(ii)(A)—$18 810 and $2830
6	Section 211(2)(c)(ii)(B)—$18 810 and $2830
7	Section 211(2)(d)—$75 260 and $4700
8	Section 211(2)(e)(i)—$262 070 and $29 330
9	Section 211(2)(e)(ii)—$555 350
10	Section 211(2)(f)—$555 350
11	Section 212(b)—$18 810 and $2830
12	Section 212(c)—$75 260 and $4700
13	Section 212(d)(i)—$262 070 and $29 330
14	Section 212(d)(ii)—$555 530
15	Section 212(e)—$555 530
16	Section 213(1)(a)—$2830 and $1860
17	Section 213(1)(b)—$2830
18	Section 213(1)(c)—$4700, $2830 and $1860
19	Section 213(1)(d)—$4700 and $2830
20	Section 213(1)(e)—$4700
21	Section 214(1)—$67 660

Column 1 *Item*	*Column 2* *Amount*
22	Section 217(1)—$555 350
22A	Section 214A(a)—$3360 and $2210
22B	Section 214A(b)—$3360
22C	Section 214A(c)—$5600, $3360 and $2210
22D	Section 214A(d)—$5600 and $3360
22E	Section 214A(e)—$5600
23	Section 217(2)—$555 350
24	Section 221(4)—$273 640
25	Section 224(1)(b)—$10 000
25A	Section 224(1)(d)—$20 000
25B	Section 224(1)(e)—$5000
26	Section 225(2)—$642
27	Section 229(4)—$32.50
28	Section 236(1)—$555 350
29	Section 236(2)—$555 350
30	Section 236(3)—$555 350
31	Section 236(3)(a)—$55 530
32	Section 236(4)—$555 350
33	Section 236(4)(a)—$27 770
34	Section 236(5)—$555 350
35	Section 236(5)(a)—$416 520
36	Section 236(6)—$555 350
37	Section 237(1)—$555 350
38	Section 237(2)—$555 350
38A	Section 237AA(1)—$20 000
38B	Section 237A(1)—$10 000
39	Section 240(9)—$33 120

Column 1 *Item*	*Column 2* *Amount*
40	Section 243(1)(b)—$8270
41	Section 301(3)—$56
42	Section 301(4)—$386
43	Section 340(a)(i)—$56 650
44	Section 340(a)(ii)—$1 275 570
45	Section 340(b)(i)—$54 730
46	Section 340(b)(ii)—$555 350
47	Schedule 4—No disadvantage—Compensation Table: each amount specified in the Table

546 Indexation—no reduction

If the variation of an amount specified in section 542, 543, 544 or 545 or in a Table to section 544 or 545 by operation of that section has the effect of reducing the amount—

(a) the variation is deemed not to have taken effect, except for the purposes of the application of this section; and

(b) when the amount is varied and increased by operation of this section in respect of the next or a subsequent financial year, that variation has effect as an increase only to the extent (if any) to which the amount of the increase exceeds the amount of the reduction in respect of a preceding financial year, or that part of such a reduction that has not been set off against a previous increase.

547 Indexation—rounding

Where it is necessary for the purposes of this Division to calculate an amount, the amount is deemed to have been calculated in accordance with this section if the calculation is made—

(a) if the amount is less than $1000, to the nearest whole $1; or

(b) if the amount is $1000 or more, to the nearest whole $10.

Division 2—Agreements

548 Reciprocal agreements—compensation

(1) The Authority may enter into an agreement with a person or body constituted by or under the law of a corresponding State relating to the payment of compensation to a worker or dependants of a worker in respect of an injury arising out of or in the course of, or due to the nature of, the worker's employment in Victoria or in the corresponding State.

(2) An agreement under subsection (1) may provide—

(a) that the provisions of this Act or the **Accident Compensation Act 1985** apply and the provisions of the law of the corresponding State do not apply in respect of compensation if the injury occurred in Victoria and the person who was injured or died was resident in the corresponding State; and

(b) that the provisions of the law of the corresponding State apply and the provisions of this Act or the **Accident Compensation Act 1985** do not apply in respect of compensation if the injury occurred in the

corresponding State and the person who was injured or died was resident in Victoria.

(3) In this section, ***corresponding State*** means another State or a Territory in which there is in force a law the provisions of which generally correspond to the provisions of this Act, being a State or Territory declared by Order of the Governor in Council published in the Government Gazette to be a corresponding State for the purposes of this section.

549 Reciprocal agreements—premiums or other amounts

(1) The Authority may enter into an agreement with a person or body constituted by or under the law of another State or Territory or of the Commonwealth relating to the payment of premium or other amounts in respect of remuneration paid or payable in respect of services performed or rendered partly in Victoria and partly in the corresponding State.

(2) An agreement under subsection (1) may provide—

(a) that the provisions of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** apply and the provisions of the law of the corresponding State do not apply in respect of remuneration paid or payable in respect of services performed or rendered partly in Victoria and partly in the corresponding State; or

(b) that the provisions of the law of the corresponding State apply and the provisions of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** do not apply in respect of such remuneration.

550 Reciprocal agreements—relevant services

(1) The Authority may enter into an agreement with a person or body that provides a relevant service under which provision is made by the Authority to meet its obligations under Division 7 of Part 5 of this Act or Division 2B of Part IV of the **Accident Compensation Act 1985** for the provision of a relevant service in Australia because of an injury caused to a worker arising out of or in the course of employment by making payments in respect of classes or groups of cases or claims rather than on an individual basis.

(2) An agreement under subsection (1) made by the Authority with a person or body—

(a) must include an agreement by the Authority to make to that person or body payments in respect of the reasonable costs of that person or body for providing the service in accordance with a scale of payments specified in the agreement; and

(b) must include an agreement by that person or body that the person or body will not make a demand to a person other than the Authority for payment of the whole or any part of costs in respect of which the Authority has agreed to make payments; and

(c) is subject to such other terms and conditions including terms and conditions relating to revocation as the Authority determines and specifies in the agreement.

(3) Where a person with whom an agreement referred to in subsection (1) is in force provides services in respect of an injury and the Authority is, under the agreement, liable to make payments in respect of those services, no person other than the Authority is liable to make payment to the first-mentioned

person in respect of those services except as provided in accordance with subsection (4).

(4) An agreement referred to in subsection (1) between the Authority and a hospital may include an agreement that if, in accordance with a request made by or on behalf of a person, the hospital provides in respect of a person hospital services in respect of which the Authority is not, under the agreement, liable to make payments, the hospital may make demand to that person for payment of an amount not exceeding an amount calculated in accordance with provisions specified in the agreement and that person is liable to pay the amount demanded by the hospital.

(5) Where an agreement under this section is made or revoked, notice of the making or revocation of the agreement must be published on the Authority's internet site.

(6) In this section ***relevant service*** means an ambulance service, hospital service, medical service, nursing service or personal and household service.

551 Incentive agreements to improve employer performance

S. 551(1) amended by No. 44/2014 s. 24(24).

(1) Without limiting the powers conferred on the Authority, for the purpose of carrying out its functions under section 493(1)(q), the Authority may do any of the following—

(a) enter into agreements with any person or body and may agree to pay money under the agreement to any person or body;

(b) require anyone seeking to enter into such an agreement to meet specified criteria or to successfully complete an approval or application process;

(c) impose fees in relation to an approval or application process;

(d) in agreeing to the payment of money under an agreement, base the amount to be paid on factors relevant to the calculation of premium.

Example

The Authority may agree to pay a representative of a group of employers an annual amount that represents the difference between the amount the group paid collectively in premiums in the previous year and the amount of premium that it is likely would have been paid in that year had the group of employers been a single employer. Under this scheme each employer would still have to pay the premium in respect of the year that he, she or it would normally have to pay.

(2) Nothing in this section authorises the Authority to agree to waive or reduce the amount of premium an employer is liable to pay but the Authority may make payments in the nature of a refund of premium.

Pt 13 Div. 2A (Heading and s. 551A) inserted by No. 8/2024 s. 22.

Division 2A—Use of information

S. 551A inserted by No. 8/2024 s. 22.

551A Use of information

(1) Information collected by the Authority under this Act or the regulations may be used by the Authority to perform its functions and exercise its powers under any Act if the use—

(a) is reasonably necessary for the purposes of performing a function or exercising a power conferred on the Authority under that Act or regulations made under that Act; or

(b) is directly related to a function or power conferred on the Authority under that Act.

(2) This section does not affect the operation of—

(a) the **Health Records Act 2001**; or

(b) the **Privacy and Data Protection Act 2014**; or

(c) the **Victorian Data Sharing Act 2017**.

Division 3—Access to information

552 Power to obtain information and evidence

(1) For the purposes specified in subsection (2), the Authority may, by notice in writing, require any person (including any person that is an employee appointed or authorised to perform any function or exercise any power of, or on behalf of, the Authority under any Act)—

(a) to furnish the Authority with such information as the Authority requires; or

(b) to attend and give evidence before the Authority or before any person employed in the administration or execution of this Act and authorised by the Authority in that behalf—

and may require the person to produce all books in the custody or under the control of the person relating thereto.

(2) The purposes are—

(a) in the case of subsection (1)(a), for determining whether any of the provisions of this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** are being or have been contravened; or

(b) in the case of subsection (1)(a) or (b), for inquiring into or ascertaining the person's or any other person's—

(i) liability or entitlement under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; or

(ii) liability to pay, or entitlement to receive, damages at common law and under the **Wrongs Act 1958**, and contribution or indemnity under that Act, in respect of an injury to, or death of, a worker arising out of or in the course of a worker's employment with the employer; or

(c) in the case of subsection (1)(a) or (b), for ascertaining for the purposes of this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** the identity of any person who—

(i) may have a liability or entitlement under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; or

(ii) may, by reason of being related to or associated or connected with another person, affect the liability or entitlement of that other person.

S. 552(3) amended by No. 6/2018 s. 68(Sch. 2 item 140.1).

(3) The Authority may require the information or evidence to be given on oath or by affirmation, either orally or in writing, or to be given by statutory declaration and for that purpose the Authority or a person so authorised by the Authority may administer an oath or affirmation.

(4) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

553 Powers of inspection

(1) Subject to subsection (2), a person authorised by the Authority may, with an interpreter or such other assistance as the person requires—

(a) without force, enter, inspect and examine at any reasonable time any premises; and

(b) require a person in or on those premises to give information and produce books; and

(c) inspect, examine and make extracts from, or copies of, any books in or on those premises; and

(d) exercise such other powers as are necessary—

for the purpose of determining whether the provisions of this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** are being or have been contravened or generally of enforcing the provisions of this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

(2) A person must not exercise a power under subsection (1) in any part of premises used only for residential purposes except with the consent of the occupier for the time being of that part.

(3) If a person exercising powers under subsection (1) uses the assistance of an interpreter, a requirement to provide information made on behalf of that person by the interpreter is to be taken to have been made by that person and any answer given to the interpreter is to be taken to have been given to that person.

Note

This section does not affect the operation of section 597 (protection against self-incrimination) or section 598 (legal professional privilege and client legal privilege).

554 Offences

(1) A person must not obstruct or hinder a person exercising powers under section 552 or 553.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement of a person exercising powers under section 552 or 553.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(3) A person must not assault, intimidate or threaten, or attempt to assault, intimidate or threaten, a person exercising powers under section 552 or 553.

Penalty: In the case of a natural person, 240 penalty units or 2 years imprisonment or both;

In the case of a body corporate, 1200 penalty units.

555 Access to police records

(1) The Chief Commissioner of Police may give the Authority any information in the possession or under the control of the Chief Commissioner that the Authority requests for the purpose of the assessment by the Authority of a person's

entitlement to compensation and that relates to the commission, or alleged commission, by a person of an offence—

(a) under the **Road Safety Act 1986** or the **Crimes Act 1958** referred to in section 42, 43, 43A or 44 involving conduct to which the Authority considers the injury may be attributable; or

S. 555(1)(a) amended by No. 49/2014 s. 59(1).

(b) that the Authority considers may comprise serious and wilful misconduct as referred to in section 40(5), being conduct to which the Authority considers the injury may be attributable.

(2) The Authority must pay to the Chief Commissioner of Police the reasonable costs of giving information under subsection (1).

(3) The use of information given to the Authority under this section is subject to the compliance by the Authority with any relevant agreement entered into between the Authority and the Chief Commissioner of Police or, if there is no such agreement, any relevant law enforcement data security standards issued under the **Privacy and Data Protection Act 2014**.

S. 555(3) amended by No. 60/2014 s. 140(Sch. 3 item 53).

556 Court to provide certificate of conviction

(1) If—

(a) a person is convicted or found guilty of an offence—

(i) that the Authority considers may comprise serious and wilful misconduct as referred to in section 40(5), being misconduct to which the injury may be attributable; or

S. 556(1)(a)(ii) amended by No. 49/2014 s. 59(1).

(ii) under the **Road Safety Act 1986** or the **Crimes Act 1958** referred to in section 42, 43, 43A or 44; and

(b) the court by which the person was convicted or found guilty made a finding as to the concentration of, or presence of, alcohol in the person's blood or breath or the concentration of, or presence of, a drug in the person's blood or oral fluid at a particular time—

the court must, at the written request of the Authority, cause a certificate with particulars of the conviction or finding of guilt and its finding as to the concentration of, or presence of, alcohol or a drug to be given to the Authority.

(2) A certificate of a court given under subsection (1) is conclusive proof of the particulars set out in it.

S. 557 (Heading) amended by Nos 49/2019 s. 186(Sch. 4 item 46.1), 25/2025 s. 106(Sch. 1 item 52.1).

557 The Secretary to the Department of Transport and Planning may disclose information to Authority

S. 557(1) amended by Nos 49/2019 s. 186(Sch. 4 item 46.2), 25/2025 s. 106(Sch. 1 item 52.2).

(1) The Secretary to the Department of Transport and Planning may, at the written request of the Authority, disclose relevant information gained by the Secretary to the Department of Transport and Planning to the Authority for the purpose of the assessment by the Authority of a claim by a person for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**, being relevant information that the Authority considers relates to conduct by the person that the Authority considers may be conduct to which the injury to which the claim relates may be attributable.

(2) In this section, ***relevant information*** means details of—

(a) a conviction or finding of guilt; or

(b) an infringement notice within the meaning of the **Infringements Act 2006**; or

(c) the concentration of alcohol in a person's blood or breath—

that relate, or may relate to—

(d) the commission or alleged commission of an offence under the **Road Safety Act 1986** or the **Crimes Act 1958** referred to in section 42, 43, 43A or 44 of this Act; or

S. 557(2)(d) amended by No. 49/2014 s. 59(2).

(e) conduct comprising serious and wilful misconduct as referred to in section 40(5).

Division 4—Issue of search warrants

558 Issue of search warrants

(1) If a magistrate is satisfied, by the evidence on oath or by affirmation or affidavit of the Authority, that there is reasonable ground for suspecting that there are on particular premises any books which are relevant—

S. 558(1) amended by Nos 37/2014 s. 10(Sch. item 188.2), 6/2018 s. 68(Sch. 2 item 140.2).

(a) in determining whether any of the provisions of this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** are being or have been contravened; or

(b) to the assessment of a premium—

the magistrate may issue a warrant authorising any police officer together with any other person named in the warrant to do the things specified in subsection (2).

S. 558(2) amended by No. 37/2014 s. 10(Sch. item 188.2).

(2) A police officer or a person named in a warrant issued by a magistrate under subsection (1) is authorised—

(a) to enter those premises (using such force as is necessary for the purpose); and

(b) to search the premises and to break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in the premises; and

(c) to take possession of, or secure against interference, any books that appear to be relevant to a purpose specified in subsection (1); and

(d) to deliver any books, possession of which is taken, into the possession of the Authority or a person authorised by the Authority to receive them.

(3) A warrant under subsection (1) must be in the prescribed form and must not be granted except in accordance with subsection (1).

(4) Where, under this section, a person takes possession of, or secures against interference, any books, that person or any person to whose possession they are delivered under subsection (2)(d)—

(a) may make copies of, or take extracts from, the books; and

(b) may retain possession of the books for such period as is necessary to enable them to be inspected, and copies of, or extracts from, them to be made or taken, by or on behalf of the Authority; and

(c) during that period must permit a person who would be entitled to inspect any one or more of those books if they were not in the possession of the first-mentioned person to inspect at all reasonable times such of those books as that person would be so entitled to inspect.

(5) If the Authority considers that it may be necessary to prove the physical properties of any books or of the contents of any books of which possession has been retained under subsection (4)(b) in any criminal proceedings, the Authority may apply to the magistrate who issued the warrant under subsection (1) for an order authorising the Authority to retain possession of the books specified in the order until the criminal proceedings are concluded.

(6) If the magistrate is satisfied that there is reasonable ground to believe that the physical properties of the books or of the contents of the books are material evidence in the proposed criminal proceedings, the magistrate may make the order specified in subsection (5).

(7) For the purposes of subsections (5) and (6), ***physical properties*** includes, but is not limited to—

(a) whether or not any of the books or contents of the books have been forged or tampered with; and

(b) whether or not there are finger prints on the books which establish who had physical possession of the books before the books were seized under this section; and

(c) whether or not handwriting in any of the books belongs to a particular person.

(8) A person must not obstruct or hinder a person employed or acting in the execution or under the authority of a warrant issued under subsection (1) or aiding or assisting in its execution.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(9) A person must not refuse to permit a search or seizure authorised by a warrant issued under subsection (1).

Penalty: In the case of a natural person, 60 penalty units or 6 months imprisonment or both;

In the case of a body corporate, 300 penalty units.

(10) A person must not assault, or attempt to assault, a person employed or acting in the execution or under the authority of a warrant issued under subsection (1) or aiding or assisting in its execution.

Penalty: In the case of a natural person, 240 penalty units or 2 years imprisonment or both;

In the case of a body corporate, 1200 penalty units.

Division 5—Prohibited conduct relating to touting for claims

559 Definitions

(1) In this Division—

agent means a person who acts, or holds himself or herself out as willing to act, as agent for a person for fee or reward in connection with a

claim, but does not (unless the regulations otherwise provide) include a legal practitioner;

claim means a claim for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**;

prohibited conduct has the same meaning as in section 560;

protected claim means—

(a) a claim under Division 5 of Part 5 of this Act or Division 2A of Part IV of the **Accident Compensation Act 1985** for a diminution of hearing; and

(b) a claim under Division 7 of Part 5 of this Act or Division 2B of Part IV of the **Accident Compensation Act 1985** for the cost of provision of a hearing aid; and

(c) any other claim under this Act or the **Accident Compensation Act 1985** that is declared by the regulations to be a protected claim for the purposes of this section.

(2) A reference in this Division to a claim includes a reference to a prospective claim irrespective of whether a claim is subsequently made.

(3) Each of the following activities is considered to constitute acting as agent for a person in connection with a claim—

(a) advising the person with respect to the making of a claim;

(b) assisting the person to complete or prepare, or completing or preparing on behalf of the person, any form, correspondence or other document concerning a claim;

(c) making arrangements for any test or medical examination or medical certificate to determine the person's entitlement to compensation;

(d) arranging referral of the person to a legal practitioner for the performance of legal work in connection with a claim;

(e) any prescribed activity.

(4) The regulations may provide that persons who engage in specified activities are not to be regarded as agents for the purposes of this Division.

560 Prohibited conduct by agents

(1) The following conduct by an agent is prohibited conduct for the purposes of this Division—

(a) making a statement to a person, knowing that the statement is false or misleading in a material particular, for the purpose of encouraging the person or any other person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim;

(b) using information obtained by the agent in connection with a claim to contact any other person for the purpose of encouraging that other person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim;

(c) seeking to obtain information from a client of the agent for the purpose of using that information as described in paragraph (b);

(d) inducing or attempting to induce a client of the agent to encourage any other person to make a claim (whether or not it is a protected claim) and to use (in connection with the claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the claim;

(e) making any unsolicited contact by telephone, personal approach or other prescribed means with a person who is not a client of the agent, for the purpose of encouraging the person to make a protected claim and to use (in connection with the protected claim) the services of the agent or of some other person from whom the agent receives any payment in connection with the protected claim;

(f) such other conduct as is prescribed by the regulations as prohibited conduct for the purposes of this section.

(2) For the purposes of this Division any conduct engaged in by a person on behalf of an agent, or that an agent has caused or procured the person to engage in, is taken to have been engaged in by the agent.

