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Version No. 160
Accident Compensation Act 1985
No. 10191 of 1985

Version incorporating amendments as at 1 July 2010

An Act to establish the Accident Compensation Commission, to constitute an Accident Compensation Tribunal, to establish the Victorian Accident Rehabilitation Council, to provide for the payment of compensation, to impose a levy in respect of accident compensation, to provide for the assessment and collection of the levy, to amend the **Workers Compensation Act 1958**, the **Pay-roll Tax Act 1971**, the **Motor Accidents Act 1973**, the **Motor Car Act 1958** and certain other Acts and for other purposes.

BE IT ENACTED by the Queen's Most Excellent Majesty by and with the advice and consent of the Legislative Council and the Legislative Assembly of Victoria in this present Parliament assembled and by the authority of the same as follows (that is to say):

PART I—PRELIMINARY

1 Short title

This Act may be cited as the **Accident Compensation Act 1985**.

2 Commencement

- (1) Subject to this section, this Act shall be deemed to have come into operation on the appointed day.
- (2) Part VII shall come into operation on the day fixed by proclamation of the Governor in Council published in the Government Gazette.

- (3) Section 91 shall come into operation on a day to be fixed by proclamation of the Governor in Council published in the Government Gazette.
- (4) Section 264(4) shall be deemed to have come into operation on 30 June 1985.
- (5) Parts I, II and VI and sections 272 and 275 come into operation on the day on which this Act receives the Royal Assent.
- (6) The item in Schedule Two which amends section 95 of the **Stamps Act 1958** shall be deemed to have come into operation on 1 January 1985.
- (7) The item in Schedule Two which amends section 97 of the **Stamps Act 1958** shall be deemed to have come into operation on 1 August 1985.
- (8) The items in Schedule Two which amend sections 98 and 99 of the **Stamps Act 1958** shall be deemed to have come into operation on 30 June 1985.

S. 3
amended by
No. 83/1987
s. 4,
substituted by
No. 67/1992
s. 4.

S. 3(b)
amended by
No. 50/1994
s. 4.

3 Objects of Act

The objects of this Act are—

- (a) to reduce the incidence of accidents and diseases in the workplace;
- (b) to make provision for the effective occupational rehabilitation of injured workers and their early return to work;
- (c) to increase the provision of suitable employment to workers who are injured to enable their early return to work;
- (d) to provide adequate and just compensation to injured workers;

- (e) to ensure workers compensation costs are contained so as to minimise the burden on Victorian businesses;
- (f) to establish incentives that are conducive to efficiency and discourage abuse;
- (g) to enhance flexibility in the system and allow adaptation to the particular needs of disparate work situations;
- (h) to establish and maintain a fully-funded scheme;
- (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.

4 Application of Act

- (1) Despite anything to the contrary in this Act—

S. 4
amended by
No. 48/1986
s. 3,
substituted by
No. 83/1987
s. 5.

- (a) this Act, other than Divisions 6A and 6B of Part IV, applies to and in relation to an injury to a worker on or after the appointed day arising out of or in the course of employment on or after the appointed day; and
- (b) this Act, other than Divisions 6A and 6B of Part IV, does not apply to or in relation to an injury to a worker—
 - (i) before the appointed day arising out of or in the course of employment before the appointed day; or
 - (ii) after the appointed day arising out of or in the course of employment solely before the appointed day; and

S. 4(1)(a)
amended by
No. 13/1988
s. 7(a).

S. 4(1)(b)
amended by
No. 13/1988
s. 7(a).

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s. 4A

S. 4(1)(c)
amended by
Nos 13/1988
s. 7(a),
18/1991
s. 12(1)(a).

- (c) Divisions 6A and 6B of Part IV apply in relation to an injury, disease or industrial deafness caused to or suffered by a worker before, on or after the appointed day which has arisen out of or in the course of any employment or is due to the nature of any employment in which the worker was employed at any time.
- (2) Subsection (1) does not affect the application of Part I or III where it is necessary for those Parts to apply to or in respect of an injury to a worker before the appointed day arising out of or in the course of employment.
- (3) Nothing in this Act entitles a worker to compensation in respect of a disease due to the nature of any employment in which the worker was employed unless the worker has been employed in employment of that nature on or after the appointed day.

S. 4A
inserted by
No. 13/1988
s. 4.

4A Interpretation

S. 4A(1)
amended by
No. 64/1989
s. 4(1).

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

S. 4A(2)
amended by
No. 64/1989
s. 4(2).

- (2) Subsection (1) applies irrespective of the date (whether before or after the commencement of section 4 of the **Accident Compensation (Further Amendment) Act 1988** and whether before or after the commencement of any other Act amending this Act, whether enacted before or after the first-mentioned Act)—

- (a) on which a worker commences or commenced to receive weekly payments; and
- (b) of any claim, notice or application.

* * * * *

S. 4A(3)
repealed by
No. 67/1992
s. 5.

- (4) Notwithstanding any provision of the **Accident Compensation (Amendment) Act 1987**, Part IV of this Act as in force prior to the commencement of the relevant provision of that Act applies to and only to the hearing and determination of any application lodged with the Tribunal—
 - (a) before that commencement; or
 - (b) after that commencement, in respect of or in relation to a recommendation made before that commencement; or
 - (c) after that commencement, in relation to a recommendation made after that commencement in respect of an application made before that commencement.

4AA Compensation for death of worker

S. 4AA
inserted by
No. 37/1992
s. 4.

- (1) 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 **Workers Compensation Act 1958**.
- (2) If a claim for compensation in respect of the death of a worker is made under the **Workers Compensation Act 1958**, a claim must not be made under this Act by any dependant of the worker unless the claim made under the **Workers Compensation Act 1958** is withdrawn or is rejected.

- (3) This section applies in relation to deaths occurring on or after the appointed day but nothing in this section affects any payment of compensation made before the day on which section 4 of the **Accident Compensation (Further Amendment) Act 1992** comes into operation.

5 Definitions

- (1) In this Act unless inconsistent with the context or subject-matter—

S. 5(1) def. of
*Accident
Compensation
Division*
inserted by
No. 83/1987
s. 6(1)(a),
repealed by
No. 64/1989
s. 5(1)(a).

* * * *

accounting records includes invoices, receipts, orders for the payment of money, bills of exchange, cheques, promissory notes, vouchers and other documents of prime entry and also includes such working papers and other documents as are necessary to explain the methods and calculations by which accounts are made up;

S. 5(1) def. of
*accredited
interpreter*
inserted by
No. 64/1989
s. 5(1)(b),
repealed by
No. 7/1996
s. 3(1).

* * * *

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

S. 5(1) def. of *ambulance service* inserted by No. 64/1989 s. 5(1)(b).

(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;

* * * * *

S. 5(1) def. of *Appeals Board* inserted by No. 64/1989 s. 5(1)(b), repealed by No. 67/1992 s. 6(a).

appointed day means four o'clock in the afternoon of the day before the proclaimed day;

apprentice except in section 16 means an apprentice within the meaning of the **Education and Training Reform Act 2006**;

S. 5(1) def. of *apprentice* amended by No. 10255 s. 8(1)(a), substituted by No. 45/1990 s. 109(a), amended by Nos 85/1995 s. 9(a), 80/1997 s. 50(a), 24/2006 s. 6.1.2(Sch. 7 item 1.1(a)).

Authority means the Victorian WorkCover Authority established under this Act;

S. 5(1) def. of *Authority* inserted by No. 67/1992 s. 6(b).

* * * * *

S. 5(1) def. of *Arbitrator* inserted by No. 83/1987 s. 6(1)(b), repealed by No. 64/1989 s. 5(1)(c).

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S. 5(1) def. of
*authorised
agent*
substituted by
No. 50/1993
s. 80(1)(a).

authorised agent means a person appointed as an
authorised agent under section 23;

S. 5(1) def. of
*authorised
deposit-taking
institution*
inserted by
No. 11/2001
s. 3(Sch.
item 2.1(a)).

authorised deposit-taking institution has the same
meaning as in the Banking Act 1959 of the
Commonwealth;

S. 5(1) def. of
*authorised
insurer*
inserted by
No. 50/1994
s. 5(1),
repealed by
No. 81/1998
s. 19(1)(a).

* * * *

S. 5(1) def. of
bank
repealed by
No. 11/2001
s. 3(Sch.
item 2.1(b)).

* * * *

S. 5(1) def. of
Board
inserted by
No. 67/1992
s. 6(c).

Board means the Board of Management of the
Authority;

S. 5(1) def. of
*Board
division*
repealed by
No. 83/1987
s. 6(1)(c).

* * * *

books includes any register or other record of
information and any accounts or accounting
records, however compiled, recorded or
stored, and also includes any document;

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company, for the purposes of the definition of *remuneration*, includes all bodies and associations (corporate and unincorporate) and partnerships;

S. 5(1) def. of *company* inserted by No. 107/1997 s. 4(a).

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 **Accident Compensation (WorkCover Insurance) Act 1993**, the **Occupational Health and Safety Act 2004**, the **Dangerous Goods Act 1985** or the **Equipment (Public Safety) Act 1994**;

S. 5(1) def. of *corresponding Authority* inserted by No. 28/2005 s. 9, amended by No. 66/2008 s. 30(1).

* * * * *

S. 5(1) def. of *Commission* repealed by No. 67/1992 s. 6(a).

* * * * *

S. 5(1) def. of *Conciliation division* repealed by No. 83/1987 s. 6(1)(d).

* * * * *

S. 5(1) def. of *Contribution Assessment Division* inserted by No. 83/1987 s. 6(1)(d), repealed by No. 64/1989 s. 5(1)(d).

* * * * *

S. 5(1) def. of *Council* repealed by No. 67/1992 s. 6(a).

S. 5(1) def. of
*current work
capacity*
inserted by
No. 107/1997
s. 30(1)(a).

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;

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 the 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;

S. 5(1) def. of
*domestic
partner*
inserted by
No. 27/2001
s. 4(Sch. 2
item 1.1(a)),
substituted by
No. 12/2008
s. 73(1)(Sch. 1
item 1.1),
amended by
No. 4/2009
s. 37(Sch. 1
item 1.1).

domestic partner of a person means—

- (a) a person who is in a registered domestic
relationship 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);

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

S. 5(1)
def. of *drive*
inserted by
No. 9/2010
s. 3.

employer includes—

- (a) the legal personal representative of a deceased employer;
- (b) the Crown in right of the State;
- (c) any person deemed to be an employer by this Act;
- (d) any public, local or municipal body or authority; and
- (e) where the services of a worker are temporarily lent or let on hire to another person by the person with whom the worker has entered into a contract of service or apprenticeship or otherwise, that last-mentioned person while the worker is working for that other person;

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—

S. 5(1) def. of
employer
super-
annuation
contribution
inserted by
No. 60/2007
s. 22(1)(c),
amended by
No. 9/2010
s. 28(2).