561 Offence of engaging in prohibited conduct

An agent must not engage in prohibited conduct.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

562 Consequences of prohibited conduct for recovery of fees by agents

(1) An agent is not entitled to recover from a person any fees, costs or other charges that would otherwise be payable by the person in connection with services made use of by the person if the services were made use of as a result of prohibited conduct engaged in by the agent, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.

(2) If prohibited conduct engaged in by an agent involved encouraging a person to make use of services and the person makes use of those services after the conduct is engaged in, it is to be presumed for the purposes of this section that the services were made use of as a result of that prohibited conduct, unless the agent concerned establishes otherwise.

(3) If the services of an agent were made use of as a result of prohibited conduct engaged in by the agent in connection with a claim under Division 5 of Part 5 of this Act or Division 2A of Part IV of the **Accident Compensation Act 1985** for a diminution of hearing, it is to be presumed for the purposes of this section that any services of the agent made use of in connection with a subsequent claim for a further diminution of hearing made by the same worker (whether or not made against the same employer) were made use of as a result of prohibited conduct engaged in by the agent, unless the agent concerned establishes otherwise.

(4) A person who has paid any amount in respect of fees, costs or other charges to an agent that the agent would not have been entitled to recover because of this section is entitled to recover the

amount from the agent as a debt in a court of competent jurisdiction.

563 Consequences of prohibited conduct for legal practitioners

(1) A legal practitioner who acts for a person on a claim must not include in any bill given to the person, and must not otherwise seek to recover from the person, any amount by way of disbursements for fees paid to an agent in connection with referral of the person to the legal practitioner by the agent if the legal practitioner knows or has reasonable cause to suspect that the agent engaged in prohibited conduct that involved encouraging the person to make the claim, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) A legal practitioner who acts for a person on a claim is not entitled to recover from any person any amount by way of disbursements for fees paid to an agent in connection with the claim if the claim was made as a result of prohibited conduct engaged in by the agent, regardless of whether the agent has been proceeded against or convicted for an offence in respect of that prohibited conduct.

(3) If prohibited conduct engaged in by an agent involved encouraging a person to make a claim and the person makes a claim after the conduct is engaged in, it is to be presumed for the purposes of subsection (2) that the claim was made as a result of that prohibited conduct unless the legal practitioner establishes otherwise.

(4) If a claim under Division 5 of Part 5 of this Act or Division 2A of Part IV of the **Accident Compensation Act 1985** for a diminution of hearing was made as a result of prohibited conduct engaged in by an agent, it is to be presumed for the purposes of subsection (2) that any subsequent claim for further diminution of hearing made by the same worker (whether or not made against the same employer) in connection with which that agent performed any service was made as a result of prohibited conduct engaged in by that agent, unless the legal practitioner concerned establishes otherwise.

(5) A person who has paid any amount in respect of disbursements to a legal practitioner that the legal practitioner would not have been entitled to recover because of subsection (2) is entitled to recover the amount from the legal practitioner as a debt in a court of competent jurisdiction.

564 Legal practitioner and agents can be requested to certify as to prohibited conduct

(1) If the Authority, employer or self-insurer is liable to pay a legal practitioner or agent any fees, costs or other charges incurred in connection with a protected claim made by a person, the Authority, employer or self-insurer is entitled to request (in writing) the legal practitioner or agent to provide a certificate under this section about the claim (unless the legal practitioner or agent has already provided it).

(2) A certificate under this section is a certificate that to the best of the legal practitioner's or agent's knowledge, no agent has engaged in prohibited conduct that involved encouraging that person to make the claim or any previous claim, except as may be disclosed in the certificate.

(3) If a certificate is requested—

(a) the legal practitioner or agent is not entitled to be paid by or recover from the Authority, employer or self-insurer any fees, costs or other charges incurred in connection with the claim concerned until the certificate is provided (even if the fees, costs or other charges are payable under an award or order of a court); and

(b) no interest that might otherwise be payable on those fees, costs or other charges is payable for the period from when the certificate is requested until it is provided (despite any order or award of a court for the payment of that interest).

(4) A legal practitioner or agent can provide the Authority, employer or self-insurer with a certificate under this section even if the Authority or self-insurer has not requested it.

(5) A legal practitioner or agent who gives a certificate under this section about a claim made by a person is guilty of an offence if the legal practitioner or agent—

(a) knew or had reasonable cause to suspect that an agent had engaged in prohibited conduct that involved encouraging the person to make the claim; and

(b) did not disclose that fact in the certificate.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

565 Power to restrict or ban recovery of costs by agents who engage in prohibited conduct

(1) The Authority may by notification given to the agent who is the subject of the relevant notification and self-insurers direct that an agent specified in the notification is not entitled to recover any fees, costs or other charges in connection with any claims or in connection with a class of claims specified in the notification, or is not so entitled unless specified conditions have been complied with.

(2) Such a notification cannot be given unless the Authority is satisfied that—

(a) the agent has persistently engaged in conduct that constitutes or may constitute a contravention of section 561; or

(b) in the case of an agent that is a corporation, a director of the corporation or other person concerned in the management of the corporation has persistently engaged in any such conduct.

(3) Before the Authority gives such a notification, it must give the agent a reasonable opportunity to make written submissions to the Authority on the matter.

(4) The effect of a notification under this section is that the agent specified in the notification is not entitled to recover fees, costs or other charges (as provided by the notification) in respect of services performed while the notification is in force.

(5) An agent whose interests are affected by a notification under this section may apply to VCAT for review of the decision to give the notification.

(6) A notification remains in force until it is withdrawn and may be withdrawn at any time by the Authority by giving notice of withdrawal in writing to self-insurers and to the agent to whom it applies.

566 Power to restrict or ban agents who engage in prohibited conduct

(1) The Authority may by direction in writing given to an agent prohibit either absolutely or in specified circumstances the agent from acting for any person in connection with any claims or in connection with specified types of claims.

(2) Such a direction must not be given unless—

(a) the Authority is satisfied that the agent concerned has persistently engaged in conduct that the Authority reasonably believes to be prohibited conduct and, as a result, is not a fit and proper person to act in connection with claims to which the direction relates; and

(b) the Authority has given the agent a reasonable opportunity to make a written submission to the Authority on the matter.

(3) An agent must not knowingly act in contravention of a direction given under this section.

Penalty: In the case of a natural person, 120 penalty units;

In the case of a body corporate, 600 penalty units.

(4) An agent who acts in contravention of a direction given under this section is not entitled to recover any fees, costs or other charges from a person for anything done by the agent in contravention of the direction.

(5) A person aggrieved by a direction under this section may apply to VCAT for review of the decision to give the direction.

(6) A direction remains in force until it is withdrawn and may be withdrawn at any time by the Authority by giving written notice of withdrawal to the agent concerned.

567 Duty of claimants to comply with requests for information about agents and legal practitioners

(1) A person who makes a protected claim must comply with a request from the Authority or self-insurer concerned for information as to whether the person made use of the services of an agent or legal practitioner in respect of the claim and how the person came to make use of those services.

(2) The regulations may make provision for limiting the operation of this section with respect to legal practitioners.

Division 6—Regulation of providers of professional services

568 Suspension of payments for services

(1) If the Authority reasonably suspects that a person who provides a professional service has committed a relevant offence, the Authority may, subject to section 572, by notice in writing given to the person, determine that the payment of costs for a professional service provided by that person is suspended.

(2) If the Authority makes a determination under subsection (1), the Authority must give a copy of the notice to each self-insurer.

(3) A determination under subsection (1) has the effect that the costs of professional services provided by the person to whom the determination relates are not payable by the Authority or a self-insurer during the period of suspension, being the period beginning when the notice under subsection (1) is given and ending—

(a) if the person is charged with an offence within 6 months after the notice is given—

(i) when the court discharges the person or finds that the person is not guilty or finds the person guilty (whether or not a conviction is recorded); or

(ii) the prosecution is discontinued;

(b) in any other case—

(i) when the Authority determines that it will not bring proceedings against the person for the suspected offence; or

(ii) on the expiration of the period of 6 months after the notice is given—

whichever first occurs.

(4) If a person to whom a determination under subsection (1) applies is convicted or found guilty by a court of a relevant offence, the court may, on its own motion or on the application of the Authority, make one or more of the following orders—

(a) an order that the costs of any professional service, or any professional service specified in the order, provided by the person during the period of suspension are not payable;

(b) an order that the person is a person for the costs of whose professional services the Authority is not liable to pay—

S. 568(4)(b) substituted by No. 5/2021 s. 27(1).

(i) as compensation under this Act; or

(ii) as provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**—

during a period specified in the order;

(c) if the Authority approved the person as a person who provides a professional service, any one or more of the following—

(i) an order directing the Authority to revoke its approval of the person as a person who provides a professional service;

(ii) an order specifying a period within which the person is precluded from making application for approval as a person who provides a professional service.

(5) If the Authority gives a notice under this section to a person whose conduct is regulated by a professional body, the Authority must give notice in writing to the professional body of the suspension and the grounds on which the payment of costs is suspended.

(6) If the Authority gives a notice under this section to a person who is a practitioner within the meaning of Part VAA of the Health Insurance Act 1973 of the Commonwealth, the Authority must give notice in writing to Medicare Australia of the suspension and the grounds on which the payment of costs is suspended.

(7) In this section, ***relevant offence*** means—

(a) an offence against this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; or

(b) an offence against the **Crimes Act 1958** that occurs in connection with—

S. 568(7)(b) substituted by No. 5/2021 s. 27(2).

(i) a claim for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; or

(ii) a request for provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**.

569 Effect of disqualifying offence

(1) If a person who provides or may provide a professional service has been convicted or found guilty of a disqualifying offence, the Authority, subject to section 572, by notice in writing given to the person—

(a) may determine either or both of the following—

(i) that the costs of any professional services provided in respect of any worker are not payable by the Authority or a self-insurer during a period specified in the notice;

(ii) that the person is a person for the costs of whose professional services the Authority is not liable during the period specified in the notice; and

(b) if the Authority approved the person as a provider of a professional service, may revoke that approval.

(2) If the Authority makes a determination by notice in writing under subsection (1)(a) or (b), the Authority—

(a) must give a copy of the notice to each self-insurer; and

(b) if the person to whom the determination applies is a person whose conduct is regulated by a professional body, may give a copy of the notice to the professional body; and

(c) if the person to whom the determination applies is a practitioner within the meaning of Part VAA of the Health Insurance Act 1973 of the Commonwealth, may give a copy of the notice to Medicare Australia.

(3) In this section, ***disqualifying offence*** means an offence—

(a) punishable by imprisonment for a term of 2 years or more or by a maximum fine not less than the fine for a level 7 offence specified in Table 2 in section 109 of the **Sentencing Act 1991**; or

(b) punishable by imprisonment for a term of 2 years or more under a law of another State, a territory or the Commonwealth.

570 Conduct of service providers

(1) This section applies if the Authority is concerned about the adequacy, appropriateness or frequency of any professional service provided by a person (***the relevant service***).

(2) If there is a relevant body responsible for regulating conduct of persons in the trade or profession of the person who provided the relevant service, the Authority—

(a) may notify the relevant body of, or refer to the relevant body for investigation or review, the conduct of the person in accordance with the relevant law and its rules and regulations, together with relevant matters of which the Authority is aware pertaining to that conduct; and

(b) until the relevant body has investigated or reviewed the conduct, may, by notice in writing given to the person, determine to suspend the payment of costs of the relevant services provided by that person, including the payment of costs of the relevant services provided before the notice is given; and

(c) if it gives a notice under paragraph (b), must give a copy of the notice to each self-insurer.

(3) If there is not a body responsible for regulating conduct of a person in the trade or profession of the person who provided the relevant services the Authority, by notice in writing given to the person, may do any one or more of the following—

(a) warn the person that the Authority is concerned about the person's conduct and, if it continues, the Authority may, by further notice in writing given to the person, suspend payment of costs of the relevant services provided by that person;

(b) determine to review the person's conduct;

(c) suspend payment of costs of professional services provided by the person until it has completed its review.

(4) A suspension of payment of costs under subsection (2) or (3) continues in force until—

(a) the conduct of the person has been reviewed under subsection (2) or (3); or

(b) the expiry of—

(i) in the case of a suspension under subsection (2), the period of 6 months after the notice of suspension is given or, if that period is extended, that period as so extended; or

(ii) in the case of a suspension under subsection (3), the period of 6 months after the notice of suspension is given under that subsection—

whichever first occurs.

(5) If, following a review of which notice is given under subsection (3)(b), the Authority considers—

(a) that the person, in providing the relevant service, has acted in an unreasonable or unprofessional manner; or

(b) that the ability of the person to practise is affected because of the person's physical or mental health or the person's incapacity; or

(c) that the person is not of good character or is otherwise not a fit and proper person—

the Authority, by notice in writing to the person, may do any one or more of the following—

(d) suspend the person's approval as a provider of the relevant services for a period specified in the notice;

(e) determine that the costs of any relevant services provided during the suspension are not payable by the Authority or a self-insurer;

(f) revoke the person's approval as a provider of the relevant services.

(6) If, under subsection (2), the Authority—

(a) has referred the conduct of a person to a relevant body; and

(b) has given a notice of suspension to that person; and

(c) forms the view that the relevant body's review of the conduct will not be completed within the period of 6 months—

the Authority may, by notice given to that person, extend the period of the suspension by one further period not exceeding 6 months.

(7) If a person to whom a notice is given under subsection (2)(b), (3), (5) or (6) is a practitioner within the meaning of Part VAA of the Health Insurance Act 1973 of the Commonwealth, the Authority—

(a) must give a copy of the notice to each self-insurer; and

(b) may give a copy of the notice to Medicare Australia.

(8) The Authority is not subject to any civil or criminal liability for a decision to refer the conduct of a person to a relevant body under subsection (2)(a) or giving notice to Medicare Australia under subsection (7).

(9) Section 21A of the **Evidence (Miscellaneous Provisions) Act 1958** applies to a review by the Authority under this section as if the Authority or a delegate of the Authority were a commission appointed by the Governor in Council to conduct the review.

(10) Section 552 applies in respect of any liability or entitlement under this section.

(11) In this section, ***relevant body*** means the following—

(a) a National Board within the meaning of the Health Practitioner Regulation National Law;

(b) the Authority, Committee, Director or Panel within the meaning of section 81 of the Health Insurance Act 1973 of the Commonwealth;

(c) a body responsible for regulating conduct of persons in the trade or profession of a person providing professional services;

(d) Medicare Australia;

(e) a tribunal.

571 Findings of relevant bodies

(1) This section applies if the Authority is concerned about the adequacy, appropriateness or frequency of any professional service provided by a person.

(2) If a relevant body finds or considers on reasonable grounds, in relation to a person who provides a professional service—

(a) that the person has, whether by act or omission, engaged in unprofessional conduct or professional misconduct; or

(b) that the ability of the person to practise is affected because of the person's physical or mental health or the person's incapacity; or

(c) that the person is not of good character or is otherwise not a fit and proper person—

the Authority may, subject to section 572, by notice in writing to that person, make either or both of the following determinations—

(d) if the Authority determined under section 570(2) to suspend payment of costs of relevant services provided by a person, a determination that those costs are not payable by the Authority or a self-insurer;

S. 571(2)(e) amended by No. 5/2021 s. 28.

(e) a determination that the person is a person for the provision of whose professional services the Authority or a self-insurer is not liable to pay costs as compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**, or provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**, being professional services provided to a worker after the determination is made and during a period specified in the determination.

(3) If the Authority makes a determination under subsection (2)—

(a) the Authority must give a copy of the determination to each self-insurer; and

(b) the Authority or a self-insurer is not liable to pay the costs of the professional services provided after the day on which the notice of the determination was given or, in the case of a self-insurer, after a copy of the determination was given to the self-insurer.

(4) In this section, ***relevant body*** means the following—

(a) a National Board within the meaning of the Health Practitioner Regulation National Law;

(b) the Authority, Committee, Director or Panel within the meaning of section 81 of the Health Insurance Act 1973 of the Commonwealth;

(c) a body responsible for regulating conduct of persons in the trade or profession of a person providing professional services;

(d) Medicare Australia;

(e) a court or tribunal.

572 Notice to be given before determination made

(1) The Authority must, before making a determination under section 568, 569 or 570 (except subsection (3)(b) or (6)) or 571 in relation to a person, give notice in writing to the person—

(a) advising the person of the determination it proposes to make; and

(b) inviting the person to make a submission in writing to the Authority within 28 days after the notice is given as to why the determination should not be made.

(2) If the Authority receives a submission within the period referred to in subsection (1), it must not make the determination unless it has considered the submission.

573 Authority may publish list of providers subject to disciplinary action

The Authority may cause to be published—

(a) the outcome of a determination of the Authority or order of the court under section 568, 569, 570 or 571; and

(b) the name and business address of each person who provides, or has provided, professional services to which the determination or order applies.

574 Victorian Civil and Administrative Tribunal

(1) A person whose interests are affected by a decision of the Authority under this Division may apply to VCAT for review of the decision.

(2) A reference in subsection (1) to a decision of the Authority does not include a reference to a decision of the Authority under section 570(2)(a) to notify a relevant body or to refer the conduct of a person for review.

(3) An application for review must be made within 12 months after the person became aware of the decision.

(4) After a copy of the application has been served on the Authority, VCAT may fix a date, not earlier than 28 days after the date of service, for the hearing of an application.

(5) The Authority must, within 28 days after receiving a copy of an application under this section for review of its decision, reconsider the decision.

(6) For the purposes of reconsidering a decision, the Authority may by notice given to the applicant, require the applicant to give further and better particulars about the reasons for the application to VCAT and such further information relating to the application as the Authority requires.

(7) If an applicant fails, without reasonable excuse, to give the further and better particulars or further information requested by the Authority or fails to give those particulars or that information within a reasonable time, VCAT may take the failure into account when making an order for costs in respect of the proceedings.

(8) If, after re-considering its decision, the Authority determines that the decision should be varied or revoked, it may vary or revoke the decision accordingly.

(9) The Authority must give notice in writing to the applicant of a determination to vary or revoke its decision.

(10) Unless the applicant has withdrawn the application, VCAT may proceed to hear it after the expiration of the period of 28 days after a copy of the application was served on the Authority.

(11) Where VCAT exercises jurisdiction under this section—

(a) VCAT may refer a medical question to a Medical Panel for an opinion; and

(b) if a party to the proceedings so requests, VCAT must refer a medical question to a Medical Panel for an opinion; and

(c) the opinion of the Medical Panel on that question shall, subject to this section, be adopted by VCAT as the answer to that question.

(12) If VCAT refers a medical question to a Medical Panel, VCAT must give the Medical Panel, and each party to the proceedings, copies of all documents in the possession of VCAT relating to the medical question.

(13) If VCAT refers a medical question to a Medical Panel, VCAT must give a copy of the Panel's opinion to each party to the proceedings.

(14) An application for leave to appeal under section 148 of the **Victorian Civil and Administrative Tribunal Act 1998** against an order of VCAT under this section by a person other than the Authority does not operate as a stay of the order.

Division 7—Discriminatory conduct

575 Offence to engage in discriminatory conduct

(1) An employer or prospective employer must not engage in discriminatory conduct for a prohibited reason.

Penalty: In the case of a natural person, 240 penalty units;

In the case of a body corporate, 1200 penalty units.

(2) For the purposes of this section, an employer engages in ***discriminatory conduct*** if the employer—

(a) dismisses, or threatens to dismiss, a worker from employment; or

(b) alters, or threatens to alter, the position of a worker to the worker's detriment; or

(c) treats a worker less favourably than another worker in relation to promotion or re-employment.

(3) Conduct referred to in subsection (2) is engaged in for a ***prohibited reason*** if the dominant reason is because the worker—

(a) has given the employer or any other employer notice of an injury; or

(b) has taken steps to pursue a claim for compensation against the employer or any other employer; or

(c) has given, or attempted to give, a claim for compensation to the employer or any other employer, the Authority or a self-insurer; or

(d) has complied with a requirement or request made under section 552 or 553.

(4) For the purposes of this section, a prospective employer engages in ***discriminatory conduct*** if the prospective employer—

(a) refuses or fails to offer employment to an applicant for employment; or

(b) in offering, or refusing to offer, terms of employment, treats an applicant for employment less favourably than another applicant for employment.

(5) Conduct referred to in subsection (4) is engaged in for a ***prohibited reason*** if the dominant reason is because the applicant for employment—

(a) has given an employer notice of an injury; or

(b) has taken steps to pursue a claim for compensation against an employer; or

(c) has given or attempted to give a claim for compensation to an employer, the Authority or a self-insurer; or

(d) has complied with a requirement or request made under section 552 or 553.