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

- (b) any contribution in respect of a worker which is not made for the purposes of discharging an obligation on an employer under—
 - (i) any industrial award;
 - (ii) any public sector superannuation scheme, agreement or arrangement; or
 - (iii) any other Commonwealth or State law relating to superannuation; or
- (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;

financial year, except in Part VII, means the period commencing on the appointed day and ending on 30 June 1986 and each year thereafter commencing on 1 July;

first entitlement period has the meaning given by section 91E;

S. 5(1)
def. of *first
entitlement
period*
inserted by
No. 9/2010
s. 28(1).

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;

S. 5(1) def. of
fringe benefit
inserted by
No. 50/1994
s. 6(1)(a).

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—

S. 5(1) def. of *heart attack injury* inserted by No. 95/2003 s. 3(2).

- (a) any heart attack; or
- (b) any myocardial infarction; or
- (c) any myocardial ischaemia; or
- (d) any angina, whether unstable or otherwise; or
- (e) any fibrillation, whether atrial or ventricular or otherwise; or
- (f) any arrhythmia of the heart; or
- (g) any tachycardia, whether ventricular, supra ventricular or otherwise; or
- (h) any harm or damage to such a blood vessel or to any associated plaque; or
- (i) any impairment, disturbance or alteration of blood, or blood circulation, within such a blood vessel; or
- (j) any occlusion of such a blood vessel, whether the occlusion is total or partial; or
- (k) any rupture of such a blood vessel, including any rupture of an aneurism of such a blood vessel; or
- (l) any haemorrhage from such a blood vessel; or
- (m) any aortic dissection; or

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

S. 5(1) def. of *hospital* inserted by No. 64/1989 s. 5(1)(e), amended by Nos 67/1992 s. 64(7)(a), 98/1995 s. 65(Sch. 1 item 1).

hospital means—

- (a) a public hospital, denominational hospital, private hospital or day procedure centre within the meaning of the **Health Services Act 1988** or a private hospital within the meaning of section 178 of the **Health Act 1958**; or
- (b) an approved mental health service within the meaning of the **Mental Health Act 1986**; or
- (c) a hospital within the meaning of a law of another State or of a Territory; or
- (d) a hospital outside Australia approved by the Authority; or
- (e) a place within Australia declared by Order of the Governor in Council to be a hospital for the purposes of this Act;

S. 5(1) def. of *hospital service* inserted by No. 64/1989 s. 5(1)(e).

hospital service includes—

- (a) maintenance, attendance and treatment in any hospital within the meaning of the **Health Services Act 1988**; and
- (b) the provision by any 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 the injury or disease of the worker;

industrial award means—

- (a) a fair work instrument (other than an FWA 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;

S. 5(1) def. of *industrial award* inserted by No. 9/2010 s. 28(1).

industrial deafness means any condition of deafness caused by—

- (a) exposure;
- (b) continued exposure; or
- (c) periods of continued exposure—
to industrial noise;

incapacity includes—

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

S. 5(1) def. of *incapacity* substituted by No. 67/1992 s. 6(d).

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S. 5(1) def. of
injury
amended by
No. 67/1992
s. 6(e),
substituted by
No. 95/2003
s. 3(1).

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

- (a) industrial deafness;
- (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;

Note

This definition only applies to injuries that occur on or after the date of commencement of section 3 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 259.

S. 5(1) def. of
interest at the prescribed rate
inserted by
No. 50/1994
s. 5(2).

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. 5(1) def. of
legal practitioner
inserted by
No. 18/2005
s. 18(Sch. 1
item 1.1).

legal practitioner means an Australian legal practitioner within the meaning of the **Legal Profession Act 2004**;

S. 5(1) def. of
Medical Panel
inserted by
No. 64/1989
s. 5(1)(f).

Medical Panel means a Medical Panel under this Act;

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 self-insurer;

S. 5(1) def. of *medical practitioner* amended by No. 83/1987 s. 6(1)(e), substituted by No. 64/1989 s. 5(1)(f), amended by Nos 67/1992 s. 64(7)(a), 23/1994 s. 118(Sch. 1 item 1.1), 97/2005 s. 182(Sch. 4 item 1(a)), 13/2010 s. 51(Sch. item 2.1).

medical question means—

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

S. 5(1) def. of *medical question* inserted by No. 64/1989 s. 5(1)(f), amended by Nos 67/1992 s. 6(f)(i)–(iv), 50/1994 s. 5(3), 60/1996 s. 4(1), 107/1997 s. 3(1)(a)–(d), 26/2000 s. 3, 102/2004 s. 17(1), 9/2010 ss 28(3), 51(2)(a), 74(2).

-
- (abaa) 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; or
- (abb) a question as to whether a worker has no current work capacity and is likely to continue indefinitely to have no current work capacity; or
- (abc) 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; or
- (ac) 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; or
- (b) a question whether a worker's employment was in fact, or could possibly have been, a significant
-

-
- contributing factor to an injury or alleged injury, or to a similar injury; or
- (ba) if paragraph (b) does not apply, a question whether a worker's employment was in fact, or could possibly have been, a contributing factor to an injury or alleged injury, or to a similar injury; or
 - (c) a question as to the extent to which any physical or mental condition, including any impairment, resulted from or was materially contributed to by the injury; or
 - (ca) a question as to the extent to which any physical or mental condition, including any impairment, results from or is materially contributed to by the injury; or
 - (d) a question as to the level of impairment of a worker including a question of the degree of impairment of a worker assessed in accordance with section 91 and a question as to whether or not that impairment is permanent; or
 - (da) a question as to the amount of the total percentage referred to in section 89(3)(b); or
 - (e) a question as to whether a worker has an injury which is a total loss mentioned in the Table to section 98E(1); or
 - (f) a question whether a worker's incapacity for work resulted from or was materially contributed to by an injury or alleged injury; or
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- (fa) a question whether a worker's incapacity for work results from or is materially contributed to by an injury or alleged injury; or

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- (h) a question prescribed to be a medical question in respect of an application for leave under section 134AB(16)(b); or

- (i) a question determined to be a medical question by a court hearing an application for leave under section 134AB(16)(b).

S. 5(1) def. of *medical service* inserted by No. 64/1989 s. 5(1)(f), amended by Nos 67/1992 ss 6(g)(i)(ii), 64(7)(a), 50/1994 s. 5(4), 7/1996 s. 3(2)(a)(b), 63/1996 s. 98(Sch. item 1.1), 78/1997 s. 97(Sch. item 1.1), 81/1998 s. 19(1)(b), 95/2003 s. 4(1).

medical service includes¹—

- (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, eyes or teeth or spectacle glasses; and
- (ba) 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

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- (c) 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
 - (d) 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
 - (e) the provision by a medical practitioner, registered dentist, registered optometrist, registered physiotherapist, registered chiropractor and osteopath or registered podiatrist of any certificate required by the worker, the worker's dependants, an employer, the Authority or a self-insurer for any purpose relating to the operation of this Act or any report authorised by the Authority or a self-insurer; and
 - (f) 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
 - (g) 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
 - (h) the provision, at the request of a medical practitioner, of equipment intended to treat or stabilize any injury;

Examples

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

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

Examples

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

Note

Paragraphs (f) to (i) only apply to services provided on or after the date of commencement of section 4 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 260.

S. 5(1) def. of *member of a family* amended by No. 27/2001 s. 4(Sch. 2 item 1.1(b)), substituted by No. 9/2010 s. 64(2).

member of a family, in relation to a person, means—

- (a) a partner, father, mother, grandfather, grandmother, step-father, step-mother, son, daughter, grand-son, grand-daughter, 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;

S. 5(1) def. of *midwife* inserted by No. 13/2010 s. 51(Sch. item 2.2).

midwife means a person registered under the Health Practitioner Regulation National Law—

- (a) 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;

S. 5(1) def. of *motor vehicle* inserted by No. 9/2010 s. 3.

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

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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;

S. 5(1) def. of
*no current
work capacity*
inserted by
No. 107/1997
s. 30(1)(b).

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S. 5(1) def. of
*notional
earnings*
inserted by
No. 67/1992
s. 6(h),
amended by
Nos 50/1993
s. 78(1)(c),
60/1996
s. 4(2),
81/1998
s. 19(1)(c),
repealed by
No. 9/2010
s. 28(4).

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);

S. 5(1) def. of
nurse
inserted by
No. 13/2010
s. 51(Sch.
item 2.2).

nursing service means a nursing or midwifery
service rendered by a nurse or midwife,
otherwise than at a hospital or as a member
of the nursing staff of a hospital;

S. 5(1) def. of
*nursing
service*
inserted by
No. 64/1989
s. 5(1)(g),
substituted by
No. 13/2010
s. 51(Sch.
item 2.3).

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S. 5(1) def. of
*occupational
rehabilitation
program*
inserted by
No. 50/1993
s. 80(2),
substituted by
No. 50/1994
s. 5(5),
repealed by
No. 9/2010
s. 130(1).

S. 5(1) def. of
*occupational
rehabilitation
service*
inserted by
No. 67/1992
s. 6(i),
amended by
Nos 50/1993
s. 80(1)(c),
50/1994
s. 5(6)(a)(b),
7/1996
s. 26(4).

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 service²—

- (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) preparation of a return to work plan;
- (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;

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S. 5(1) def. of *partial incapacity* inserted by No. 67/1992 s. 6(i), repealed by No. 107/1997 s. 30(1)(c).

partner of a worker means—

S. 5(1) def. of *partner* inserted by No. 27/2001 s. 4(Sch. 2 item 1.1(a)).

- (a) in relation to a worker who died before the commencement of section 4 of the

**Statute Law Amendment
(Relationships) Act 2001—**

- (i) the worker's spouse at the time of the worker's death; or
- (ii) a person of the opposite sex who, though not married to the worker, lived with the worker at the time of the worker's death on a permanent and bona fide domestic basis;
- (b) in relation to a worker who dies on or after that commencement—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;

S. 5(1) def. of *person under a disability* inserted by No. 9/2010 s. 64(1).

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—

S. 5(1) def. of *personal and household service* inserted by No. 50/1993 s. 80(1)(b), amended by No. 68/2007 s. 21.

- (a) attendant care;

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(b) counselling;

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(d) household help;

(e) transportation costs;