(6) In proceedings for an offence against this section, if all the facts constituting the discriminatory conduct are proved, the employer or prospective employer bears the burden of adducing evidence that the reason alleged in the charge was not the dominant reason why the employer or prospective employer engaged in the conduct.

(7) It is a defence to proceedings for an offence against this section if the employer or prospective employer proves that—

(a) the relevant conduct was necessary to comply with the requirements of this Act, the **Accident Compensation Act 1985**, the **Workers Compensation Act 1958** or the **Occupational Health and Safety Act 2004**; or

(b) the worker or applicant for employment was unable to perform the inherent requirements of the employment, even if the employer or prospective employer had made reasonable adjustments to those requirements; or

(c) the worker was engaged in fraud or dishonesty in relation to, or associated with, the giving of notice of the injury or pursuit of the claim for compensation.

576 Order for damages or reinstatement

(1) If an employer or prospective employer is convicted or found guilty of an offence against section 575 in respect of a worker or applicant for employment, the court may (in addition to imposing a penalty) make one or more of the following orders—

(a) an order that the employer or prospective employer pay (within a specified period) to the worker or applicant for employment such damages as the court considers appropriate to compensate the worker or applicant for hurt and humiliation as the result of the discriminatory conduct;

(b) an order that the employer or prospective employer pay the worker or applicant an amount not exceeding the remuneration that—

(i) in the case of a worker, but for the discriminatory conduct, the worker would have received from that employer during the 12 months immediately after the discriminatory conduct was engaged in;

(ii) in the case of an applicant for employment, the applicant would have received if the applicant had been employed by that prospective employer for a period not exceeding 12 months from the day on which the applicant made the application for employment;

(c) an order that—

(i) the worker be reinstated or re-employed in the worker's former position or, if that position is not available, in a similar position; or

(ii) the worker or applicant for employment be employed in the position for which he or she had applied or a similar position.

S. 576(2) amended by No. 5/2021 s. 29.

(2) In making any order under this section, the court must take into account any compensation or damages, or provisional payments under Division 10 of Part 5 of this Act or Division 2BA of Part IV of the **Accident Compensation Act 1985**, received by the worker in respect of any injury to which the discriminatory conduct relates.

(3) Nothing in a proceeding referred to in section 575 or 578 gives rise to an issue estoppel in relation to a claim for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** or an application or proceedings referred to in Division 2 of Part 7 of this Act or Division 8A or 9 of Part IV of the **Accident Compensation Act 1985**.

577 Procedure if prosecution is not brought under section 575

(1) If—

(a) a worker or applicant for employment considers that an offence against section 575 has occurred; and

(b) no prosecution has been brought in respect of that occurrence within 6 months of that occurrence—

the worker or applicant for employment may request in writing that the Authority bring a prosecution in respect of that occurrence.

(2) Within 3 months after it receives a request under subsection (1), the Authority must—

(a) investigate the matter; and

(b) advise in writing the worker or applicant for employment that a prosecution has been or will be brought or give reasons why a prosecution will not be brought.

(3) If the Authority advises the worker or applicant for employment that a prosecution will not be brought, the Authority must refer the matter to the Director of Public Prosecutions if the worker or applicant for employment requests in writing that the Authority do so.

(4) The Director of Public Prosecutions must—

(a) consider the matter; and

(b) advise the Authority in writing whether or not the Director of Public Prosecutions considers that a prosecution should be brought.

(5) The Authority must—

(a) ensure a copy of the advice is sent to the worker or applicant for employment who made the request; and

(b) if the Authority declines to follow advice from the Director of Public Prosecutions to bring proceedings, give the worker or applicant for employment written reasons for its decision.

(6) The Authority must include in its annual report, and publish on its website, a statement setting out—

(a) the number of requests received by the Authority under subsection (1); and

(b) the number of cases in which the Authority has advised under subsection (2)(b) that a prosecution has been or will be brought, or will not be brought; and

(c) the number of cases in which the Director of Public Prosecutions has advised under subsection (4) that a prosecution should be brought or should not be brought.

(7) No proceedings may be brought in respect of a decision to bring or not to bring proceedings for an offence under section 575.

578 Civil proceedings relating to discriminatory conduct

(1) For the purposes of this section, an employer engages in ***discriminatory conduct*** if the employer—

(a) dismisses, or threatens to dismiss, a worker from employment; or

(b) alters, or threatens to alter, the position of a worker to the worker's detriment; or

(c) treats a worker less favourably than another worker in relation to promotion or re-employment.

(2) Conduct referred to in subsection (1) is engaged in for a ***prohibited reason*** if a substantial reason is because the worker—

(a) has given the employer or any other employer notice of an injury; or

(b) has taken steps to pursue a claim for compensation against the employer or any other employer; or

(c) has given, or attempted to give, a claim for compensation to the employer or any other employer, the Authority or a self-insurer; or

(d) has complied with a requirement or request made under section 552 or 553.

(3) For the purposes of this section, a prospective employer engages in ***discriminatory conduct*** if the prospective employer—

(a) refuses or fails to offer employment to an applicant for employment; or

(b) in offering, or refusing to offer, terms of employment, treats an applicant for employment less favourably than another applicant for employment.

(4) Conduct referred to in subsection (3) is engaged in for a ***prohibited reason*** if a substantial reason is because the applicant for employment—

(a) has given an employer notice of an injury; or

(b) has taken steps to pursue a claim for compensation against an employer; or

(c) has given or attempted to give a claim for compensation to an employer, the Authority or a self-insurer; or

(d) has complied with a requirement or request made under section 552 or 553.

(5) A worker or an applicant for employment may apply to the Industrial Division of the Magistrates' Court for an order under this section in relation to an employer or a prospective employer who has engaged in discriminatory conduct for a prohibited reason.

(6) An application referred to in subsection (5) must be made not more than one year after the date on which the discriminatory conduct occurred.

(7) In a proceeding under this section, if all the facts constituting the discriminatory conduct are proved, the employer or prospective employer bears the burden of adducing evidence that the reason alleged in the proceeding was not a substantial reason for the conduct.

(8) It is a defence to a proceeding under this section if the employer or prospective employer proves that—

(a) the relevant conduct was necessary to comply with the requirements of this Act, the **Accident Compensation Act 1985**, the **Workers Compensation Act 1958** or the **Occupational Health and Safety Act 2004**; or

(b) the worker or applicant for employment was unable to perform the inherent requirements of the employment even if the employer or prospective employer made reasonable adjustments to those requirements; or

(c) the worker was engaged in fraud or dishonesty in relation to, or associated with, the giving of notice of the injury or pursuit of the claim for compensation.

(9) The Industrial Division of the Magistrates' Court may make one or more of the following orders in relation to an employer or prospective employer who has engaged in discriminatory conduct for a prohibited reason—

(a) an order that the employer or prospective employer pay (within a specified period) to the worker or applicant for employment such damages as the court considers appropriate to compensate the worker or applicant for hurt and humiliation as a result of the discriminatory conduct;

(b) an order that the employer or prospective employer pay the worker or applicant an amount not exceeding the remuneration that—

(i) in the case of a worker, but for the discriminatory conduct, the worker would have received from that employer during the 12 months immediately after the discriminatory conduct was engaged in;

(ii) in the case of an applicant for employment, the applicant would have received if the applicant had been employed by that prospective employer for a period not exceeding 12 months from the day on which the applicant made the application for employment;

(c) an order that—

(i) the worker be reinstated or re-employed in the worker's former position or, if that position is not available, in a similar position; or

(ii) the worker or applicant for employment be employed in the position for which the worker or applicant had applied or a similar position.

(10) In making any order under this section, the court must take into account any compensation or damages received by the worker in respect of any injury to which the discriminatory conduct relates.

(11) Each party to a proceeding under this section is to bear its own costs in the proceeding unless the court determines that it is fair that a party pay all or a specified part of the costs of another party.

579 Effect of orders on other orders under section 575, 576 or 578

(1) The making of an order in a proceeding under section 578 does not prevent the bringing of a proceeding for an offence against section 575 in respect of the same conduct.

(2) If a court makes an order in a proceeding under section 576, a court cannot make an order under section 578 in respect of the same conduct.

(3) If a court makes an order in a proceeding under section 578, a court cannot make an order under section 576 in a proceeding for an offence against section 575 in respect of the same conduct.

580 Claims under section 576 or 578

An application for an order under section 576 or a proceeding under section 578 is not a proceeding in respect of an injury within the meaning of section 326 of this Act or section 134AB(1) of the **Accident Compensation Act 1985**.

Division 8—Offences

Subdivision 1—Fraud, bribery and false information

581 Fraud

(1) A person must not obtain or attempt to obtain fraudulently any payment under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

Penalty: In the case of a natural person, 240 penalty units or 2 years imprisonment;

In the case of a body corporate, 1200 penalty units.

(2) Without limiting the generality of subsection (1), a person must not obtain or attempt to obtain fraudulently any payment under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** for any other person, or knowingly assist any other person to obtain fraudulently any payment under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

Penalty: In the case of a natural person, 240 penalty units or 2 years imprisonment;

In the case of a body corporate, 1200 penalty units.

582 Bribery

(1) A person employed in the administration of this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** must not corruptly ask for, receive or obtain, or agree to receive or obtain, any money, property or benefit

of any kind for the person employed or any other person—

(a) so that the person employed will forego or neglect his or her functions or duties under this Act or in order to influence him or her in the performance of his or her functions or duties under this Act; or

(b) on account of anything already done or omitted to be done or to be afterwards done or omitted to be done by the person employed in the performance of his or her functions or duties under this Act; or

(c) for the person employed to use or take advantage of his or her position improperly to gain any benefit or advantage for or facilitate the commission of an offence by another person.

Penalty: In the case of a natural person, 240 penalty units or 2 years imprisonment;

In the case of a body corporate, 1200 penalty units.

(2) A person must not corruptly give to, confer on or procure for, or promise or offer to give to, confer on or procure for, a person employed in the administration of this Act or any other person any money, property or benefit of any kind—

(a) so that the person employed will forego or neglect his or her functions or duties under this Act or in order to influence him or her in the performance of his or her functions or duties under this Act; or

(b) on account of anything already done or omitted to be done or to be afterwards done or omitted to be done by the person employed in the performance of his or her functions or duties under this Act; or

(c) for the person employed to use or take advantage of his or her position improperly to gain any benefit or advantage for or facilitate the commission of an offence by the first-mentioned person or any other person.

Penalty: In the case of a natural person, 240 penalty units or 2 years imprisonment;

In the case of a body corporate, 1200 penalty units.

583 False or misleading information

(1) A provider of a professional service or a person on behalf of such a provider must not give another person information knowing that it may be used in connection with a claim for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** if the provider or person knows that the information is false or misleading in a material particular.

Penalty: In the case of a natural person, 180 penalty units or 6 months imprisonment or both;

In the case of a body corporate, 900 penalty units.

(2) A person must not use information given by a provider of a professional service or by a person on behalf of such a provider in connection with a claim for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** if the person

knows that the information is false or misleading in a material particular.

Penalty: In the case of a natural person, 180 penalty units or 6 months imprisonment or both;

In the case of a body corporate, 900 penalty units.

584 False or misleading statements

(1) A person must not knowingly—

(a) make a false or misleading statement in any document prepared for, or on behalf of, an employer; or

(b) suggest to an employer that the employer make a false or misleading statement—

that will be given to the Authority or an authorised agent for or in relation to the calculation or collection of premium payable by the employer in accordance with this Act and the relevant premiums order.

Penalty: In the case of a natural person, 180 penalty units or imprisonment for 6 months;

In the case of a body corporate, 900 penalty units.

(2) A person must not knowingly—

(a) omit from, or fail to include in a document prepared for, or on behalf of, an employer; or

(b) advise an employer to omit or fail to include in a document—

to be given to the Authority or an authorised agent for or in relation to the calculation or collection of premium payable by the employer, in accordance with this Act and the relevant premiums order,

any material or data or any fact or circumstance that is relevant to the calculation or collection of premium.

Penalty: In the case of a natural person, 180 penalty units or imprisonment for 6 months;

In the case of a body corporate, 900 penalty units.

585 False information

(1) A person must not provide orally or in writing or by electronic communication any false or misleading information under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

(2) Subsection (1) is not limited to information in or in connection with any claim, application, certificate or notice under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

(3) A person must not make a statement knowing that it is false or misleading in a material particular—

(a) in a notice given by the person under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; or

(b) in a claim for compensation made by the person; or

(c) in a medical certificate or other document that the person knows may accompany or be supplied in connection with a claim for compensation; or

(d) in a declaration given under section 167(1)(b) of this Act or section 111(1)(b) of the **Accident Compensation Act 1985**.

Penalty: In the case of a natural person, 180 penalty units or 6 months imprisonment or both;

In the case of a body corporate, 900 penalty units.

586 Investigations

(1) The Authority may, subject to and in accordance with the regulations, inquire into and investigate activities carried on by any person or persons in the course of which the Authority reasonably believes an offence against this Subdivision was or may have been committed.

(2) Upon commencing an inquiry or investigation under subsection (1), the Authority must give notice in writing to the Chief Commissioner of Police of the proposed inquiry or investigation.

(3) The Authority must give to the Chief Commissioner of Police any information requested by the Commissioner and obtained by the Authority in the course of an inquiry or investigation under this section.

587 Indemnity

If the Authority considers that an offence may have been committed against this Subdivision, the Authority may recommend to the Director of Public Prosecutions that appropriate indemnities be offered for the purpose of enabling information to be obtained about the alleged offence.

Subdivision 2—Other offences

588 Unauthorised use of information

A person must not use information obtained under or pursuant to this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** except as authorised by or in respect of a matter or for a purpose arising under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

Penalty: 60 penalty units.

589 Obstructing officers

A person shall not obstruct or hinder a person acting in the administration of this Act or the regulations, the **Accident Compensation Act 1985** or the regulations under that Act or the **Workers Compensation Act 1958**.

Penalty: In the case of a natural person, 60 penalty units;

In the case of a body corporate, 300 penalty units.

Division 9—Miscellaneous

590 Certificate

A certificate purporting to be signed by an officer or employee of the Authority certifying as to any of the particulars prescribed under this Act or the **Accident Compensation Act 1985** specified in the certificate relating to amounts (including amounts of compensation) paid or payable by the Authority under this Act is evidence of the matters stated in the certificate and, in the absence of evidence to the contrary, is proof of those matters.

591 State taxation officer

The Authority may perform the functions of a State taxation officer for the purposes of Part IIIA of the Taxation Administration Act 1953 of the Commonwealth.

592 Signature

(1) Any document or copy of a document issuing out of the office of the Authority and bearing the written, stamped or printed signature of the Chief Executive Officer of the Authority or a delegate of the Authority or a person authorised by a delegate, is until the contrary is proved, to be taken to have been duly signed by the person by whom it purports to have been signed.

(2) Judicial notice is to be taken of a signature to which subsection (1) applies and of the fact that the person whose signature it purports to be holds or has held the office of Chief Executive Officer of the Authority or is or has been a delegate of the Authority or a person authorised by a delegate.

593 Service of documents by the Authority

(1) Subject to this Act, a document under this Act or the regulations or under the **Accident Compensation Act 1985** or regulations under that Act or under the **Workers Compensation Act 1958** required or authorised to be given to or served on a person (other than a body corporate) may be served by—

(a) giving or serving it personally on the person; or

(b) sending it by post or electronic communication to the person at the person's usual or last known place of residence or business or usual or last known electronic address or post office box; or

(c) leaving it at that person's usual or last known place of residence; or

S. 593(1)(c) amended by No. 73/2016 s. 17(1)(a).

(d) leaving it at the person's usual or last known place of business; or

S. 593(1)(d) amended by No. 73/2016 s. 17(1)(b).

(e) if the person is an employer registered under section 434, sending it by post or electronic communication to the last address for service shown on a communication from the employer to the Authority.

(2) A document under this Act or the regulations required or authorised to be given or served on a body corporate may be served by—

(a) giving it to or serving it on; or

(b) sending it by post or electronic communication to—

the body corporate at the head office, registered office or principal office of the body corporate.

S. 593(2A) inserted by No. 73/2016 s. 17(2).

(2A) For the purposes of this section, service of a document that is sent by post is taken to have been effected 2 business days from the date of posting, unless the contrary is proved.

(3) This section is in addition to, and not in derogation from, the **Interpretation of Legislation Act 1984**, the **Electronic Transactions (Victoria) Act 2000** and sections 109X and 601CX of the Corporations Act.

594 Service of documents on the Authority

(1) Any notice, summons, writ or other process and any return, application, notice, statement or form to be served on the Authority for the purposes of this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** or regulations under this Act may be served—

(a) by being lodged at the office of the Authority; or

(b) if an authorised agent is acting on behalf of the Authority in the relevant matter, by being lodged at the office of the authorised agent; or

(c) on a person employed in the administration of this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** and authorised in writing by the Authority to accept service of documents on behalf of the Authority.

(2) This section is in addition to, and not in derogation of, any other provisions of this Act, the **Interpretation of Legislation Act 1984** or the **Electronic Transactions (Victoria) Act 2000** relating to the service of documents.

595 Secrecy provisions

(1) This section applies to a person who is, or has at any time been—

(a) a member of the Board; or

(b) appointed for the purposes of this Act, other than Part 8; or

(c) engaged as a member of staff of the Authority; or

(d) authorised to perform or exercise any function or power of the Authority or any function or power on behalf of the Authority, other than a function or power under Part 8.

(2) A person to whom this section applies may—

(a) produce a document to a court in the course of a criminal proceeding or in the course of any proceeding under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; and

(b) produce a document or divulge information to ACCS, a Medical Panel, the Magistrates' Court, VCAT or the County Court with respect to a matter arising under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; and

S. 595(2)(b) amended by No. 73/2016 s. 21(2).

(c) divulge or communicate to a court in the course of a criminal proceeding referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that paragraph; and

(d) produce a document or divulge or communicate information to an entity specified in Schedule 8; and

(e) produce a document or divulge or communicate information as provided in section 92(1)(c) and (1)(e)(vi) of the **Taxation Administration Act 1997**; and

S. 595(2)(e) amended by No. 10/2022 s. 84.

(f) produce a document or disclose information which is required or permitted to be produced or disclosed by or under this Act or any other Act.

(3) A person to whom this section applies must not, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by the person by reason of being or having been appointed, engaged or authorised as specified in subsection (1), or make use of any such information, for any purpose except—

(a) to the extent necessary to perform official duties or to perform or exercise a function or power specified under subsection (1); or

(b) for a purpose specified in subsection (2).

S. 595(4) amended by No. 44/2014 s. 24(25).

(4) The Minister must cause a report of requests for the approval of persons or bodies by the Governor in Council under item 16 of Schedule 8 to be laid before each House of the Parliament within 14 sitting days of that House after 30 June in each year.

(5) The report must include the following matters in respect of each request—

(a) the name of the person sought to be approved;

(b) the reason for the request;

(c) the date of the request;

(d) whether the request was approved or refused.

596 Liability of premium adviser

(1) If, through the negligence of a premium adviser, an employer is liable to pay a default penalty or late payment penalty as determined by the Authority in accordance with Part 10—

(a) the premium adviser is liable to pay the employer the amount of the default penalty or late payment penalty; and

(b) the amount of the default penalty or late payment penalty may be sued for and recovered by the employer in any court of competent jurisdiction.

(2) This section does not exonerate an employer from the liability to pay a default penalty or late payment penalty as determined by the Authority in accordance with Part 10.

(3) In this section, ***premium adviser*** means a person who provides professional advice to an employer in respect of an employer's liability to pay premiums under a premiums order and includes a financial adviser, legal practitioner and accountant.

597 Protection against self-incrimination

(1) A natural person may refuse or fail to give information or do any other thing that the person is required to do by or under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** if giving the information or doing the other thing would tend to incriminate the person.

(2) However, subsection (1) does not apply to the production of a document or part of a document that the person is required by this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** to produce.

(3) If a person is required to produce a document under this section, the document, and evidence obtained as a result of the production of the document, must not be used in proceedings against a person other than—

(a) criminal or civil proceedings under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; or

(b) proceedings for an offence against the **Crimes Act 1958** that arises in connection with a claim for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

598 Legal professional privilege and client legal privilege not affected

Nothing in this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**—

(a) entitles or requires a person to disclose information that is the subject of legal professional privilege or client legal privilege; or

(b) affects the law or practice relating to legal professional privilege or client legal privilege.