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

and includes a rehabilitation service provided
under this Act as in force before the
commencement of section 80 of the
**Accident Compensation (WorkCover
Insurance) Act 1993**;

prescribed means prescribed by the regulations;

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S. 5(1) def. of
*presidential
member*
inserted by
No. 83/1987
s. 6(1)(f),
substituted by
No. 64/1989
s. 5(1)(h),
repealed by
No. 67/1992
s. 6(a).

proclaimed day means the day fixed under
section 2(2);

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

S. 5(1) def. of
*registered
chiropractor*
inserted by
No. 102/2004
s. 31,
substituted by
Nos 97/2005
s. 182(Sch. 4
item 1(b)),
13/2010
s. 51(Sch.
item 2.4).

registered dentist means a person registered under the Health Practitioner Regulation National Law—

- (a) to practise in the dental profession as a dentist (other than as a student); and
- (b) in the dentists division of that profession;

S. 5(1) def. of *registered dentist* inserted by No. 102/2004 s. 31, substituted by Nos 97/2005 s. 182(Sch. 4 item 1(c)), 13/2010 s. 51(Sch. item 2.4).

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

S. 5(1) def. of *registered optometrist* inserted by No. 9/2010 s. 74(1), substituted by No. 13/2010 s. 51(Sch. item 2.4).

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

S. 5(1) def. of *registered osteopath* inserted by No. 102/2004 s. 31, substituted by Nos 97/2005 s. 182(Sch. 4 item 1(d)), 13/2010 s. 51(Sch. item 2.4).

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

S. 5(1) def. of *registered physiotherapist* inserted by No. 102/2004 s. 31, substituted by Nos 97/2005 s. 182(Sch. 4 item 1(e)), 13/2010 s. 51(Sch. item 2.4).

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S. 5(1) def. of
*registered
podiatrist*
inserted by
No. 102/2004
s. 31,
substituted by
Nos 97/2005
s. 182(Sch. 4
item 1(f)),
13/2010
s. 51(Sch.
item 2.4).

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);

S. 5(1) def. of
*registered
psychologist*
inserted by
No. 41/2000
s. 102(Sch.
item 1),
substituted by
Nos 97/2005
s. 182(Sch. 4
item 1(g)),
13/2010
s. 51(Sch.
item 2.4).

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

S. 5(1) def. of
Registrar
amended by
No. 64/1989
s. 35(a)(i),
substituted by
No. 67/1992
s. 6(j).

Registrar means Registrar or a deputy registrar of
the County Court;

S. 5(1) def. of
*rehabilitation
service*
substituted by
No. 64/1989
s. 5(1)(i),
amended by
No. 67/1992
s. 6(k),
repealed by
No. 50/1993
s. 80(1)(d).

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remuneration has the same meaning as it has in section 3(1) of the **Accident Compensation (WorkCover Insurance) Act 1993**;

S. 5(1) def. of *remuneration* amended by Nos 10255 s. 8(1)(b), 64/1989 s. 5(1)(j), 45/1990 s. 109(b), 18/1991 s. 4, 67/1992 s. 6(l), 50/1994 ss 5(7), 6(1)(b)(i)–(iii), 92(4), 62/1994 s. 68(a)(b), 7/1996 s. 3(4)(a)(b), 107/1997 ss 4(b), 8(2), 80/1997 s. 50(b)(c), 107/1997 s. 5(1)(a)(i)(ii), 97/2000 s. 41(Sch. 2 item 1), 82/2001 s. 12(1), 24/2006 s. 6.1.2(Sch. 7 item 1.1(b)), substituted by No. 60/2007 s. 22(1)(a).

retirement age, in relation to a worker, means—

S. 5(1) def. of *retirement age* inserted by No. 64/1989 s. 5(1)(k).

- (a) if there is a normal retiring age for workers in the occupation in which the worker was employed at the time of the injury—that age; or

- (b) the age of 65 years—

whichever is the earlier, and, for the purposes of determining whether there is a normal retiring age for workers in an occupation, regard may be had to any retiring age in any industry or establishment where that occupation is carried on;

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S. 5(1) def. of
return to work
plan
inserted by
No. 50/1994
s. 5(8),
repealed by
No. 9/2010
s. 130(1).

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S. 5(1) def. of
risk
management
program
inserted by
No. 50/1994
s. 5(8),
repealed by
No. 9/2010
s. 130(1).

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S. 5(1) def. of
Rules
amended by
No. 64/1989
s. 35(a)(ii),
repealed by
No. 67/1992
s. 6(a).

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S. 5(1) def. of
second
entitlement
period
inserted by
No. 9/2010
s. 28(1).

second entitlement period has the meaning given
by section 91E;

S. 5(1) def. of
self-insurer
amended by
No. 7/1996
s. 3(5),
substituted by
No. 9/2010
s. 124.

self-insurer means—

- (a) a body corporate approved as a self-insurer under Part V; or
- (b) a body corporate that has ceased to be a self-insurer—
 - (i) which has elected or entered into an arrangement with the Authority to retain liability for its tail claims; and
 - (ii) has not ceased to be liable for those claims;

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

S. 5(1) def. of *spouse* inserted by No. 27/2001 s. 4(Sch. 2 item 1.1(a)).

State average weekly earnings, in relation to compensation payable in a financial year, means the latest average weekly earnings as at 30 May in the preceding financial year of all employees for Victoria published by the Australian Statistician in respect of the December quarter of that preceding financial year or, if that is not available, the latest available quarter;

S. 5(1) def. of *State average weekly earnings* inserted by No. 9/2010 s. 28(1).

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—

S. 5(1) def. of *stroke injury* inserted by No. 95/2003 s. 3(2).

- (a) any stroke; or
- (b) any cerebral infarction; or
- (c) any cerebral ischaemia; or
- (d) any rupture of such a blood vessel, including any rupture of an aneurism of such a blood vessel; or
- (e) any subarachnoid haemorrhage; or
- (f) any haemorrhage from such a blood vessel; or
- (g) any harm or damage to such a blood vessel or to any associated plaque; or
- (h) any impairment, disturbance or alteration of blood, or blood circulation, within such a blood vessel; or

- (i) any occlusion of such a blood vessel, whether the occlusion is total or partial; or
- (j) any consequential physical harm or damage, including neurological harm or damage; or
- (k) any consequential mental harm or damage;

S. 5(1) def. of *student worker* inserted by No. 47/1996 s. 15, amended by No. 80/1997 s. 50(d).

student worker means a worker within the meaning of paragraph (d) or (e) of the definition of ***worker***;

S. 5(1) def. of *suitable employment* inserted by No. 67/1992 s. 6(m), amended by Nos 50/1994 s. 5(9), 107/1997 s. 30(1)(b), substituted by No. 9/2010 s. 74(3).

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

- (a) having regard to—
 - (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; and
 - (ii) the nature of the worker's pre-injury employment; and
 - (iii) the worker's age, education, skills and work experience; and
 - (iv) the worker's place of residence; and
 - (v) any plan or document prepared as part of the return to work planning process; and

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

(b) regardless of whether—

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

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

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S. 5(1) def. of *super-annuation benefit* inserted by No. 107/1997 s. 5(1)(b), repealed by No. 60/2007 s. 22(1)(b).

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S. 5(1) def. of *total incapacity* inserted by No. 67/1992 s. 6(m), repealed by No. 107/1997 s. 30(1)(e).

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

S. 5(1) def. of *transport accident* inserted by No. 9/2010 s. 3.

Tribunal means Victorian Civil and Administrative Tribunal established by the **Victorian Civil and Administrative Tribunal Act 1998**;

S. 5(1) def. of *Tribunal* repealed by No. 67/1992 s. 6(a), new def. of *Tribunal* inserted by No. 52/1998 s. 311(Sch. 1 item 1.1).

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S. 5(1) def. of
*Tribunal
division*
repealed by
No. 83/1987
s. 6(1)(g).

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S. 5(1) def. of
*Uninsured
Employers
and Indemnity
Scheme*
inserted by
No. 81/1998
s. 19(1)(d).

Uninsured Employers and Indemnity Scheme
means the scheme established under
section 55 of the **Accident Compensation
(WorkCover Insurance) Act 1993**;

S. 5(1) def. of
*weekly
payment*
substituted by
No. 64/1989
s. 5(1)(l),
amended by
Nos 50/1994
s. 5(10),
107/1997
s. 30(1)(f),
41/2006
s. 15(1),
substituted by
No. 9/2010
s. 32(a).

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

S. 5(1) def. of
*WorkCover
insurance
policy*
inserted by
No. 81/1998
s. 19(1)(e).

WorkCover insurance policy has the same
meaning as it has in section 3(1) of the
**Accident Compensation (WorkCover
Insurance) Act 1993**;

S. 5(1) def. of
worker
amended by
Nos 83/1987
s. 6(1)(h),
45/1990
s. 109(c),
67/1992
s. 6(n),
50/1993
s. 80(1)(e),
62/1994
s. 68(a)(b),
24/2006
s. 6.1.2(Sch. 7
item 1.1(c)).

worker means—

- (a) a person (including a domestic servant
or an outworker) who has entered into
or works under a contract of service or
apprenticeship or otherwise with an
employer whether by way of manual
labour, clerical work or otherwise and
whether the contract is express or
implied, is oral or is in writing;

- (b) a person who under this Act is deemed to be working under a contract of service;
- (c) a person who under this Act is deemed to be a worker;
- (d) if a student at a school within the meaning of Part 5.4 of the **Education and Training Reform Act 2006** is employed under an arrangement under that Part—that student whilst so employed; or
- (e) if a student of a TAFE provider is employed under a practical placement agreement under Part 5.4 of the **Education and Training Reform Act 2006**—that student whilst so employed—

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S. 5(1) def. of *Workers Compensation Division* inserted by No. 83/1987 s. 6(1)(i), repealed by No. 64/1989 s. 5(1)(m).

WorkSafe Victoria means the Victorian WorkCover Authority.

S. 5(1) def. of *WorkSafe Victoria* inserted by No. 9/2010 s. 145.

- (1A) For the purposes of the definition of ***injury***, the employment of a worker shall be taken to include any travelling or other circumstances referred to in section 83 other than subsection (1)(a).

S. 5(1A) inserted by No. 83/1987 s. 6(2), amended by No. 50/1994 s. 5(11).

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S. 5(1B)
inserted by
No. 67/1992
s. 7.

- (1B) In determining for the purposes of this Act whether a worker's employment was a *significant contributing factor* to an injury—
- (a) the duration of the worker's current employment; and
 - (b) the nature of the work performed; and
 - (c) the particular tasks of the employment; and
 - (d) the probable development of the injury occurring if that employment had not taken place; and
 - (e) the existence of any hereditary risks; and
 - (f) the life-style of the worker; and
 - (g) the activities of the worker outside the workplace—

must be taken into account.