599 Refunding money to the Authority etc.

(1) If a person is convicted or found guilty of an offence against this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** or of an offence against the **Crimes Act 1958** which occurs in connection with a claim for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**, any payments made by the Authority, a self-insurer or an employer as a result of the commission of the offence may be recovered as a debt or set-off from the person to the Authority, self-insurer or employer together with—

(a) an additional amount equal to half the amount of the payments made; and

(b) interest at the prescribed rate, on the payments and the additional amount calculated from the date on which the

payments were made or the additional amount was due (as the case may be) until the debt or set-off is paid.

(2) If a court convicts, or finds guilty, a person, of an offence against this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** or of an offence against the **Crimes Act 1958** which occurs in connection with a claim for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**, it may, on the application of the Authority, a self-insurer or an employer order the person to pay a sum equal to the amount of any payments made by the Authority, the self-insurer or the employer as a result of the commission of the offence together with—

(a) an additional amount equal to half the amount of the payments made; and

(b) interest, at the prescribed rate on the payments and the additional amount calculated from the date on which the payments were made or the additional amount was due (as the case may be) until the debt is paid.

(3) An order under subsection (2) may be made on an application made as soon as practicable after the offender is convicted or found guilty of the offence.

600 Imputing conduct of bodies corporate

(1) For the purposes of this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**, any conduct engaged in on behalf of a body corporate by an employee, agent or officer of the body corporate acting within the actual or apparent scope of his or her

employment, or within his or her actual or apparent authority, is conduct also engaged in by the body corporate.

(2) In this section—

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

officer in relation to a body corporate means—

(a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or

(b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate.

601 Criminal liability of officers of bodies corporate—failure to exercise due diligence

(1) If a body corporate commits an offence against a provision specified in subsection (2), an officer of the body corporate also commits an offence against the provision if the officer failed to exercise due diligence to prevent the commission of the offence by the body corporate.

(2) For the purposes of subsection (1), the following provisions are specified—

(a) section 16;

(b) section 17(1) and (3);

S. 601(2)(ba) inserted by No. 44/2014 s. 20(a).

(ba) section 31(3);

(c) section 73(1) and (2);

(d) section 103(1);

(e) section 104(1);

(f) section 105(1);

(g) section 106(1);

(h) section 107(1) and (2);

(i) section 108(1);

(j) section 109(2);

(k) section 120(2);

(l) section 136(4);

(m) section 139(2);

(n) section 143(2);

(o) section 146;

(p) section 147;

(q) section 179(3);

(r) section 292;

(s) section 295;

(t) section 384(5);

(u) section 389(2) and (3);

(v) section 403(4);

(w) section 407(4);

* * * * *

S. 601(2)(x) repealed by No. 48/2017 s. 38.

(y) section 412(3);

(ya) section 434(3);

S. 601(2)(ya) inserted by No. 44/2014 s. 20(b).

(yb) section 438(1);

S. 601(2)(yb) inserted by No. 44/2014 s. 20(b).

S. 601(2)(yc) inserted by No. 44/2014 s. 20(b).

(yc) section 439;

S. 601(2)(yd) inserted by No. 44/2014 s. 20(b).

(yd) section 442(1);

S. 601(2)(ye) inserted by No. 44/2014 s. 20(b).

(ye) section 443(1) and (2);

S. 601(2)(z) amended by No. 44/2014 s. 20(c).

(z) section 554(1), (2) and (3);

(za) section 558(8), (9) and (10);

(zb) section 561;

(zc) section 563(1);

(zd) section 564(5);

(ze) section 566(3);

(zf) section 575(1);

(zg) section 581(1) and (2);

(zh) section 582(1) and (2);

(zi) section 583(1) and (2);

(zj) section 584(1) and (2);

(zk) section 585(1) and (3);

(zl) section 588;

(zm) section 589.

(3) In determining whether an officer of a body corporate failed to exercise due diligence, a court may have regard to—

(a) what the officer knew, or ought reasonably to have known, about the commission of the offence by the body corporate; and

(b) whether or not the officer was in a position to influence the body corporate in relation to the commission of the offence by the body corporate; and

(c) what steps the officer took, or could reasonably have taken, to prevent the commission of the offence by the body corporate; and

(d) any other relevant matter.

(4) Without limiting any other defence available to the officer, an officer of a body corporate may rely on a defence that would be available to the body corporate if it were charged with the offence with which the officer is charged and, in doing so, the officer bears the same burden of proof that the body corporate would bear.

(5) An officer of a body corporate may commit an offence against a provision specified in subsection (2) whether or not the body corporate has been prosecuted for, or found guilty of, an offence against that provision.

(6) An officer of a body corporate (including a body corporate representing the Crown) who is a volunteer is not liable to be prosecuted under this section for anything done or not done by him or her as a volunteer.

Note

Officer of a body corporate includes a person who makes or participates in the making of decisions that affect the whole or a substantial part of the body corporate's business and a

person who has the capacity to affect significantly the body corporate's financial standing (Corporations Act).

(7) In this section—

body corporate has the same meaning as corporation has in section 57A of the Corporations Act;

officer in relation to a body corporate means—

(a) a person who is an officer (as defined by section 9 of the Corporations Act) of the body corporate; or

(b) a person (other than a person referred to in paragraph (a)), by whatever name called, who is concerned in, or takes part in, the management of the body corporate;

volunteer means a person who is acting on a voluntary basis (irrespective of whether the person receives out-of-pocket expenses).

602 Responsible agency for the Crown

(1) If proceedings are brought against the Crown for an offence against this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** or the regulations under this Act or the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**, the responsible agency in respect of the offence may be specified in any document initiating, or relating to, the proceedings.

(2) The responsible agency in respect of an offence is entitled to act in proceedings against the Crown for the offence and, subject to any relevant rules of court, the procedural rights and obligations of the Crown as the accused in the proceedings are conferred or imposed on the responsible agency.

(3) The person prosecuting the offence may change the responsible agency during the proceedings with the court's leave.

(4) In this section, the ***responsible agency*** in respect of an offence is the agency of the Crown—

(a) whose acts or omissions are alleged to constitute the offence; or

(b) if that agency has ceased to exist, that is the successor of that agency; or

(c) if that agency has ceased to exist and there is no clear successor, that the court declares to be the responsible agency.

603 Proceedings against successors to public bodies

(1) Proceedings for an offence against this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** or the regulations under this Act or the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** that were instituted against a public body before its dissolution, or that could have been instituted against a public body if not for its dissolution, may be continued or instituted against its successor if the successor is a public body.

(2) In this section, ***public body*** means—

(a) a body corporate representing the Crown; or

(b) a State owned enterprise or reorganising body (within the meaning of the **State Owned Enterprises Act 1992**); or

(c) a Council (within the meaning of the **Local Government Act 2020**); or

S. 603(2)(c) amended by No. 9/2020 s. 390(Sch. 1 item 113.3).

(d) a public entity (within the meaning of the **Public Administration Act 2004**).

604 Undertakings

(1) The Authority may accept a written undertaking given by a person in connection with a matter relating to a contravention, or an alleged contravention, of a relevant provision.

(2) The undertaking must specify—

(a) the action proposed to be taken by the person; and

(b) the timeframe in which the proposed action is to be taken; and

(c) any other relevant matter.

(3) The person may, with the Authority's consent, withdraw or vary the undertaking at any time.

(4) A proceeding may not be brought against the person who has given the undertaking for an offence in relation to the matter referred to in subsection (1).

(5) If the Authority considers that the person who gave the undertaking has breached any of its terms, the Authority may apply to the Magistrates' Court for an order under subsection (6).

(6) If the Magistrates' Court is satisfied that the person has breached a term of the undertaking, the Magistrates' Court may make—

(a) an order that the person comply with the undertaking or take specified action to comply with the undertaking; or

(b) any other order that the Magistrates' Court considers appropriate.

(7) For the purposes of this section, a relevant provision means a provision of this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** for which the penalty for the contravention of the provision is—

(a) in the case of a natural person, no more than 180 penalty units; or

(b) in the case of a body corporate, no more than 900 penalty units.

605 Adverse publicity orders

(1) If a court convicts a person, or finds a person guilty, of an offence against this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** or the regulations under this Act or the **Accident Compensation Act 1985**, the court may make an order (***adverse publicity order***) in relation to the offender requiring the offender—

(a) to take either or both of the following actions within the period specified in the order—

(i) to publicise, in the way specified in the order, the offence, its consequences, the penalty imposed and any other related matter;

(ii) to notify a specified person or specified class of persons, in the way specified in the order, of the offence, its consequences, the penalty imposed and any other related matter; and

(b) to give the Authority, within 7 days after the end of the period specified in the order, evidence that the action or actions were taken by the offender in accordance with the order.

(2) The court may make an adverse publicity order on its own initiative or on the application of the prosecutor.

(3) If the offender fails to give evidence to the Authority in accordance with subsection (1)(b), the Authority, or a person authorised in writing by the Authority, may take the action or actions specified in the order.

(4) However, if—

(a) the offender gives evidence to the Authority in accordance with subsection (1)(b); and

(b) despite that evidence, the Authority is not satisfied that the offender has taken the action or actions specified in the order in accordance with the order—

the Authority may apply to the court for an order authorising the Authority, or a person authorised in writing by the Authority, to take the action or actions.

(5) If the Authority, or a person authorised in writing by the Authority, takes an action or actions in accordance with subsection (3) or applies for an order under subsection (4), the reasonable expenses of taking the action or actions, or of applying for the order, are a debt due by the offender to the Authority.

(6) The court must not make an adverse publicity order unless it is satisfied that the costs of complying with the order do not exceed the maximum penalty amount that the court may impose on the offender for the offence concerned.

(7) The court may make an adverse publicity order in relation to an offender in addition to or instead of—

(a) imposing a penalty on the offender; or

(b) making any other order that the court may make in relation to the offence.

605A Review of the compensation scheme under this Act

S. 605A inserted by No. 27/2025 s. 33.

(1) The Minister must cause an independent review of the compensation scheme under this Act to be undertaken—

(a) for the purposes of the first review under this section, on or by 31 December 2030; and

(b) at least once in each period of 5 years after 31 December 2030.

(2) For the purposes of subsection (1), the Minister may—

(a) select a person to conduct the review; and

(b) determine the terms of reference for the review.

(3) A written report on any review conducted under this section must be given to the Minister.

(4) The final report on any review conducted under this section must be laid before each House of the Parliament within 6 months after that report is given to the Minister under subsection (3).

Division 10—Prosecutions

606 Institution of prosecutions under Part 4

Despite any law to the contrary, proceedings for an offence against Part 4 may, with the authority of the Director of Public Prosecutions, be instituted at any time after the offence is committed.

607 Return to work—procedure if prosecution is not brought

(1) If—

(a) a person considers that the occurrence of an act, matter or thing constitutes an offence against Part 4; and

(b) no prosecution has been brought in respect of the occurrence of the act, matter or thing within 6 months of that occurrence—

the person may request in writing that the Authority bring a prosecution.

(2) Within 3 months after the Authority receives a request under subsection (1) it must—

(a) investigate the matter; and

(b) advise the person in writing whether a prosecution has been or will be brought or give reasons why a prosecution will not be brought.

(3) If the Authority advises the person that a prosecution will not be brought, the Authority must refer the matter to the Director of Public Prosecutions if the person requests in writing that the Authority do so.

(4) The Director of Public Prosecutions must consider the matter and advise the Authority in writing whether or not the Director considers that a prosecution should be brought.

(5) The Authority must—

(a) ensure a copy of the advice is sent to the person who made the request; and

(b) if the Authority declines to follow advice from the Director of Public Prosecutions to bring proceedings, give the person written reasons for its decision.

(6) The Authority must include in its annual report, and publish on its website, a statement setting out—

(a) the number of requests received by the Authority under subsection (1); and

(b) the number of cases in which the Authority has advised under subsection (2)(b) that a prosecution has been or will be brought, or will not be brought; and

(c) the number of cases in which the Director of Public Prosecutions has advised under subsection (4) that a prosecution should be brought or should not be brought.

(7) No proceedings may be brought in respect of a decision by the Authority to bring or not to bring a prosecution following advice from the Director of Public Prosecutions.

608 Institution of prosecutions

(1) A charge-sheet charging an offence against—

(a) this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**; or

(b) the **Crimes Act 1958** which occurs in connection with a claim for compensation under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**—

may be filed by the Authority or by any person authorised by the Authority to file charge-sheets on behalf of the Authority.

(2) An affidavit for use in proceedings relating to a charge specified in subsection (1) may be sworn or affirmed and taken before a person authorised by the Authority for this purpose.

S. 608(2) amended by No. 6/2018 s. 68(Sch. 2 item 140.3).

(3) Any prosecution instituted in the name of the Authority is, in the absence of evidence to the contrary, to be taken to have been instituted by the authority of the Authority.

(4) A person referred to in subsection (1) may appear on behalf of the Authority or the Minister, as the case requires, in any proceedings for an offence referred to in that subsection.

(5) Despite any law to the contrary, proceedings may be instituted for an offence against section 73(1) or (2), 103(1), 108, 179(3) or (4), 434(3), 575, 581, 583, 584 or 585 of this Act or section 114D(2) of the **Accident Compensation Act 1985** within 3 years after the alleged offence occurred.

S. 608(5A) inserted by No. 48/2017 s. 39.

(5A) Despite any law to the contrary, a proceeding for an offence against Part 8 must be commenced within 12 months after the date on which the Authority becomes aware that an offence has been committed.

(6) The Authority must make guidelines in accordance with section 612 for or with respect to the prosecution of offences under this Act.

(7) The **Subordinate Legislation Act 1994** does not apply to the first guidelines made for or with respect to the prosecution of offences under this Act.

Division 11—Directions and guidelines

609 Directions given by the Minister

(1) A direction given by the Minister in accordance with this section—

(a) must be published in the Government Gazette and on a Government Internet website; and

(b) must not relate to a specific person; and

(c) may be of general or limited application; and

(d) may differ according to differences in time, place or circumstance; and

(e) may specify any other matter or thing required or permitted by this Act to be specified or necessary to be specified to give effect to this Act; and

(f) may specify fees.

(2) A person to whom a direction is given by the Minister in accordance with this section must comply with the direction.

(3) The Minister may amend or revoke a direction given by the Minister in accordance with this section by publishing the amendment or revocation of the direction in the Government Gazette and on a Government Internet website.

(4) A direction or an amendment or revocation of a direction given by the Minister in accordance with this section takes effect—

(a) on the day after the direction or the amendment or revocation of the direction is published in the Government Gazette; or

(b) on any later day specified in the direction or the amendment or revocation of the direction.

610 Directions given for the purposes of Part 4

(1) A copy of each direction given in accordance with section 609 for the purposes of Part 4, or an amendment or revocation of a direction given in accordance with that section for the purposes of that Part, must be laid before both Houses of Parliament on or before the 6th sitting day after

notice of the direction, amendment or revocation is published in the Government Gazette.

(2) Parts 3A and 5A of the **Subordinate Legislation Act 1994** apply to a direction given, amended or revoked in accordance with subsection (1) as if it were a legislative instrument within the meaning of that Act laid before each House of the Parliament under section 16B of that Act.

611 Guidelines made by the Minister

(1) Guidelines made by the Minister in accordance with this section must be published in the Government Gazette and on a Government Internet website.

(2) The Minister may amend or revoke guidelines made in accordance with this section by publishing the amendment or revocation of the guidelines in the Government Gazette and on a Government Internet website.

(3) Guidelines or an amendment or revocation of guidelines made by the Minister in accordance with this section take effect—

(a) on the day after the guidelines or the amendment or revocation of the guidelines are published in the Government Gazette; or

(b) on any later day specified in the guidelines or the amendment or revocation of the guidelines.

612 Guidelines made by the Authority

(1) Guidelines made by the Authority in accordance with this section must be published in the Government Gazette and on a Government Internet website.

(2) The Authority may amend or revoke guidelines made under this Act to which this section applies by publishing the amendment or revocation of the guidelines in the Government Gazette and on a Government Internet website.

(3) Guidelines or an amendment or revocation of guidelines made by the Authority in accordance with this section take effect—

(a) on the day after the guidelines or the amendment or revocation of the guidelines are published in the Government Gazette; or

(b) on any later day specified in the guidelines or the amendment or revocation of the guidelines.

Division 12—The Authority and the IBAC

613 Mandatory notification of corrupt conduct to IBAC

S. 613(1) substituted by No. 30/2016 s. 89(1).

(1) Subject to any exemption notice issued under section 57B of the **Independent Broad-based Anti-corruption Commission Act 2011**, the Chief Executive Officer of the Authority must notify the IBAC of any matter that the Chief Executive Officer of the Authority suspects on reasonable grounds involves corrupt conduct occurring or having occurred, of which the Chief Executive Officer of the Authority becomes aware in the performance of functions or the exercise of powers under this Act or any other Act.

(2) This section does not apply to corrupt conduct of the IBAC or IBAC personnel.

(3) This section does not apply to a matter referred to the Authority by the IBAC under section 73 of the **Independent Broad-based Anti-corruption Commission Act 2011**.

S. 613(4) amended by No. 30/2016 s. 89(2).

(4) If the Chief Executive Officer of the Authority considers at any time that any matter described in subsection (3) appears to involve conduct that is corrupt conduct, the Chief Executive Officer of the Authority must inform the IBAC.

614 Consultation prior to notification

For the purposes of deciding whether to make a notification under this Division to the IBAC, the Chief Executive Officer of the Authority may consult the IBAC.

615 Communication of information to the IBAC

(1) At any time, the Chief Executive Officer of the Authority may provide or disclose any information received or obtained in the course of the performance of functions or duties or the exercise of powers under this Act or any other Act to the IBAC if the Chief Executive Officer of the Authority considers that—

(a) the information is relevant to the performance of the functions or duties or the exercise of powers of the IBAC; and

(b) it is appropriate for the information to be brought to the attention of the IBAC, having regard to the nature of the information.

(2) This section applies subject to any restriction on the provision or disclosure of information under this Act or any other Act (including any Commonwealth Act).

616 Authority not to prejudice investigations of the IBAC

(1) If the Authority is, or becomes, aware of an IBAC investigation, the Authority must take all reasonable steps to ensure that the performance of its functions or duties or the exercise of its powers does not prejudice the IBAC investigation.

(2) For the purposes of ensuring compliance with subsection (1), the Authority may consult the IBAC.

Division 13—Section 85 provisions

617 Supreme Court—limitation of jurisdiction—conferral of exclusive jurisdiction

S. 617 amended by No. 5/2021 s. 30 (ILA s. 39B(1)).

(1) It is the intention of sections 264, 265 and 266 to alter or vary section 85 of the **Constitution Act 1975**.

S. 617(2) inserted by No. 5/2021 s. 30.

(2) It is the intention of sections 264, 265 and 266, as they apply on and after the commencement of section 11 of the **Workplace Injury Rehabilitation and Compensation Amendment (Provisional Payments) Act 2021** to alter or vary section 85 of the **Constitution Act 1975**.

618 Supreme Court—limitation of jurisdiction—no proceedings

S. 618 amended by No. 5/2021 s. 31 (ILA s. 39B(1)).

(1) It is the intention of sections 6(3), 78(3), 80(4), 83(8), 208, 227(1), 243(10), 313(4), 354, 355, 356, 369(9), 426, 456, 458, 463(4), 577(7), 604(4) and 607(7) to alter or vary section 85 of the **Constitution Act 1975**.

S. 618(2) inserted by No. 5/2021 s. 31.

(2) It is the intention of section 263D as inserted by section 11 of the **Workplace Injury Rehabilitation and Compensation Amendment (Provisional Payments) Act 2021** to alter or vary section 85 of the **Constitution Act 1975**.

S. 618(3) inserted by No. 8/2024 s. 21.

(3) It is the intention of section 167J as inserted by section 16 of the **Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024** to alter or vary section 85 of the **Constitution Act 1975**.

619 Proceedings

For the purposes of the sections of this Act specified in section 618, ***proceedings*** includes—

(a) the inquiry into, hearing and determination of any question or matter under this Act; and

(b) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration of right or an injunction; and

(c) seeking any order under the **Administrative Law Act 1978**; and

(d) any other action or proceeding.

Division 14—Regulations

620 Regulations

(1) The Governor in Council may make regulations for or with respect to—

(a) prescribing forms; and

(b) prescribing fees; and

(c) any matter or thing required or permitted by this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958** to be prescribed or necessary to be prescribed to give effect to this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**.