S. 5(1C)
inserted by
No. 107/1997
s. 3(2).

- (1C) The definition of *medical question* as amended by section 3(1) of the **Accident Compensation (Miscellaneous Amendment) Act 1997** applies in respect of any referral lodged on or after the commencement of that section.

S. 5(1D)
inserted by
No. 9/2010
s. 74(4).

- (1D) For the purposes of Part VIIB, the definition of *suitable employment* also includes—
- (a) 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;
 - (b) 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;

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- (c) 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.
- (2) A reference in this Act to a Commonwealth Act is a reference, if that Act has been amended, to that Act as amended and in force for the time being.
- (2A) A reference in this Act to the Authority is to be construed as a reference to WorkSafe Victoria.
- (3) 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;
 - (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.
- (3A) Unless the contrary intention appears, in this Act, ***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 subsection (1).
- (4) A reference in this Act to a worker who has been injured includes, where the worker is dead, a reference to the legal personal representative of the deceased worker.

S. 5(2A)
inserted by
No. 9/2010
s. 146.

S. 5(3)
amended by
No. 64/1989
s. 5(2)(a)(b).

S. 5(3A)
inserted by
No. 9/2010
s. 64(2).

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S. 5(4A)
inserted by
No. 7/1996
s. 4.

(4A) A person who is a participant in a declared training program is deemed to be a worker employed by the person who provides the workplace based training during any time that the person participates in the declared training program after the person who is to provide the workplace based training has entered into an agreement to provide the workplace based training.

S. 5(4B)
inserted by
No. 7/1996
s. 4.

(4B) The Governor in Council may by Order in Council published in the Government Gazette—

- (a) declare a training program which includes the provision of workplace based training to be a declared training program;
- (b) specify a class of payments which are deemed to be remuneration paid or payable in respect of a participant in a declared training program.

S. 5(4C)
inserted by
No. 7/1996
s. 4.

(4C) A payment which is deemed to be remuneration paid or payable in respect of a participant in a declared training program is deemed to be remuneration for the purposes of the **Accident Compensation Act 1985** and the **Accident Compensation (WorkCover Insurance) Act 1993** paid or payable by the person who provides the workplace based training.

S. 5(4D)
inserted by
No. 7/1996
s. 4.

(4D) The Landcare and Environment Action Program and the New Work Opportunities Program conducted by the Commonwealth of Australia are deemed to have been declared to be declared training programs.

S. 5(4E)
inserted by
No. 7/1996
s. 4.

(4E) The training allowance payable to participants in the Landcare and Environment Action Program and the New Work Opportunities Program is deemed—

- (a) to be remuneration paid or payable in respect of a participant in a declared training program; and
- (b) to be remuneration for the purposes of the **Accident Compensation Act 1985** and the **Accident Compensation (WorkCover Insurance) Act 1993** paid or payable by the person who provides the workplace based training.

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S. 5(5)
repealed by
No. 27/2001
s. 4(Sch. 2
item 1.2).

- (6) As between a tributer or sub-tributer and the lessee or owner of any mine or claim, the tributer or sub-tributer (as the case may be) shall, for the purposes of this Act, be deemed to be working under a contract of service with the lessee or owner and the lessee or owner shall for those purposes be deemed to be the employer in relation to the tributer or sub-tributer.

- (7) In subsection (6), *claim*, *lessee*, *mine*, *sub-tributer* and *tributer* have respectively the same meanings as in Part I or (if the case so requires) Part II of the **Mines Act 1958**.

S. 5(7)
amended by
No. 60/2007
s. 29(a).

- (8) If there is caused to a person who is not a worker otherwise than by reason of this subsection an injury arising out of or in the course of any employment programme provided or arranged by the Authority—

S. 5(8)
amended by
Nos 83/1987
s. 6(3),
67/1992
s. 64(8)(a).

- (a) the person shall be deemed for the purposes of this Act to be a worker employed by the Authority; and

S. 5(8)(a)
amended by
No. 67/1992
s. 64(7)(a).

(b) for the purposes of Division 2 of Part IV, the person's pre-injury average weekly earnings in relation to the injury shall be deemed to be the pre-injury average weekly earnings in relation to the injury because of which the worker is on the employment programme as indexed in accordance with section 100.

S. 5(8A)
inserted by
No. 60/2007
s. 22(2).

(8A) For the purposes of sections 6(1), 8(1) and 9(2)(e), *superannuation benefit* has the same meaning as it has in section 3(1) of the **Accident Compensation (WorkCover Insurance) Act 1993**.

S. 5(9)
substituted by
No. 50/1994
s. 6(2),
amended by
Nos 107/1997
s. 5(2),
71/2004 s. 3.

(9) For the purposes of this Act, a reference to remuneration includes a reference to fringe benefits.

S. 5(9A)
inserted by
No. 9/2010
s. 94(1).

(9A) For the purposes of this Act, *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.

S. 5(10)
substituted by
No. 9/2010
s. 94(2).

(10) For the purposes of this Act, *remuneration* does not include—

- (a) the exempt component of a motor vehicle allowance paid or payable in respect of a financial year, calculated in accordance with section 5D;
- (b) 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 section 5E.