(2) The regulations—

(a) may be of general or of specially limited application; and

(b) may differ according to differences in time, place or circumstance; and

(c) may confer a discretionary authority, or impose a duty, on a specified person or body or class of person or body; and

(d) may apply, adopt or incorporate, with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made; and

(e) may make provision for or in relation to any matter by applying, adopting or incorporating, with or without modification, the provisions of any Act of the Commonwealth or of any statutory rule or other instrument made under an Act of the Commonwealth, as in force at a particular time or as in force from time to time; and

(f) may impose a penalty not exceeding 10 penalty units for a contravention of the regulations.

(3) Sections 6 and 7 of the **Subordinate Legislation Act 1994** do not apply to the first regulations made under this section.

* * * * *

S. 621 expired by force of No. 67/2013 s. 621(6).

Pt 13 Div. 14 (Heading and ss 620A, 620B) inserted by No. 8/2024 s. 25.

Division 14A—Review of amendments

S. 620A inserted by No. 8/2024 s. 25.

620A Independent review by expert panel

(1) The Minister must cause an independent review of the operation of the amendments made to this Act by the amending Act to be conducted by an expert panel.

(2) The conduct of the review must commence on or after 1 January 2027 and before 1 January 2028.

(3) The independent review must be conducted in accordance with the terms of reference set by the Minister.

(4) The Minister must set the terms of reference for the independent review which may include an examination of and recommendations in relation to matters arising from the operation of the amendments, including the operational and financial impact of the following—

(a) the introduction of the definition of ***mental injury*** and the amendment of sections 39 and 40 by Division 1 of Part 2 of the amending Act;

(b) the introduction of Subdivision 1A of Division 2 of Part 5 and consequential amendments relating to the introduction of a whole person impairment test in the second entitlement period made by Division 2 of Part 2 of the amending Act;

(c) increasing the scope of claims that may be dealt with administratively because of the amendments made by Division 2 of Part 2 of the amending Act;

(d) changes to the information sharing framework under this Act by Division 3 of Part 2 of the amending Act;

(e) reducing the scope of disputes that may be referred to arbitration because of the amendments made by Division 4 of Part 2 of the amending Act;

(f) any other relevant matter.

(5) In this section—

amending Act means the **Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024**.

620B Appointment of expert panel

S. 620B inserted by No. 8/2024 s. 25.

(1) For the purposes of section 620A, the Minister must appoint a minimum of 3 persons to form the expert panel.

(2) The Minister must ensure that each person appointed to the expert panel has experience in one or more of the following areas—

(a) medicine;

(b) law;

(c) finance;

(d) occupational health and safety.

Division 15—Savings, repeal and transitionals

622 Re-enacted provisions of Accident Compensation Act 1985

(1) Without limiting the operation of any provisions of the **Interpretation of Legislation Act 1984** relating to repeal and re-enactment, the provisions of this Act specified in column 1 of the Table to this section are to be treated as re-enacting with

or without modifications the provisions of the **Accident Compensation Act 1985** specified in column 2 of the Table to this section.

(2) For the purposes of this Act, a reference in any document to a provision of the **Accident Compensation Act 1985** specified in column 2 of the Table to this section is to be construed as a reference to the corresponding provision of this Act specified in column 1 of the Table to this section.

(3) The Table to this section is not to be taken to be an exhaustive list of the provisions of the **Accident Compensation Act 1985** re-enacted by this Act.

(4) This section is to be construed subject to any specific provision made in respect of the application of this section in regulations made under section 621.

TABLE

Column 1 *Provision of this Act*	*Column 2* *Provision of **Accident Compensation Act 1985***
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17	101(2)(3)(4)
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20	103(2)(4)(4B)(4G)
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22	103(4H)
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85	114O
86	114P
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Column 1 *Provision of this Act*	*Column 2* *Provision of **Accident Compensation Act 1985***
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267	43(3)
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274	45(1)(1A)(1B)(1C)(1D)
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Column 1 *Provision of this Act*	*Column 2* *Provision of **Accident Compensation Act 1985***
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278	50(1)(2)(2A)(2B)(3)(4)(5)(6)(7)
279	50A
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287	56(3)(4), 58A
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289	56(5A)(5B)
290	56(8)
291	56(9)(10)
292	56(11)
293	56(2)
294	57(1)(2)
295	58B
296	57(3)(4)(5)(6)
297	59(1)(2)(3)(5)(6)(7)(8)(9)(10)(b)
298	59(4)(10)(a)
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303	65(1)(2)(7)(8)(8A)(9)
304	65(6A)(6B)
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Column 1 *Provision of this Act*	*Column 2* *Provision of **Accident Compensation Act 1985***
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308	67(2)(3)
309	67(4)(5)
310	65(4)(4A)(11)
311	65(6)
312	65(5C)
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314	91A
315	91B
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373	139A
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375	140
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379	142
380	142A
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382	144
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Column 1 *Provision of this Act*	*Column 2* *Provision of **Accident Compensation Act 1985***
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Column 1 *Provision of this Act*	*Column 2* *Provision of **Accident Compensation Act 1985***
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421	172(1)
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499	22(1)(2)(5)
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504	18(3)(4)
505	18(5)
506	26(2)(3)(4)
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Column 1 *Provision of this Act*	*Column 2* *Provision of **Accident Compensation Act 1985***
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532	52I(1A)
533	52I
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536	52LA

Column 1 *Provision of this Act*	*Column 2* *Provision of **Accident Compensation Act 1985***
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551	238A
552	239
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554	241
555	239AAA
556	239AAB
557	239AAC
558	240A
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568	249AA
569	249AB
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Column 1 *Provision of this Act*	*Column 2* *Provision of **Accident Compensation Act 1985***
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573	249BC
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575	242AA
576	242AB
577	242AC
578	242AD
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580	242AF
581	248
582	248AA
583	248A
584	248AB
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586	248B
587	248C
588	242A
589	250
590	239A
591	244A
592	245
593	246
594	247
595	243
596	248BA
597	248D
598	248E
599	249A

Column 1 *Provision of this Act*	*Column 2* *Provision of **Accident Compensation Act 1985***
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601	250AA
602	250B
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604	251
605	251A
606	252(4A)
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608	252
609	253AA
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612	252B
613	236C
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615	236E
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Sch 1	5(1B)(3A)(9A)(10)(11)(12)(13)(14), 5C, 5D, 5E and Division 3 of Part I
Sch 6	Sch 4
Sch 7	Sch 5
Sch 8	Sch 6

623 Repeal of Accident Compensation (WorkCover Insurance) Act 1993

(1) The **Accident Compensation (WorkCover Insurance) Act 1993** is **repealed**.

(2) Except as in this Act or regulations made under section 621 expressly provided, all persons, things and circumstances appointed or created by or

under the **Accident Compensation (WorkCover Insurance) Act 1993** or existing or continuing under the **Accident Compensation (WorkCover Insurance) Act 1993** immediately before 1 July 2014 continue under and subject to this Act to have the same status, operation and effect as they respectively would have had in respect of any premium paid or payable before 1 July 2014 if the **Accident Compensation (WorkCover Insurance) Act 1993** had not been repealed.

(3) Without limiting the generality of subsection (2), any action, matter or thing relating to any premium to which subsection (2) applies, including any review, appeal or other proceedings, may be continued under the **Accident Compensation (WorkCover Insurance) Act 1993** as in force immediately before 1 July 2014.

(4) For the purposes of this section, premium has the same meaning as it has in section 32 of the **Accident Compensation (WorkCover Insurance) Act 1993** as in force immediately before 1 July 2014.

(5) Nothing in this section limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

S. 623A inserted by No. 73/2016 s. 18

623A Transitional provision—Staff to be transferred to ACCS

The Chief Executive Officer of the Authority must list in writing the employees of the Authority who are to become employees of ACCS.

S. 623B inserted by No. 73/2016 s. 19.

623B Transitional provision—Transfer of staff to ACCS

(1) A person listed under section 623A who was an employee of the Authority immediately before the commencement of this section (***transferred employee***) is to be regarded as—

(a) having been employed by ACCS with effect from that commencement; and

(b) having been so employed on the same terms and conditions as those that applied to the person, immediately before that commencement, as an employee of the Authority; and

(c) having accrued an entitlement to benefits in connection with that employment that is equivalent to the entitlement that the person had accrued, as an employee of the Authority, immediately before that commencement.

(2) The service of a transferred employee as an employee of ACCS is to be regarded for all purposes as having been continuous with the service of the transferred employee, immediately before the commencement of this section, as an employee of the Authority.

(3) A transferred employee is not entitled to receive any payment or other benefit by reason only of having ceased to be an employee of the Authority because of this Act.

(4) A certificate purporting to be signed by the Chief Executive Officer of the Authority certifying that the person named in the certificate was, with effect from the commencement of this section, employed, by virtue of this section, by ACCS is admissible in evidence in any proceedings as evidence of the matters stated in it.

(5) Nothing in this section prevents—

(a) any of the terms and conditions of employment of a transferred employee being altered by or under any law, award or agreement with effect from any time after the commencement of this section; or

(b) a transferred employee from resigning or being dismissed at any time after that commencement in accordance with the then existing terms and conditions of the transferred employee's employment with ACCS.

S. 623C inserted by No. 73/2016 s. 19.

623C Provisions relating to establishment of ACCS

(1) In this section, ***commencement date*** means the day on which section 15 of the **Compensation Legislation Amendment Act 2016** comes into operation.

(2) On and from the commencement date—

(a) the Conciliation Service is wound up; and

(b) the Senior Conciliation Officer goes out of office and is taken to be employed by ACCS for a fixed term of 12 months beginning on the commencement date, on the same terms and conditions as set out in the instrument of appointment as in force immediately before the commencement date; and

(c) the Conciliation Officers go out of office and are taken to be employed by ACCS for a fixed term of 6 months beginning on the commencement date, on the same terms and conditions as set out in the instrument of appointment as in force immediately before the commencement date; and

(d) all property and rights of the Conciliation Service vest in ACCS; and

(e) all liabilities of the Conciliation Service become liabilities of ACCS; and

(f) ACCS is the successor in law of the Conciliation Service.

623D Validity of things done under section 623C

S. 623D inserted by No. 73/2016 s. 19.

(1) Nothing effected or to be effected by section 623C or done or suffered under section 623C—

(a) is to be regarded as placing any person in breach of contract or confidence or as otherwise making any person guilty of a civil wrong; or

(b) is to be regarded as placing any person in breach of, or as constituting a default under, any Act or other law or obligation or any provision in any agreement, arrangement or understanding including, but not limited to, any provision or obligation prohibiting, restricting or regulating the assignment, transfer, sale or disposal of any property or the disclosure of any information; or

(c) is to be regarded as fulfilling any condition that allows a person to exercise a power, right or remedy in respect of or to terminate any agreement or obligation; or

(d) is to be regarded as giving rise to any remedy for a party to a contract or an instrument or as causing or permitting the termination of any contract or instrument because of a change in the beneficial or legal ownership of any asset, right or liability; or

(e) is to be regarded as causing any contract or instrument to be void or otherwise unenforceable; or

(f) is to be regarded as frustrating any contract; or

(g) releases any surety or other obligor wholly or in part from any obligation.

(2) In this section, ***Act*** does not include the Charter of Human Rights and Responsibilities.

S. 623E inserted by No. 73/2016 s. 19.

623E Savings provisions—Compensation Legislation Amendment Act 2016

(1) In this section, ***commencement date*** means the day on which section 15 of the **Compensation Legislation Amendment Act 2016** comes into operation.

(2) On and from the commencement date, any conciliation that was being conducted by the Conciliation Service immediately before the commencement date but was not concluded may be concluded by ACCS.

S. 623F inserted by No. 73/2016 s. 20.

623F Transitional provision—Compensation Legislation Amendment Act 2016

(1) In this section, ***commencement date*** means the day on which section 11(2) of the **Compensation Legislation Amendment Act 2016** comes into operation.

(2) A person to whom section 169 applied immediately before the commencement date is, on and from the commencement date, entitled to weekly payments under this Act for whichever of the following is the longer period—

(a) the first 130 weeks (whether consecutive or not) of incapacity for work; or

(b) until the day the person reaches retirement age.

S. 623G inserted by No. 48/2017 s. 40.

623G Transitional provision—WorkSafe Legislation Amendment Act 2017

This Act, as amended by section 29 of the **WorkSafe Legislation Amendment Act 2017**, applies to all claims made on or after the date on which section 29 of the **WorkSafe Legislation Amendment Act 2017** comes into operation.

623H Transitional provision—WorkSafe Legislation Amendment Act 2017

S. 623H inserted by No. 48/2017 s. 40.

This Act, as amended by section 30 of the **WorkSafe Legislation Amendment Act 2017**, applies to all claims made on or after the date on which section 30 of the **WorkSafe Legislation Amendment Act 2017** comes into operation.

623I Transitional provision—WorkSafe Legislation Amendment Act 2017

S. 623I inserted by No. 48/2017 s. 40.

This Act, as amended by section 39 of the **WorkSafe Legislation Amendment Act 2017**, applies to all offences against Part 8 committed, or of which the Authority becomes aware, on or after the date on which section 39 of the **WorkSafe Legislation Amendment Act 2017** comes into operation.

623J Savings provision—seafarers' claims

S. 623J inserted by No. 48/2017 s. 40.

(1) This section applies to a claim for compensation made, and a premium collected or recovered under this Act that, but for *Samson Maritime Pty Ltd v Noel Aucote* [2014] FCAFC 182, would be a valid claim or validly collected or recovered premium in accordance with this Act.

(2) If a claim has been accepted by the Authority, then it is taken to be a valid claim in accordance with this Act.

(3) If a premium has been collected or recovered by the Authority then it is taken to be validly collected or recovered.

(4) Nothing in this section creates any new entitlement to compensation.

S. 623K inserted by No. 1/2018 s. 7.

623K Transitional provision—Compensation Legislation Amendment Act 2018

Schedule 1, as amended by the **Compensation Legislation Amendment Act 2018**, applies to all injuries occurring on or after the commencement of that Act.

S. 623L inserted by No. 49/2018 s. 38.

623L Transitional provision—Treasury and Finance Legislation Amendment Act 2018

This Act, as amended by sections 33 and 35 of the **Treasury and Finance Legislation Amendment Act 2018**, applies in respect of a claim made on or after the date on which that Act has come into operation, regardless of when the injury occurred.

S. 623M inserted by No. 50/2015 s. 14.

623M Transitional provision—Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019

On the day on which Part 3 of the **Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019** comes into operation, the Chief Executive Officer ceases to be a Director of the Board.

S. 623MA inserted by No. 15/2021 s. 46.

623MA Transitional provision—Workplace Injury Rehabilitation and Compensation Amendment (Arbitration) Act 2021

(1) Subdivision 4 of Division 2 of Part 6 of this Act does not apply to a dispute relating to a claim in respect of—

(a) an injury that occurred before the commencement date; or

(b) an illness, the onset of which occurred before the commencement date.

(2) In this section—

commencement date means the date of commencement of section 35 of the **Workplace Injury Rehabilitation and Compensation Amendment (Arbitration) Act 2021**.

623N Transitional provision—Workplace Safety Legislation and Other Matters Amendment Act 2022

New s. 623N inserted by No. 10/2022 s. 78.

(1) Sections 234 and 241, as in force on the commencement date, are taken to apply to a person for the purposes of a claim that relates to the death of a worker that occurred before the commencement date if the person is under 25 years of age on the commencement date.

(2) In this section, ***commencement date*** means the date of commencement of Division 1 of Part 8 of the **Workplace Safety Legislation and Other Matters Amendment Act 2022**.

624 Transitional provision—Local Government Legislation Amendment (Rating and Other Matters) Act 2022

New s. 624 inserted by No. 30/2022 s. 45.

Section 40(1)(d), as amended by section 44 of the **Local Government Legislation Amendment (Rating and Other Matters) Act 2022**, applies to a claim for compensation made on or after the commencement of that amendment.

625 Transitional provision—Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024

New s. 625 inserted by No. 8/2024 s. 26.

(1) The definition of ***mental injury*** as inserted by Division 1 of Part 2 of the amending Act and sections 39 and 40, as amended by that Division of that Act, apply to claims made in respect of injuries that occur on or after the date of

commencement of Division 1 of Part 2 of the amending Act.

(2) Sections 163, 165 and 175, as in force immediately before the commencement of Division 2 of Part 2 of the amending Act, continue to apply to a worker who immediately before the date of commencement of that Division of the amending Act is receiving weekly payments despite the expiry of the second entitlement period.

(3) Section 301C, as in force immediately before the commencement of Division 4 of Part 2 of the amending Act, continues to apply to a dispute that relates to an injury that occurs before the date of commencement of that Division of the amending Act.

(4) In this section—

amending Act means the **Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024**.

* * * * *

Pt 14 (Headings and ss 624–650) amended by No. 44/2014 ss 21–23, 24(26)–(36), repealed by No. 67/2013 s. 650, new Pt 14 (Heading and ss 623N, 623O) inserted by No. 11/2020 s. 60, amended by No. 27/2020 ss 44, 45, repealed by No. 67/2013 s. 623O (as amended by No. 27/2020 s. 45).

626 Transitional provisions—Workplace Injury Rehabilitation and Compensation Amendment Act 2025—administration of Authority

New s. 626 inserted by No. 27/2025 s. 34.

(1) The person appointed as the Chief Executive Officer under section 498(1) as in force immediately before the commencement of section 28 of the amending Act is, on and from that commencement, taken to be appointed by the Board with the approval of the Minister.

(2) Section 506(3) as in force immediately before the commencement of section 29 of the amending Act, continues to apply to a Director until the Minister fixes the remuneration, travelling and other allowance under section 506(3) as amended by section 29 of the amending Act by writing to the Chairperson of the Board to advise the Board of the changes.

(3) In this section—

amending Act means the **Workplace Injury Rehabilitation and Compensation Amendment Act 2025**.

New s. 627 inserted by No. 27/2025 s. 34.

627 Transitional provisions—Workplace Injury Rehabilitation and Compensation Amendment Act 2025—sections 214A and 545

(1) Section 214A, as amended by section 11 of the amending Act, applies, and is taken always to have applied, in respect of the calculation of an amount of non-economic loss under section 214A that is made on or after 1 July 2022.

(2) Section 545, as amended by section 32 of the amending Act, applies, and is taken always to have applied, as if items 22A, 22B, 22C, 22D and 22E were specified in the Table to that section from 1 July 2022.

(3) However, section 545 does not apply to vary an amount specified in item 22A, 22B, 22C, 22D or 22E of the Table to that section for the financial year commencing on 1 July 2022.

(4) In this section—

amending Act means the **Workplace Injury Rehabilitation and Compensation Amendment Act 2025**.

New s. 628 inserted by No. 27/2025 s. 34.

628 Transitional provision—Workplace Injury Rehabilitation and Compensation Amendment Act 2025—section 224

(1) This section applies to a family member of a worker who, immediately before the commencement day, was receiving or became entitled to receive compensation under section 224(1)(b) in respect of an injury to the worker, including an eligible progressive disease, or in respect of the death of the worker.

(2) Section 224(1)(b), as amended by section 13 of the amending Act, applies to a family member referred to in subsection (1) for the purposes of determining the services for which compensation is payable under that section in respect of the injury, eligible progressive disease or death.

(3) Despite subsection (2), the amount of compensation payable to a family member referred to in subsection (1) is the amount of compensation to which the person was entitled under section 224(1)(b), as in force immediately before the commencement day, in respect of the injury, eligible progressive disease or death.

(4) In this section—

amending Act means the **Workplace Injury Rehabilitation and Compensation Amendment Act 2025**;

commencement day means the date of commencement of section 13 of the amending Act.

629 Transitional provision—Workplace Injury Rehabilitation and Compensation Amendment Act 2025—section 241

New s. 629 inserted by No. 27/2025 s. 36.

(1) If a person was receiving or became entitled to receive compensation under section 241 in the 5 year period immediately preceding the commencement day, the amount of compensation that the person is entitled to receive under that section in relation to the review period is to be determined in accordance with section 241, as in force immediately after the commencement day.

(2) If a determination under subsection (1) results in a person being entitled to an amount of compensation under section 241 that is greater than the amount that, but for the application of this section, the person was entitled to receive in

relation to the review period, the amount of compensation paid or payable to the person is to be adjusted accordingly.

(3) Despite section 239, a claimant is not entitled to interest at the prescribed rate on an amount of compensation that is paid or payable to a person under this section that is greater than the amount that, but for the application of this section, the person was entitled to receive in relation to the review period.

(4) If a determination under subsection (1) results in a person being entitled to an amount of compensation under section 241 that is less than the amount that, but for the application of this section, the person received or was entitled to receive in relation to the review period, no adjustment is to be made under this section.

(5) In this section—

commencement day means the date of commencement of section 35 of the **Workplace Injury Rehabilitation and Compensation Amendment Act 2025**;

review period means the 5 year period referred to in subsection (1).

Schedules

Schedule 1—Further interpretative provisions

Part 1—Persons deemed to be workers or employers

Section 4(3)

1 Students etc. deemed to be workers and their deemed employers

(1) Each of the following is deemed to be a worker to the extent specified—

(a) a student at a school within the meaning of Division 1 of Part 5.4 of the **Education and Training Reform Act 2006** while employed under a work experience arrangement or a structured workplace learning arrangement under that Part;

(b) a student who is in an accredited senior secondary course (within the meaning of section 4.1.1 of the **Education and Training Reform Act 2006**)—

(i) at a TAFE institute or a dual sector university; or

Sch. 1 cl. 1(1)(b)(i) amended by No. 7/2015 s. 15.

(ii) provided by a person or body registered under section 4.3.10 of that Act with respect to that course—

while employed under a work experience arrangement or a structured workplace learning arrangement under Part 5.4 of that Act;

(c) a student employed under an agreement or arrangement referred to in section 6.1.21 of the **Education and Training Reform Act 2006**, while so employed;

(d) a post-secondary student of a TAFE provider within the meaning of Division 2 of Part 5.4 of the **Education and Training Reform Act 2006** while employed under a practical placement agreement under that Part;

(e) a student employed under an agreement or arrangement referred to in section 6.1.23, 6.1.24 or 6.1.25 of the **Education and Training Reform Act 2006**, while so employed;

(f) an apprentice—

(i) within the meaning of the **Education and Training Reform Act 2006** while employed under an approved training scheme within the meaning of Part 5.5 of that Act; or

(ii) employed under a contract of apprenticeship, while so employed;

(g) a person who is a participant in a declared training program, while so participating.

(2) In relation to—

(a) a student who is deemed to be a worker under subclause (1)(a), (b), (c), (d) or (e)—

Sch. 1 cl. 1(2)(a)(i) amended by No. 10/2022 s. 85.

(i) the Department of Education and Training is deemed to be the employer of that student in respect of the employment under the arrangement or agreement; and

(ii) the amount paid or payable to the student for services rendered under the agreement or arrangement is deemed to be remuneration;

(b) an apprentice referred to in subclause (1)(f)—

(i) the person who enters into the approved training scheme or contract of apprenticeship with the apprentice is deemed to be the employer of the apprentice; and

(ii) the amount paid or payable to the apprentice under the approved training scheme or contract of apprenticeship is deemed to be remuneration;

(c) a person referred to in subclause (1)(g), the provider of the declared training program is deemed to be the employer of that person.

2 Declared training programs

(1) The Governor in Council may, by Order in Council published in the Government Gazette, declare a training program provided by a person or body specified in the Order in Council that includes the provision of workplace based training to be a declared training program.

(2) The Governor in Council may, by Order in Council published in the Government Gazette, specify, in relation to a declared training program—

(a) a class of payments; or

(b) a training allowance—

payable to participants in that declared training program.

(3) A payment of a class or a training allowance, specified in an Order in Council under subclause (2) is deemed to be remuneration paid or payable in respect of a participant in the training program to which that Order in Council applies.

3 Persons attending certain employment programs deemed to be workers

If a person (not being a worker within the meaning of any other provision of this Part) is injured while attending an employment program provided or arranged by the Authority—

(a) for the purposes of this Act—

(i) the person is deemed to be a worker; and

(ii) the Authority is deemed to be the employer of the person; and

(b) for the purposes of Divisions 1 and 2 of Part 5, the person's pre-injury average weekly earnings are deemed to be the pre-injury average weekly earnings of the person as calculated for the purposes of this Act in relation to the injury suffered by that person by reason of which the person is attending the employment program as indexed in accordance with this Act.

4 Co-operatives—deemed workers and employers

(1) A person—

Sch. 1 cl. 4(1)(a) amended by No. 44/2014 s. 25.

(a) who is a secretary of a co-operative housing society within the meaning of the **Co-operative Housing Societies Act 1958** or a co-operative within the meaning of the Co-operatives National Law (Victoria); and

(b) who is entitled, as secretary, to be paid more than $400 per annum (other than in respect of expenses)—

is deemed to be a worker.

(2) The co-operative, or co-operative society, is deemed to be the employer of that person.

(3) The amount (other than in respect of expenses) paid or payable to that person by the employer is deemed to be remuneration.

5 Door to door sellers

If—

(a) a person (the ***seller***) is engaged under a contract or arrangement (not being a contract of employment with an employer)—

(i) to sell goods door to door; or

(ii) to party plan on-sell goods; or

(iii) to sell services ancillary to a sale or on-sale of goods referred to in subparagraph (i) or (ii); and

(b) the Authority determines that the contract or arrangement was entered into with an intention of directly or indirectly avoiding or evading the payment of premium by any person—

then—

(c) the seller is deemed to be a worker; and

(d) the person who engaged the seller is deemed to be the employer of the seller; and

(e) the amount paid or payable to the seller by the person who engaged the seller is deemed to be remuneration.

6 Timber contractors

(1) If a person who, in the course of, or for the purposes of, a trade or business carried on by the person (***principal***), enters into a timber contract with one or more individuals (***timber contractor***)—

(a) each timber contractor is deemed to be a worker; and

(b) the principal is deemed to be the employer of each timber contractor.

(2) Subclause (1) does not apply if—

(a) the timber contractor—

(i) subcontracts the timber contract in its entirety; or

(ii) does not perform personally any work under the contract and employs or engages persons to perform all the work under the timber contract; or

(b) where the timber contractor is a partnership of 2 or more individuals, no part of the work under the timber contract is performed personally by a member of the partnership.

(3) In relation to a timber contractor who is deemed to be a worker, the amount payable by the principal to the timber contractor, less the applicable prescribed percentage (if any), is deemed to be remuneration.

(4) In this clause, ***timber contract*** means a contract under which one or more individuals agree with another person (***principal***) to do all or any of the following—

(a) fell trees and deliver the timber to the principal;

(b) cut firewood and deliver the firewood to the principal;

(c) fell trees or cut scrub on land of which the principal is the occupier;

(d) clear stumps or logs from land of which the principal is the occupier;

(e) remove stumps or logs from land, whether by loading them onto a vehicle or otherwise.

7 Drivers carrying passengers for reward

(1) A person engaged in driving a motor vehicle is deemed to be a worker if the person (***driver***)—

(a) has the use of a motor vehicle under a contract of bailment entered into with another person (the ***operator***) (other than a bona fide contract for the purchase of the vehicle); and

(b) uses the motor vehicle to carry passengers for reward; and

(c) is required under the contract to make payments to the operator for the use of the motor vehicle.

Sch. 1 cl. 7(2) amended by No. 63/2017 s. 21(Sch. 1 item 12).

(2) A reference in subclause (1) to a contract of bailment includes a reference to a driver agreement within the meaning of Division 1 of Part 6 of the **Commercial Passenger Vehicle Industry Act 2017**.

(3) If, under subclause (1), a driver is a worker—

(a) the operator is deemed to be the employer of the driver; and

(b) the amount received by the driver for carrying passengers, less the amount paid or payable to the operator for the use of the motor vehicle, is deemed to be remuneration.

8 Owner drivers carrying goods for reward

(1) Subject to this clause, an individual (***owner-driver***) is deemed to be a worker if, under a contract (not being a contract of employment) entered into by the individual with another person (***principal***), the owner-driver drives a motor vehicle, of which he or she is the owner, mainly for the purposes of providing transport services to the principal.

(2) This clause does not apply in respect of an individual who is an owner-driver if the Authority determines that, in providing transport services to the principal, the owner-driver is carrying on an independent trade or business.

(3) If, under subclause (1), an owner-driver is deemed to be a worker—

(a) the principal is deemed to be the employer of the owner-driver; and

(b) the amount paid or payable by the principal for transport services to the owner-driver, less the percentage deduction (if any) applicable to owner-drivers and specified in guidelines made by the Authority under subclause (4), is deemed to be remuneration.

(4) The Authority may make guidelines as to—

(a) the circumstances in which it may determine that an individual, in providing transport services to a principal, is carrying on an independent trade or business; and

(b) the determination of a percentage deduction for the purposes of subclause (3)(b).

(5) The Authority must ensure that guidelines made under subclause (4) are published and are generally available.

(6) In this clause—

owner, in relation to a motor vehicle, has the same meaning as in the **Road Safety Act 1986**;

transport services means the service of transporting and delivering goods.

9 Contractors

(1) This clause applies if—

(a) an entity (the ***principal***), in the course of, and for the purposes of, a trade or business carried on by the entity, enters into a contractual arrangement with another entity (the ***contractor***) for the provision by the contractor of services (not being transport services within the meaning of clause 8) to the principal for reward in respect of a relevant period; and

(b) the provision of the services by the contractor under the contractual arrangement is not ancillary to the provision of materials or equipment by the contractor to the principal under the contractual arrangement; and

(c) at least 80 per cent of those services are, or are to be, pursuant to the contractual arrangement, provided by the same individual (***the individual***) being—

(i) the contractor; or

(ii) if the contractor is a partnership, an individual member of the partnership; or

(iii) if the contractor is a body corporate—a member, director, shareholder or employee of the body corporate; or

(iv) if the contractor is the trustee of a trust—a person who may benefit under that trust or is an employee of the trustee; and

(d) the gross income of the contractor that is, or is to be, derived from the provision of the services pursuant to the contractual arrangement is, or is to be, at least 80 per cent of the total gross income of the contractor earned from services of the same class provided by or on behalf of the contractor in the relevant period.

(2) This clause does not apply in respect of a contractual arrangement if the Authority determines that, in providing services to the principal, the contractor is carrying on an independent trade or business.

(3) The Authority may make guidelines as to the circumstances in which it may determine that a contractor, in providing services to a principal, is carrying on an independent trade or business.

(4) The Authority must ensure that guidelines made under subclause (3) are published and are generally available.

(5) If subclause (1) applies—

(a) the individual is deemed to be a worker in respect of the relevant period; and

(b) the principal is deemed to be the employer of the individual in respect of the relevant period; and

(c) the total amount paid or payable by the principal to the contractor under the contractual arrangement, less—

(i) the applicable prescribed percentage (if any); or

(ii) if there is no applicable prescribed percentage, the part of that total amount not attributable to the provision of labour—

is deemed to be remuneration.

(6) In this clause—

principal includes a group, or one or more members of a group, within the meaning of section 431;

relevant period, in relation to services provided under a contractual arrangement referred to in subclause (1), means—

Sch. 1 cl. 9(6) def. of *relevant period* amended by No. 10/2022 s. 86.

(a) the financial year in which those services are, or are to be, provided; or

(b) if those services are, or are to be, provided in 2 or more consecutive financial years—

(i) the 12 month period beginning on the date on which those services are first provided pursuant to the contractual arrangement; or

(ii) the 12 month period ending on the date on which those services cease, or are to cease, to be provided;

services includes results (whether goods or services) of work performed.

10 Remuneration and contractual arrangements

(1) If—

(a) a person (the ***principal***) enters into a contract with a body corporate (the ***contractor)*** under which the contractor agrees to provide services to the principal; and

(b) the contractor engages an individual to perform work for the purposes of the contract; and

(c) the individual engaged is deemed under clause 9 to be a worker employed by the principal—

the amount of remuneration is the total amount paid or payable by the principal to the contractor under the contract, less—

(d) the applicable prescribed percentage; or

(e) if there is no applicable prescribed percentage, the part of that total amount not attributable to the provision of labour.

(2) If subclause (1) applies, an amount paid or payable by a contractor within the meaning of subclause (1) to an individual engaged by the contractor to perform work for the principal within the meaning of subclause (1) is not remuneration.

11 Claims to be made against principal

If an individual referred to in clause 9(1)(c)(iii) or (iv)—

(a) is deemed under clause 9(5) to be a worker employed by the principal; and

(b) makes a claim for compensation under this Act in relation to an injury arising out of, or in the course, of being so employed—

the claim must be made against the principal within the meaning of clause 9.

12 Share farmers

(1) If, under a contract entered into between an owner of land and a share farmer—

(a) the share farmer is engaged by the owner and—

(i) is entitled to receive as consideration a share of the income (being less than one third of that income) derived from the land whether in cash or in kind or partly in cash and partly in kind; or

(ii) if the contract is in writing, the contract provides that the owner is liable to pay compensation under this Act in respect of any injury arising out of or in the course of any work carried out by the share farmer in the performance of the contract—

then—

(b) the share farmer is deemed to be a worker; and

(c) the owner is deemed to be the employer of the share farmer.

(2) If a share farmer is deemed to be a worker and an owner of land is deemed to be that share farmer's employer in respect of a particular contract, then only the cash paid or payable under the contract by the owner to the share farmer is deemed to be remuneration.

(3) A share farmer engaged by an owner of land is not a worker unless subclause (1) applies.

(4) A member of a share farmer's family who is employed by, or assists, the share farmer, whether for remuneration or otherwise, in the performance of the duties of the share farmer, whether pursuant to the contract between the share farmer and the

owner of the land or otherwise, is not to be deemed to be a worker employed by the owner of the land by reason of the performance of such duties.

(5) In this clause—

income, in relation to land, means the gross value of the production derived from the land;

owner, in relation to land, includes a person in possession of, or entitled to the receipt of, the rents and profits from the land;

primary production means agriculture, pasturage, horticulture, viticulture, apiculture, poultry farming, dairy farming, cultivation of soils, gathering in of crops or rearing of livestock;

share farmer means an individual who, under a contract with the owner of land used substantially for primary production—

(a) is to perform work in relation to that land; and

(b) is to be remunerated in whole or in part by receiving a share of the income, whether in cash or in kind, derived from that land.

13 Religious bodies and organisations

(1) If, by Order in Council published in the Government Gazette at the request of a religious body or organisation specified in the Order as having made the request, the Governor in Council declares that—

(a) persons within a class specified in the Order, who are not otherwise workers within the meaning of this Act, are workers of that body or organisation; and

(b) the employer of those persons is the person specified in the Order as the employer—

then—

(c) the persons referred to in paragraph (a) are deemed to be workers; and

(d) the person specified in paragraph (b) is deemed to be the employer of those workers.

(2) If an Order in Council is made under this clause in relation to a religious body or organisation, such amounts as are determined by agreement between the Authority and the religious body or organisation are deemed to be remuneration.

14 Persons employed in the public sector

(1) This Act applies to a person who—

(a) is a responsible Minister of the Crown; or

(b) is a member of the Legislative Council or the Legislative Assembly; or

(c) holds an office as a member of a public entity or of the governing body of a public entity; or

(d) holds a judicial office; or

(e) is a non-judicial member of VCAT; or

(f) is a public official within the meaning of the **Public Administration Act 2004**; or

(g) is a bail justice; or

(h) is a member of Victoria Police personnel within the meaning of the **Victoria Police Act 2013**.

Sch. 1 cl. 14(1)(h) substituted by No. 37/2014 s. 10(Sch. item 188.3).

(2) A person specified in subclause (1) is to be taken to be a worker.

(3) Amounts paid or payable to a person specified in subclause (1) in respect of their employment, office or duties are deemed to be remuneration.

(4) In this clause, ***public entity*** and ***public official*** have the same respective meanings as they have in the **Public Administration Act 2004**.

15 Municipal Councillors

(1) A Councillor, while carrying out duties as a Councillor, is deemed to be a worker.

(2) The Council of which the Councillor is a member, while the Councillor is carrying out duties as a Councillor, is deemed to be the employer of the Councillor.

Sch. 1 cl. 15(3) amended by No. 9/2020 s. 390(Sch. 1 item 113.4)

(3) Allowances fixed in a Determination of the Victorian Independent Remuneration Tribunal under the **Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019** and paid or payable to the Councillor are deemed to be remuneration.

(4) The Minister may make guidelines in accordance with section 611 for the purposes of this clause specifying duties performed by a Councillor that may be taken to be, or not to be, duties as a Councillor for the purposes of this clause.

Sch. 1 cl. 15(5) amended by No. 9/2020 s. 390(Sch. 1 item 113.5)

(5) In this clause, ***Councillor*** and ***Council*** have the same respective meanings as they have in section 3(1) of the **Local Government Act 2020**.

16 Places of pick-up

Despite anything in this Act or any other law, if a person is ordinarily engaged in any employment in connection with which persons customarily attend certain pre-arranged places (***places of pick-up***) at which employers select and engage persons for employment—

(a) any such person is deemed, while in attendance at any such place of pick-up for the purpose of being so selected, to be working under a contract of employment with an employer; and

(b) the employer who last employed that person in customary employment is deemed to be that employer; and

(c) amounts paid or payable by the deemed employer to that person are deemed to be remuneration.

17 Sporting contestants

(1) Except as provided in subclause (3), if a person is engaged by an employer to participate as a contestant in a sporting or athletic activity, neither the employer or self-insurer nor the Authority is liable to pay compensation for an injury received by the person if the injury is received while the person is—

(a) participating as a contestant in a sporting or athletic activity; or

(b) engaged in training or preparation with a view to so participating; or

(c) travelling between a place of residence and the place at which the person is so participating or so engaged.

(2) For the purposes of subclause (1), ***person*** does not include a person—

(a) who is a jockey or an apprentice jockey who holds a licence granted in accordance with the Rules of Racing; or

Sch. 1 cl. 17(2)(a) amended by No. 1/2018 s. 8(1).

(b) engaged to participate as a rider, not being a person referred to in paragraph (a), or a driver in a horse, pony or harness race at a race-meeting within the meaning of the **Racing Act 1958** on a racecourse licensed under that Act or on lands otherwise authorised for the holding of race-meetings under Part I of that Act.

Sch. 1 cl. 17(3) amended by No. 1/2018 s. 8(4).

(3) A person—

Sch. 1 cl. 17(3)(a) amended by No. 1/2018 s. 8(2).

(a) engaged to participate as a rider in a horse race conducted as part of a race meeting, or official trial, held under the Rules of Racing; or

Sch. 1 cl. 17(3)(b) substituted by No. 1/2018 s. 8(3).

(b) who, not being the owner or trainer of the horse to be ridden, is a jockey or an apprentice jockey who holds a licence granted in accordance with the Rules of Racing and who agrees to do ride work for a trainer licensed under the Rules of Racing—

(i) at a location authorised for the holding of a horse race under the **Racing Act 1958**; or

(ii) at a training venue occupied by a club registered in accordance with the Rules of Racing; or

(iii) at a training venue occupied by a trainer licensed under the Rules of Racing; or

(iv) at a connecting route between any of the training venues referred to in subparagraphs (i) to (iii)—

is deemed while participating as such a rider or doing such riding work to be a worker solely employed by Racing Victoria and the amounts paid to the person, or to the person's nominee, in respect of so participating or doing (including any prize money) is deemed to be remuneration.

(4) In this clause—

Sch. 1 cl. 17(4) substituted by No. 1/2018 s. 8(5).

Racing Victoria has the same meaning as in the **Racing Act 1958**;

Rules of Racing has the same meaning as in the **Racing Act 1958**.

18 Riders and drivers in certain races

If a person is engaged to participate as—

(a) a rider in a horse race or pony race; or

(b) a driver in a harness race—

conducted as part of a mixed sports gathering within the meaning of the **Racing Act 1958** held in accordance with section 19 of the **Racing Act 1958**—

(c) the rider or driver is deemed, while so participating, to be a worker; and

(d) the club, association or body of persons holding the mixed sports gathering is deemed to be the employer of the rider or driver; and

(e) amounts paid or payable to the rider or driver for so participating are deemed to be remuneration.

19 Outworkers

(1) A natural person who is an outworker within the meaning of the **Outworkers (Improved Protection) Act 2003** is deemed to be a worker.

(2) A person (other than a family entity) who engages a natural person who is an outworker to perform outwork within the meaning of the **Outworkers (Improved Protection) Act 2003** is deemed to be the employer of the outworker.

(3) If a person engages a family entity or a family business to perform outwork within the meaning of the **Outworkers (Improved Protection) Act 2003**—

(a) each person engaged by the family entity or family business who performs outwork within the meaning of that Act is deemed to be a worker; and

(b) the first-mentioned person is deemed to be the employer of each person referred to in paragraph (a).

(4) Subclauses (1) and (2) do not apply if the outworker does not perform any of the outwork personally but engages a person or persons to perform all the outwork.

(5) For the purposes of the definition of ***family entity***, the outworker or a member of the outworker's family (***relevant person***), or any two or more of them together (***relevant persons***) are to be taken to have a controlling interest in a family entity if—

(a) where the family entity is a corporation—

(i) its directors (by whatever name called); or

(ii) a majority of its directors; or

(iii) one or more of its directors is, or are, entitled to exercise a majority in voting power at meetings of the directors—

are under an obligation or understanding to act in accordance with the directions, instructions or wishes of the relevant person or relevant persons; or

(b) where the family entity is a corporation with a share capital, the relevant person or relevant persons directly or indirectly exercise, control the exercise of, or substantially influence the exercise of more than 50 per cent of the voting power attached to voting shares or any class of voting shares issued by the corporation; or

(c) where the family entity is a partnership—the relevant person or relevant persons together—

(i) own (whether or not beneficially) more than 50 per cent of the capital of the partnership; or

(ii) are entitled (whether or not beneficially) to more than 50 per cent of any profits of the partnership; or

(d) where the family entity is a trustee of a trust that carries on a business, the relevant person or relevant persons (whether or not a trustee or trustees of, or beneficiary or beneficiaries of, another trust) are beneficiaries in respect of more than 50 per cent of the value of the interests in the trust.

(6) For the purposes of subclause (5)(d), a person who, as the result of the exercise of a power or discretion—

(a) by the trustee of a discretionary trust; or

(b) by any other person; or

(c) by a trustee of a discretionary trust and another person—

may benefit under a discretionary trust is deemed to be a beneficiary in respect of more than 50 per cent of the value of the interests in the trust.

(7) An amount paid or payable for the performance of outwork—

(a) to a person who, under subclause (1) is deemed to be a worker; or

(b) to a family entity or family business referred to in subclause (3)(a)—

by the person deemed under subclause (2) or (3)(b) to be the employer is deemed to be remuneration.

(8) In this clause—

corporation has the same meaning as in section 57A of the Corporations Act;

family business means an unincorporated business—

(a) of which a natural person who is an outworker is the sole proprietor; and

(b) that does not engage any person other than the outworker or a member of the outworker's family;

family entity, in relation to an outworker, means—

(a) a corporation; or

(b) a partnership; or

(c) a trustee of a trust that carries on a business—

that does not engage any person other than the outworker or a member of the outworker's family and in respect of which one or more of the outworker and members of the outworker's family have a controlling interest;

member of the outworker's family, in relation to an outworker, means any of the following—partner, father, mother, grandfather, grandmother, son, daughter, grandson, granddaughter, brother, sister, uncle, aunt, nephew, niece or cousin.

Part 2—Remuneration

Section 4(4)

20 Definition of remuneration

(1) Subject to this clause, ***remuneration*** means any wages, remuneration, salary, commission, incentive-based payment, bonus, penalty rate, loading, overtime payment, monetary allowance or shift allowance (whether at piece work rates or otherwise and whether paid or payable in cash or kind) paid to or in relation to a worker and, without limiting the generality of the foregoing, includes but is not limited to the following—

(a) wages, remuneration, salary, commission, an incentive-based payment, bonus, penalty rate, loading, overtime rate, monetary allowance, piece rate, shift allowance (however described and whether paid or payable in cash or in kind) and whether paid by or on behalf of the employer or by a person working in concert with, or under an arrangement or understanding (whether

formal or informal and whether expressed or implied) with the employer;

(b) an amount or payment that, under this Act, is deemed to be remuneration;

(c) a fringe benefit;

(d) a superannuation benefit, other than a superannuation benefit paid or payable in respect of services performed or rendered by a worker before 1 January 1998;

(e) an amount paid or payable by an entity to, or in relation to, a director or member of the governing body of that entity for services rendered by that director or member to the entity.

(2) ***Remuneration*** includes an amount that is the fringe benefits taxable amount (within the meaning of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth) in respect of benefits provided by an employer to which section 57, 57A or 58 of that Act applies.

(3) ***Remuneration*** does not include the following—

(a) an amount paid or payable to a person within the meaning of clause 17 engaged by an employer to participate as a contestant in a sporting or athletic activity in respect of the services provided by the person while the person is—

(i) participating as a contestant in that sporting or athletic activity; or

(ii) engaging in training or preparation with a view to so participating; or

(iii) travelling between a place of residence and the place at which the person is so participating or so engaged;

(b) an amount paid or payable to an apprentice under a training contract made in accordance with a training scheme that is approved by the Victorian Skills Commission under Part 5.5 of the **Education and Training Reform Act 2006** if the apprentice or training scheme is, or is in a class of apprentices or training schemes declared by the Minister to be, an apprentice or training scheme to which this paragraph applies;

(c) an allowance for travel or accommodation paid or payable at a rate in a particular class or class of cases that does not exceed the rate prescribed for that class or classes;

(d) an amount that does not exceed the exemption limit in respect of the relevant financial year;

(e) any payment of compensation in respect of an injury under this Act, the **Accident Compensation Act 1985** or the **Workers Compensation Act 1958**;

(f) in relation to a worker of a class to which an applicable prescribed percentage applies, that applicable prescribed percentage;

(g) the exempt component of a motor vehicle allowance paid or payable in respect of a financial year, calculated in accordance with clause 22;

(h) an accommodation allowance paid or payable to a worker in respect of a night's absence from the worker's usual place of residence that does not exceed the exempt rate, determined in accordance with clause 23;

(i) an amount referred to in clause 10(2).

(4) Any wages, remuneration, salary, commission, bonuses or allowances referred to in subclause (1)(a) are deemed to be paid or payable by the employer.

(5) A reference to remuneration paid or payable by an employer includes remuneration that is deemed to be paid or payable by the employer.

(6) ***Paid***, in relation to wages, remuneration, salary, commission, bonuses or allowances, includes provided, conferred and assigned.

21 Remuneration—value of remuneration comprising fringe benefits

The value of remuneration comprising a fringe benefit is to be determined in accordance with the formula—

$$TV \times \frac{1}{1 - \text{FBT rate}}$$

where—

TV is the value that would be the taxable value of the benefit as a fringe benefit for the purposes of the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth;

FBT rate is the rate of fringe benefits tax imposed by the Fringe Benefits Tax Assessment Act 1986 of the Commonwealth that applies when the liability to pay premium arises.

22 Remuneration—motor vehicle allowance

(1) If the total motor vehicle allowance paid or payable to a worker in respect of a financial year—

(a) does not exceed the exempt component, the motor vehicle allowance is not remuneration; and

(b) exceeds the exempt component (if any), only that amount that exceeds the exempt component of the motor vehicle allowance is included as remuneration.

(2) The ***exempt component*** of a motor vehicle allowance paid or payable in respect of a financial year is calculated in accordance with the formula—

$$E = K \times R$$

where—

E is the exempt component;

K is the number of business kilometres travelled during the financial year;

R is the exempt rate.

(3) Unless subclause (5) applies to an employer, the ***number of business kilometres travelled during the financial year*** ("K") is to be determined in accordance with one of the following methods selected and used by an employer—

(a) the continuous recording method or the averaging method under Part 5 of Schedule 1 to the **Payroll Tax Act 2007**;

(b) a method approved by the Commissioner of State Revenue under section 29(6) of the **Payroll Tax Act 2007**.

(4) The Authority may approve the use, by an employer or class of employer, of another method of determining the number of business kilometres travelled during the financial year (including the use of an estimate).

(5) If the Authority approves a method under subclause (4)—

(a) the approved method must be published in the Government Gazette; and

(b) the employer or class of employers referred to in the approval must determine the number of business kilometres travelled during the financial year in accordance with that approved method.

(6) For the purposes of this clause, the ***exempt rate*** for the financial year concerned is—

Sch. 1 cl. 22(6)(a) amended by No. 44/2014 s. 24(37).

(a) the rate prescribed by the regulations under section 28.25 of the Income Tax Assessment Act 1997 of the Commonwealth for calculating a deduction for car expenses for a large car using the "cents per kilometre method" in the financial year immediately preceding the financial year in which the allowance is paid or payable; or

(b) if no rate referred to in paragraph (a) is prescribed, the rate prescribed by the regulations under section 29(7)(b) of the **Payroll Tax Act 2007**.

23 Remuneration—accommodation allowance

(1) If the accommodation allowance paid or payable to a worker in respect of a night's absence from the worker's usual place of residence exceeds the exempt rate, remuneration includes that allowance only to the extent that it exceeds the exempt rate.

(2) For the purposes of this clause, the ***exempt rate*** for the financial year concerned is—

(a) the total reasonable amount for daily travel allowance expenses using the lowest capital city for the lowest salary band for the financial year determined by the

Commissioner of Taxation of the Commonwealth; or

(b) if no determination referred to in paragraph (a) is in force, the rate prescribed by the regulations under section 30(3)(b) of the **Payroll Tax Act 2007**.

24 Rateable remuneration

(1) ***Rateable remuneration*** means remuneration that is paid or payable by an employer on or after 1 July 2014 in respect of services performed or rendered on or after 1 July 2014 by a worker whose employment is connected with the State of Victoria within the meaning of section 37.

(2) If remuneration for a financial year includes a fringe benefit, the amount of the fringe benefit paid or payable in respect of that year that is rateable remuneration is the amount of the fringe benefit paid or payable in respect of the period ending on 31 March in that financial year and beginning on the preceding 1 April.

(3) Remuneration that is superannuation benefits that are not paid in respect of services performed or rendered by a worker in a particular month is rateable remuneration as if it were paid or payable in respect of services performed or rendered during the month in which it is paid or became payable.

(4) Nothing in subclause (3) applies to render remuneration that is superannuation benefits paid or payable in respect of services performed or rendered by a worker before 1 July 2014 to be rateable remuneration.

Part 3—Other interpretation provisions

Section 4(5)

25 Significant contributing factor

In determining whether a worker's employment was a ***significant contributing factor*** to an injury, the following must be taken into account—

(a) the duration of the worker's current employment;

(b) the nature of the work performed;

(c) the particular tasks of the employment;

(d) the probable development of the injury occurring if that employment had not taken place;

(e) the existence of any hereditary risks;

(f) the life style of the worker;

(g) the activities of the worker outside the workplace.

26 Member of a family

(1) ***Member of a family***, in relation to a person, means—

(a) a partner, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grandson, granddaughter, step-son, step-daughter, brother, sister, half-brother and half-sister of the person; and

(b) any person who stands in the place of a parent in relation to the person.

(2) ***Member of a worker's family***, ***member of a share farmer's family*** and ***member of an employer's family*** have the same meaning as ***member of a family*** has in subclause (1).

27 Superannuation benefit

(1) ***Superannuation benefit*** means money paid or payable by an employer in respect of a worker—

(a) to or as a superannuation fund within the meaning of the Superannuation Industry (Supervision) Act 1993 of the Commonwealth; or

(b) as a superannuation guarantee charge within the meaning of the Superannuation Guarantee (Administration) Act 1992 of the Commonwealth; or

(c) to or as any other form of superannuation, provident or retirement fund or scheme including—

(i) a Superannuation Holding Accounts Special Account within the meaning of the Small Superannuation Accounts Act 1995 of the Commonwealth; and

(ii) a retirement savings account within the meaning of the Retirement Savings Accounts Act 1997 of the Commonwealth; and

(iii) a wholly or partly unfunded fund or scheme.

(2) A reference in subclause (1) to a worker includes a reference to any person to whom, by virtue of the definition of ***remuneration***, an amount paid or payable in the circumstances referred to in that definition constitutes remuneration.

(3) For the purposes of subclause (1)(c), a superannuation, provident or retirement fund or scheme is unfunded to the extent that money paid or payable by an employer in respect of a worker covered by the fund or scheme is not paid or

payable during the worker's period of employment with the employer.

Note

See also section 446.

Schedule 2—Pre-injury average weekly earnings

Section 153(5)

Column 1 *Item*	*Column 2* *Class of worker at time of injury*	*Column 3* *Calculation of pre-injury average weekly earnings*
1	Worker who is— (a) under the age of 21 years; or (b) an apprentice; or (c) working under a contract of employment under which the worker is required to undergo training, instruction or examination in order to become qualified to carry on an occupation— and who, but for the injury, would have been entitled to increments in earnings at certain ages or stages during the course of employment to become qualified.	(a) Until the worker attains the age or stage or, but for the injury, would have attained the age or stage at which the highest rate is payable—the worker's pre-injury average weekly earnings are the earnings that the worker would have been entitled to receive in respect of a relevant week if the worker had not sustained the injury and had continued in the employment; (b) On and after the worker attains the age or stage or, but for the injury, would have attained the age or stage at which the highest rate is payable—the worker's pre-injury average weekly earnings are to be calculated as if, at the time of the injury, the worker were being paid at the highest rate applicable to that age or stage;

Column 1 *Item*	*Column 2* *Class of worker at time of injury*	*Column 3* *Calculation of pre-injury average weekly earnings*
		(c) If (a) or (b) applies but there is no rate applicable to a worker who has attained the age of 21 years, the worker's pre-injury average weekly earnings are twice the State average weekly earnings.
2	Worker employed by 2 or more employers and who works for one of those employers for at least the ordinary hours fixed in any applicable industrial award.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 1 of Part 5 with reference to the work for the employer for whom the worker works for at least the ordinary hours fixed in the industrial award.
3	Worker employed by 2 or more employers who works for one of those employers for at least the prescribed number of hours each week and to whom no industrial award is applicable.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 1 of Part 5 with reference to the work for the employer for whom the worker works for at least the prescribed number of hours.
4	Worker employed by 2 or more employers for at least the ordinary hours fixed in any applicable industrial award.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 1 of Part 5 with reference to the work which yields the higher weekly ordinary earnings.

Column 1 *Item*	*Column 2* *Class of worker at time of injury*	*Column 3* *Calculation of pre-injury average weekly earnings*
5	Worker employed by 2 or more employers who works for one of those employers for at least the ordinary hours fixed in an applicable industrial award and works for another of those employers for at least the prescribed number of hours each week.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 1 of Part 5 with reference to the work which yields the higher weekly ordinary earnings.
6	Worker employed by 2 or more employers for at least the prescribed number of hours each week and to whom no industrial award is applicable.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 1 of Part 5 with reference to the work which yields the higher weekly ordinary earnings.
7	Worker employed by 2 or more employers who sustains an injury that results in an incapacity to work for one or more of those employers but not for all those employers.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 1 of Part 5 with reference to earnings from work with all the employers.
8	Worker employed by 2 or more employers in circumstances other than those described in the preceding provisions of this Schedule.	The worker's pre-injury average weekly earnings are the worker's average ordinary earnings expressed as an amount per hour for all work carried out by the worker for all employers multiplied by— (a) the prescribed number of hours per week; or (b) the total of the worker's ordinary hours per week— whichever is the lesser.

Column 1 *Item*	*Column 2* *Class of worker at time of injury*	*Column 3* *Calculation of pre-injury average weekly earnings*
9	Worker who, during the period of 52 weeks immediately before the injury, receives advice in writing from the employer that the worker is to be promoted or otherwise appointed to a new position (otherwise than on a temporary basis) with the effect that the worker's ordinary earnings will be increased but has not been so promoted or appointed.	The worker's pre-injury average weekly earnings are to be calculated in accordance with Division 1 of Part 5 with reference to the amount that is the average of the earnings expressed as a weekly sum that the worker could reasonably be expected to have earned after the promotion or appointment had taken effect as if the promotion or appointment had taken effect 52 weeks before the injury.
10	Full-time student at a post-secondary education institution within the meaning of the **Education and Training Reform Act 2006**.	(a) Until the worker, but for the injury, would have completed the course as a full-time student, pre-injury average weekly earnings are to be calculated in accordance with Division 1 of Part 5; (b) As from the time the worker, but for the injury, would have completed the course in which the worker was a full-time student, pre-injury average weekly earnings are twice the State average weekly earnings.

Column 1 *Item*	*Column 2* *Class of worker at time of injury*	*Column 3* *Calculation of pre-injury average weekly earnings*
11	Full-time student at primary or secondary school.	(a) Until the worker, but for the injury, would have completed secondary school, pre-injury average weekly earnings are to be calculated in accordance with Division 1 of Part 5; (b) As from the time the worker, but for the injury, would have completed secondary school, pre-injury average weekly earnings are $1210.
12	Worker (not being a worker to whom another item of this Schedule applies) who is a student at a school within the meaning of Part 5.4 of the **Education and Training Reform Act 2006** and is employed under a work experience arrangement or a structured workplace learning arrangement under that Part.	The worker's pre-injury average weekly earnings are the amount deemed by operation of section 5.4.9(6) of the **Education and Training Reform Act 2006**.
13	Worker (not being a worker to whom another item of this Schedule applies) who is a post-secondary student within the meaning of Part 5.4 of the **Education and Training Reform Act 2006** and is employed under a practical placement agreement under that Part.	The worker's pre-injury average weekly earnings are the amount deemed by operation of section 5.4.16(5) of the **Education and Training Reform Act 2006**.

Schedule 3—Modification to degrees of impairment for the purposes of Division 5 of Part 5

Section 210

Column 1 *Whole person impairment as assessed in accordance with Chapter 3 of the A.M.A Guides*	*Column 2* *Modified whole person impairment*
5	10.00
6	10.20
7	10.40
8	10.60
9	10.80
10	11.00
11	11.95
12	12.90
13	13.85
14	14.80
15	15.75
16	16.70
17	17.65
18	18.60
19	19.55
20	20.50
21	21.45
22	22.40
23	23.35
24	24.30
25	25.25
26	26.20

Column 1	*Column 2*
Whole person impairment as assessed in accordance with Chapter 3 of the A.M.A Guides	*Modified whole person impairment*
27	27.15
28	28.10
29	29.05

Sch. 4 amended by Nos 44/2014 s. 24(38), 73/2016 s. 22.

Schedule 4—No Disadvantage—Compensation Table

Section 221

TABLE

Injury	***Total Losses**—Minimum Compensation Payable for Total Loss* *$*
Total loss of the sight of both eyes	273 640
Total loss of the sight of an only eye	273 640
Loss of both hands	273 640
Loss of both feet	273 640
Loss of a hand and a foot	273 640
Total loss of the right arm or of the greater part of the right arm	218 920
Total loss of the left arm or of the greater part of the left arm	205 240
Total loss of the right hand or of five fingers of the right hand, or of the lower part of the right arm	191 520
Total loss of the left hand or of five fingers of the left hand, or of the lower part of the left arm	177 890
Total loss of a leg	205 240
Total loss of a foot	177 890
Total loss of the lower part of the leg	191 520
Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	205 240
Total loss of hearing	177 890
Total loss of the sight of one eye	109 430
Loss of binocular vision	109 430

Injury	***Total Losses**—Minimum Compensation Payable for Total Loss* *$*
Loss of eyeball (in addition to compensation for loss of sight of an eye)	60 210
Total loss of power of speech	164 190
Total loss of sense of taste or smell	46 530
Total loss of senses of both taste and smell	93 050
Total loss of male sexual organs	128 630
Total loss of penis	128 630
Total loss of one testicle	27 330
Total loss of two testicles or an only testicle	128 630
Total loss of female sexual organs	128 630
Total loss of both breasts	128 630
Total loss of one breast	82 080
Total loss of the thumb of the right hand	82 080
Total loss of the thumb of the left hand	71 150
Total loss of the forefinger of the right hand	57 490
Total loss of the forefinger of the left hand	49 240
Total loss of two joints of the forefinger of the right hand	43 780
Total loss of two joints of the forefinger of the left hand	32 830
Total loss of a joint of the thumb	43 780
Total loss of the first joint of the forefinger of the right hand	27 330
Total loss of the first joint of the forefinger of the left hand	24 640
Total loss of the first joint of the middle or little or ring finger of either hand	16 400
Total loss of the middle finger of either hand	32 830

Injury	***Total Losses**—Minimum Compensation Payable for Total Loss* *$*
Total loss of the little or ring finger of either hand	30 120
Total loss of two joints of the middle finger of either hand	27 330
Total loss of two joints of the little or ring finger of either hand	24 640
Total loss of the great toe of either foot	60 210
Total loss of a joint of the great toe of either foot	27 330
Total loss of any other toe	16 400
Total loss of a joint of any other toe	5 470
Quadriplegia	273 640
Paraplegia	273 640
Total impairment of the spine	273 640

For the purposes of this Table—

(a) the total loss of a limb, hand, foot, finger, thumb, toe or joint or any part thereof is deemed to include the permanent total loss of the use of such limb, hand, foot, finger, thumb, toe, joint or part;

(b) where a worker habitually uses the left hand and arm to perform work usually performed by a worker with the right hand and arm, the compensation payable for the loss of such left arm or the greater part of the arm or for the total loss of the left hand or of five fingers thereof or of the lower part of that arm or of a finger or part of a finger of the left hand is such amount as would have been payable for a similar loss in respect of the right arm or the part or parts thereof, but in any such case the compensation for the loss

of the right arm or the greater part of that arm or for the total loss of the right hand or of five fingers thereof or of the lower part of that arm or of a finger or part of a finger of the right hand is such amount as would have been payable for a similar loss in respect of the left arm or the part or parts thereof if the worker did not habitually use the left hand and arm to perform work usually performed by a worker with the right hand and arm.

Note

Amounts are indexed to the year in which the injury occurred.

Schedule 5—Table to be used to determine settlement amounts under section 246

Section 246

Column 1 *Age*	*Column 2*
56	67
57	65
58	61
59	56
60	50
61	43
62	35
63	27
64	19
65	0

Schedule 6—Self-insurers—Pre-application eligibility fee

Section 375

1 Pre-application eligibility fee

(1) The fee that must accompany an application under section 375(1) is $846 (or $931 inclusive of GST) as varied in accordance with subclause (2).

(2) An amount referred to in subclause (1) must be varied, in respect of the financial year beginning on 1 July 2014 and each subsequent financial year, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is an amount specified in subclause (1) or, if that amount has been varied in accordance with this clause, that amount as last so varied;

B is the all groups consumer price index for Melbourne in original terms published by the Australian Bureau of Statistics as at 15 June in the preceding financial year in respect of the most recent reference period ending on or before 31 December in that financial year;

C is the all groups consumer price index for Melbourne in original terms for the corresponding reference period one year earlier than the reference period referred to in B published by the Australian Bureau of Statistics as at 15 June referred to in B.

Schedule 7—Application fee for approval as self-insurer

Section 376

1 Application fee

For the purposes of section 376(4) and subject to section 378, the fee that must accompany an application for approval as a self-insurer is the lesser of—

(a) an amount equal to 0·033 per cent of the assessment remuneration of the applicant determined under clause 2;

(b) the fee limit determined under clause 3.

2 Assessment remuneration

(1) For the purposes of clause 1(a) and subject to subclause (2), ***assessment remuneration*** of an employer means the sum of—

$$\frac{A}{B} \times 12$$

where—

A is the total relevant remuneration which was paid or payable during the preceding year to workers employed by the employer and its eligible subsidiaries;

B is the number of months in the preceding year during which the remuneration referred to in the definition of **A** was paid or payable by the employer.

(2) If the employer and its eligible subsidiaries have paid no remuneration during the preceding year, the ***assessment remuneration*** means the relevant remuneration estimated by the Authority under

section 377 as payable by the employer and its eligible subsidiaries during the forthcoming year.

(3) In this clause—

forthcoming year means the next financial year following the date on which the application is made;

preceding year means the most recent financial year preceding the date on which the application is made;

relevant remuneration has the same meaning it has in section 372.

3 Fee limit

(1) For the purposes of clause 1(b), the fee limit for an application for approval as a self-insurer is $55 330 or that amount as varied in accordance with subclauses (2), (3) and (4) as at the date on which the application is made.

(2) The fee limit must be varied, in respect of the financial year beginning on 1 July 2014 and each subsequent financial year, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount specified in subclause (1) or, if that amount has been varied in accordance with this clause, that amount as last so varied;

B is the average weekly total earnings of all employees in Victoria in original terms for the most recent reference period in the preceding financial year published by the Australian Bureau of Statistics as at 15 June

immediately preceding the date on which the variation is made;

C is the average weekly total earnings of all employees in Victoria in original terms for the corresponding reference period in the financial year preceding the financial year referred to in B published by the Australian Bureau of Statistics as at 15 June immediately preceding the date on which the variation is made.

(3) If the variation of the fee limit by operation of subclause (2) has the effect of reducing the amount of the fee limit—

(a) the variation is deemed not to have taken effect, except for the purposes of the application of this subclause; and

(b) when the fee limit is varied and increased by operation of subclause (2) in respect of the next or a subsequent financial year, that variation has effect as an increase only to the extent (if any) to which the amount of the increase exceeds the amount of the reduction in respect of a preceding financial year, or that part of such a reduction that has not been set off against a previous increase.

(4) The amount produced by a variation of the fee limit must be calculated to the nearest whole $10.

Schedule 8—Persons to whom document may be produced or information communicated or divulged

Section 595

1 The Secretary to the Department of State Development, Business and Innovation.

2 The Secretary to the Department of Environment and Primary Industries.

3 The Secretary to the Department of Transport and Planning.

S. 8 item 3 amended by Nos 49/2019 s. 186(Sch. 4 item 46.3), 25/2025 s. 106(Sch. 1 item 52.3).

4 The Secretary to the Department of Treasury and Finance.

5 The Coroners Court.

6 The Public Advocate.

7 The Commissioner of State Revenue.

8 The Transport Accident Commission.

9 A person who has responsibility for the administration of a welfare, benefit or compensation scheme of a State or Territory or the Commonwealth.

10 A corresponding authority.

11 A Department or public entity within the meaning of the **Public Administration Act 2004**.

12 The National Occupational Health and Safety Commission.

13 The Australian Bureau of Statistics.

14 The Board or committee of management (by whatever name called) of a statutory superannuation scheme within the meaning of the **Superannuation (Portability) Act 1989**.

15 Any special commission (within the meaning of the **Evidence (Commissions) Act 1982**) where—

(a) the Authority has received a request in writing for information from the special commission; and

(b) the Minister has given written approval to the Authority of the communication of that information; and

(c) the Authority has given to that person written approval of the communication of that information.

16 A person, committee or body approved by the Governor in Council.

17 A committee of the Parliament.

18 CPA Australia.

19 A National Board within the meaning of the Health Practitioner Regulation National Law.

Sch. 8 item 20 substituted by No. 17/2014 s. 160(Sch. 2 item 113.3).

20 The Victorian Legal Services Board.

Sch. 8 item 21 substituted by No. 17/2014 s. 160(Sch. 2 item 113.3).

21 The Victorian Legal Services Commissioner.

Sch. 8 item 22 amended by Nos 44/2014 s. 24(39), 17/2014 s. 160(Sch. 2 item 113.3).

22 The Victorian Bar within the meaning of the **Legal Profession Uniform Law Application Act 2014**.

23 CoINVEST Limited A.C.N. 078 0040985 or its successors.

* * * * *

Sch. 9 amended by No. 44/2014 s. 24(40), repealed by No. 67/2013 s. 650.

Endnotes

1 General information

See www.legislation.vic.gov.au for Victorian Bills, Acts and current authorised versions of legislation and up-to-date legislative information.

Minister's second reading speech—

Legislative Assembly: 19 September 2013

Legislative Council: 17 October 2013

The long title for the Bill for this Act was "A Bill for an Act to re-enact with amendments certain provisions of the **Accident Compensation Act 1985** and the **Accident Compensation (WorkCover Insurance) Act 1993**, to provide for the registration of employers and the payment of WorkCover premiums, to amend the **Accident Compensation Act 1985**, to repeal the **Accident Compensation (WorkCover Insurance) Act 1993**, to make consequential amendments to certain other Acts and for other purposes."

The **Workplace Injury Rehabilitation and Compensation Act 2013** was assented to on 12 November 2013 and came into operation as follows:

Sections 630(3) and 641 on 5 April 2010: section 2(3); section 647 on 1 July 2010: section 2(4); sections 628(1) and 643 on 20 October 2010: section 2(5); section 626(7) on 1 July 2011: section 2(5A); section 630(6) on 1 July 2012: section 2(6); sections 626(1)–(6), 628(2)–(4), 629, 630(1)(2)(4)(5)(10)(11), 631–633, 637(4), 642 on 13 November 2013: section 2(2); sections 1–479, 482–625, 627, 630(7)–(9), 634–636, 637(1)–(3), 638–640, 644–646, 648–650 on 1 July 2014: section 2(1); sections 480 and 481 repealed on 1 July 2014 by No. 44/2014 section 18.

INTERPRETATION OF LEGISLATION ACT 1984 (ILA)

Style changes

Section 54A of the ILA authorises the making of the style changes set out in Schedule 1 to that Act.

References to ILA s. 39B

Sidenotes which cite ILA s. 39B refer to section 39B of the ILA which provides that where an undivided section or clause of a Schedule is amended by the insertion of one or more subsections or subclauses, the original section or clause becomes subsection or subclause (1) and is amended by the insertion of the expression "(1)" at the beginning of the original section or clause.

Interpretation

As from 1 January 2001, amendments to section 36 of the ILA have the following effects:

- **Headings**

All headings included in an Act which is passed on or after 1 January 2001 form part of that Act. Any heading inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. This includes headings to Parts, Divisions or Subdivisions in a Schedule; sections; clauses; items; tables; columns; examples; diagrams; notes or forms. See section 36(1A)(2A).

- **Examples, diagrams or notes**

All examples, diagrams or notes included in an Act which is passed on or after 1 January 2001 form part of that Act. Any examples, diagrams or notes inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, form part of that Act. See section 36(3A).

- **Punctuation**

All punctuation included in an Act which is passed on or after 1 January 2001 forms part of that Act. Any punctuation inserted in an Act which was passed before 1 January 2001, by an Act passed on or after 1 January 2001, forms part of that Act. See section 36(3B).

- **Provision numbers**

All provision numbers included in an Act form part of that Act, whether inserted in the Act before, on or after 1 January 2001. Provision numbers include section numbers, subsection numbers, paragraphs and subparagraphs. See section 36(3C).

- **Location of "legislative items"**

A "legislative item" is a penalty, an example or a note. As from 13 October 2004, a legislative item relating to a provision of an Act is taken to be at the foot of that provision even if it is preceded or followed by another legislative item that relates to that provision. For example, if a penalty at the foot of a provision is followed by a note, both of these legislative items will be regarded as being at the foot of that provision. See section 36B.

- **Other material**

Any explanatory memorandum, table of provisions, endnotes, index and other material printed after the Endnotes does not form part of an Act. See section 36(3)(3D)(3E).

2 Table of Amendments

This publication incorporates amendments made to the **Workplace Injury Rehabilitation and Compensation Act 2013** by Acts and subordinate instruments.

Workplace Injury Rehabilitation and Compensation Act 2013 No. 67/2013

Assent Date:	12.11.13
Commencement Date:	Ss 621, 650 on 1.7.14: s. 2(1); s. 623O inserted on 25.4.20 by No. 11/2020 s. 60: s. 2 (as amended by No. 27/2020 s. 45)
Note:	S. 650 repealed Pt 14 (ss 624–650), Sch. 9 on 1.7.15; s. 621(6) provided that s. 621 expired on 1.7.16; s. 623O repealed Pt 14 (ss 623N, 623O) on 26.4.21
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Legal Profession Uniform Law Application Act 2014, No. 17/2014

Assent Date:	25.3.14
Commencement Date:	S. 160(Sch. 2 item 113) on 1.7.15: Special Gazette (No. 151) 16.6.15 p. 1
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Mental Health Act 2014 No. 26/2014

Assent Date:	8.4.14
Commencement Date:	S. 455(Sch. item 34) on 1.7.14: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Victoria Police Amendment (Consequential and Other Matters) Act 2014, No. 37/2014

Assent Date:	3.6.14
Commencement Date:	S. 10(Sch. item 188) on 1.7.14: Special Gazette (No. 200) 24.6.14 p. 2
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Treasury Legislation and Other Acts Amendment Act 2014, No. 44/2014

Assent Date:	27.6.14
Commencement Date:	Ss 6–16, 20–24 on 12.11.13: s. 2(2); ss 17–19, 25 on 1.7.14: s. 2(6)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Road Safety Amendment Act 2014, No. 49/2014

Assent Date:	1.7.14
Commencement Date:	Ss 55–59 on 1.8.15: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Privacy and Data Protection Act 2014, No. 60/2014

Assent Date:	2.9.14
Commencement Date:	S. 140(Sch. 3 item 53) on 17.9.14: Special Gazette (No. 317) 16.9.14 p. 1
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Courts Legislation Miscellaneous Amendments Act 2014, No. 62/2014

Assent Date:	9.9.14
Commencement Date:	S. 24 on 10.11.14: Special Gazette (No. 364) 14.10.14 p. 1
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Inquiries Act 2014, No. 67/2014

Assent Date:	23.9.14
Commencement Date:	S. 147(Sch. 2 item 46) on 15.10.14: Special Gazette (No. 364) 14.10.14 p. 2
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Education and Training Reform Amendment (Child Safe Schools) Act 2015, No. 7/2015

Assent Date:	21.4.15
Commencement Date:	S. 15 on 22.4.15: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Statute Law Revision Act 2015, No. 21/2015

Assent Date:	16.6.15
Commencement Date:	S. 3(Sch. 1 item 68) on 1.8.15: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Integrity and Accountability Legislation Amendment (A Stronger System) Act 2016, No. 30/2016

Assent Date:	31.5.16
Commencement Date:	S. 89(2) on 1.7.16: Special Gazette (No. 194) 21.6.16 p. 1; s. 89(1) on 1.12.16: Special Gazette (No. 194) 21.6.16 p. 1
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Treasury and Finance Legislation Amendment Act 2016, No. 41/2016

Assent Date:	28.6.16
Commencement Date:	S. 3 on 1.7.14: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Compensation Legislation Amendment Act 2016, No. 73/2016

Assent Date:	13.12.16
Commencement Date:	S. 22 on 1.7.14: s. 2(2); ss 12, 16–18 on 14.12.16: s. 2(1); ss 11(2), 13, 14, 20 on 1.7.17: s. 2(3); ss 11(1), 15, 19, 21 on 11.10.17: s. 2(5)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

WorkSafe Legislation Amendment Act 2017, No. 48/2017

Assent Date:	26.9.17
Commencement Date:	S. 27 on 1.7.14: s. 2(2); ss 28–40 on 27.9.17: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Commercial Passenger Vehicle Industry Amendment (Further Reforms) Act 2017, No. 63/2017

Assent Date:	19.12.17
Commencement Date:	S. 21(Sch. 1 item 12) on 2.7.18: Special Gazette (No. 248) 29.5.18 p. 1
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Compensation Legislation Amendment Act 2018, No. 1/2018

Assent Date:	13.2.18
Commencement Date:	Ss 7, 8 on 1.7.18: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Oaths and Affirmations Act 2018, No. 6/2018

Assent Date:	27.2.18
Commencement Date:	S. 68(Sch. 2 item 140) on 1.3.19: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Treasury and Finance Legislation Amendment Act 2018, No. 49/2018

Assent Date:	25.9.18
Commencement Date:	Ss 31–38 on 26.9.18: s. 2
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Guardianship and Administration Act 2019, No. 13/2019

Assent Date:	4.6.19
Commencement Date:	S. 221(Sch. 1 item 62) on 1.3.20: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Transport Legislation Amendment Act 2019, No. 49/2019

Assent Date:	3.12.19
Commencement Date:	S. 186(Sch. 4 item 46) on 1.1.20: Special Gazette (No. 514) 10.12.19 p. 1
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Workplace Safety Legislation Amendment (Workplace Manslaughter and Other Matters) Act 2019, No. 50/2019

Assent Date:	3.12.19
Commencement Date:	Ss 11–14 on 1.1.20: Special Gazette (No. 537) 17.12.19 p. 3
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Local Government Act 2020, No. 9/2020

Assent Date:	24.3.20
Commencement Date:	S. 390(Sch. 1 items 113.2–113.5) on 6.4.20: Special Gazette (No. 150) 24.3.20 p. 1; s. 390(Sch. 1 item 113.1) on 24.10.20: s. 2(3)(f)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

COVID-19 Omnibus (Emergency Measures) Act 2020, No. 11/2020

Assent Date:	24.4.20
Commencement Date:	S. 60 on 25.4.20: s. 2
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

COVID-19 Omnibus (Emergency Measures) and Other Acts Amendment Act 2020, No. 27/2020

Assent Date:	20.10.20
Commencement Date:	Ss 44, 45 on 21.10.20: s. 2
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Justice Legislation Amendment (Supporting Victims and Other Matters) Act 2020, No. 35/2020

Assent Date:	17.11.20
Commencement Date:	S. 53 on 18.11.20: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Workplace Injury Rehabilitation and Compensation Amendment (Provisional Payments) Act 2021, No. 5/2021

Assent Date:	23.2.21
Commencement Date:	Ss 4–7(1), 8–31 on 1.7.21: Special Gazette (No. 293) 16.6.21 p. 1; s. 7(2) on 1.1.22: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Workplace Injury Rehabilitation and Compensation Amendment (Arbitration) Act 2021, No. 15/2021

Assent Date:	11.5.21
Commencement Date:	Ss 4–46 on 1.9.22: Special Gazette (No. 422) 23.8.22 p. 1
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Occupational Health and Safety and Other Legislation Amendment Act 2021, No. 36/2021

Assent Date:	21.9.21
Commencement Date:	Ss 27, 28, 35 on 22.9.21: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Social Services Regulation Act 2021, No. 37/2021 (as amended by No. 40/2022)

Assent Date:	21.9.21
Commencement Date:	S. 401 on 1.7.24: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Workplace Safety Legislation and Other Matters Amendment Act 2022, No. 10/2022

Assent Date:	16.3.22
Commencement Date:	Ss 79–86 on 17.3.22: s. 2(2); ss 56–78 on 1.7.22: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Local Government Legislation Amendment (Rating and Other Matters) Act 2022, No. 30/2022

Assent Date:	9.8.22
Commencement Date:	Ss 44, 45 on 10.8.22: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Mental Health and Wellbeing Act 2022, No. 39/2022

Assent Date:	6.9.22
Commencement Date:	S. 884 on 1.9.23: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Disability and Social Services Regulation Amendment Act 2023, No. 9/2023

Assent Date:	23.5.23
Commencement Date:	S. 264 on 1.7.24: s. 2(3)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Workplace Injury Rehabilitation and Compensation Amendment (WorkCover Scheme Modernisation) Act 2024, No. 8/2024

Assent Date:	13.3.24
Commencement Date:	Ss 4–26 on 31.3.24: s. 2(2)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Justice Legislation Amendment (Integrity, Defamation and Other Matters) Act 2024, No. 31/2024

Assent Date:	10.9.24
Commencement Date:	S. 113(Sch. 1 item 44) on 10.2.25: Special Gazette (No. 648) 26.11.24 p. 1
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Roads and Ports Legislation Amendment (Road Safety and Other Matters) Act 2025, No. 25/2025

Assent Date:	5.8.25
Commencement Date:	S. 106(Sch.1 item 52) on 6.8.25: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Workplace Injury Rehabilitation and Compensation Amendment Act 2025, No. 27/2025

Assent Date:	5.8.25
Commencement Date:	Ss 4–34 on 6.8.25: s. 2(1); ss 35, 36 on 1.11.25: Special Gazette (No. 588) 28.10.25 p. 1
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

Regulatory Legislation Amendment (Reform) Act 2026, No. 15/2026

Assent Date:	14.4.26
Commencement Date:	S. 53 on 15.4.26: s. 2(1)
Current State:	This information relates only to the provision/s amending the **Workplace Injury Rehabilitation and Compensation Act 2013**

3 Explanatory details

[1] S. 291(2): The amendment proposed by section 26 of the **Workplace Injury Rehabilitation and Compensation Amendment (Arbitration) Act 2021**, No. 15/2021 is not included in this publication as the words "ACCS may, at his or her discretion," do not appear in section 291(2) due to the earlier amendment by the **Workplace Safety Legislation and Other Matters Amendment Act 2022**, No. 10/2022 s. 81.

Section 26 reads as follows:

> **26 Power to request or release documents etc.**
>
> In section 291(2) of the Principal Act, for "ACCS may, at his or her discretion," **substitute** "ACCS has the discretion to".

[2] Pt 13 Div. 1: See Government Gazette of 26 June 2025 pages 1353–1360 for Notice of Indexed Benefit Levels and Other Amounts.