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- (11) In this Act any wages, remuneration, salary, commission, bonuses or allowances referred to in paragraph (e) in the interpretation of **remuneration** shall be deemed to be paid or payable by the employer. S. 5(11) amended by No. 50/1994 s. 6(3).
- (12) A reference in this Act to remuneration paid or payable by an employer includes remuneration which is deemed to be paid or payable by the employer.
- (13) A reference in this Act to remuneration paid or payable by a related person or associate in a group within the meaning of section 196 of this Act or section 67 of the **Accident Compensation (WorkCover Insurance) Act 1993** includes remuneration which would be deemed to be paid or payable by a related person or an associate if the related person or associate were the employer of the worker to whom it was paid. S. 5(13) amended by No. 50/1994 s. 5(12)(a)(b).
- (14) In this Act in relation to wages, remuneration, salary, commission, bonuses or allowances **paid** includes provided, conferred and assigned. S. 5(14) amended by No. 50/1994 s. 6(3).
- * * * * * S. 5(15)–(17) inserted by No. 107/1997 s. 5(3), repealed by No. 60/2007 s. 23.
- (18) For the purposes of the definition of **domestic partner** in subsection (1)— S. 5(18) inserted by No. 27/2001 s. 4(Sch. 2 item 1.3), substituted by No. 12/2008 s. 73(1)(Sch. 1 item 1.2).
- (a) **registered domestic relationship** has the same meaning as in the **Relationships Act 2008**; and S. 5(18)(a) amended by No. 4/2009 s. 37(Sch. 1 item 1.2(a)).

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S. 5(18)(b)
amended by
No. 4/2009
s. 37(Sch. 1
item 1.2(b)).

- (b) in determining whether persons who are not in a registered domestic relationship are domestic partners of each other, all the circumstances of their relationship are to be taken into account, 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.

S. 5A
inserted by
No. 64/1989
s. 6.

5A Pre-injury average weekly earnings

- (1) In this Act, *the worker's pre-injury average weekly earnings* means—

- (a) the average weekly earnings during the 12 months preceding the relevant injury if the worker has been continuously employed by the same employer for that period; or
(b) the average weekly earnings for the period less than 12 months preceding the relevant injury for which the worker has been continuously employed by the same employer—

calculated at the worker's ordinary time rate of pay for the worker's normal number of hours per week.

S. 5A(1A)
inserted by
No. 60/2007
s. 24(1).

- (1A) Despite subsection (1), *the worker's pre-injury average weekly earnings* do not include, and are deemed to have never included, any employer superannuation contribution.

S. 5A(1AA)
inserted by
No. 41/2006
s. 3(1),
amended by
No. 9/2010
s. 4(a).

- (1AA) For the purposes of subsection (1), in calculating weekly payments of pension under section 92B for the first 52 weeks after the death of the worker, if—
(a) the worker, during the relevant period under subsection (1), worked paid overtime; and

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- (b) it is likely that the worker would have worked paid overtime at any time during that first 52 week period if not for the death of the worker resulting from, or materially contributed to, by an injury which entitles the worker's dependants to compensation—
- an additional amount calculated under subsection (1C) is to be included in the worker's pre-injury average weekly earnings.
- (1AB) For the purposes of subsection (1), in calculating weekly payments of pension under section 92B for the first 52 weeks after the death of the worker, if—
- (a) the worker, during the relevant period under subsection (1), carried out shift work that attracted a shift allowance; and
- (b) it is likely that the worker would have carried out shift work attracting a shift allowance at any time during that first 52 week period if not for the death of the worker resulting from, or materially contributed to, by an injury which entitles the worker's dependants to compensation—
- an additional amount calculated under subsection (1C) is to be included in the worker's pre-injury average weekly earnings.
- (1A) For the purposes of subsection (1), in calculating a worker's weekly payments for the first 52 weeks under section 93A or 93B, if—
- (a) the worker, during the relevant period under subsection (1), worked paid overtime; and
- S. 5A(1AA)(b) amended by No. 9/2010 s. 4(a).**
- S. 5A(1AB) inserted by No. 41/2006 s. 3(1), amended by No. 9/2010 s. 4(b).**
- S. 5A(1AB)(b) amended by No. 9/2010 s. 4(b).**
- S. 5A(1A) inserted by No. 26/2000 s. 4(1), substituted by No. 95/2003 s. 5(1), amended by No. 9/2010 s. 4(c)(d).**
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S. 5A(1A)(b)
amended by
No. 9/2010
s. 4(c).

(b) it is likely that the worker would have worked paid overtime at any time during that first 52 week period if not for the incapacity resulting from, or materially contributed to, by the relevant injury—

an additional amount calculated under subsection (1C) is to be included in the worker's pre-injury average weekly earnings.

S. 5A(1B)
inserted by
No. 26/2000
s. 4(1),
substituted by
No. 95/2003
s. 5(1),
amended by
No. 9/2010
s. 4(e)(f).

(1B) For the purposes of subsection (1), in calculating a worker's weekly payments for the first 52 weeks under section 93A or 93B, if—

(a) the worker, during the relevant period under subsection (1), carried out shift work that attracted a shift allowance; and

S. 5A(1B)(b)
amended by
No. 9/2010
s. 4(e).

(b) it is likely that the worker would have carried out shift work attracting a shift allowance at any time during that first 52 week period if not for the incapacity resulting from, or materially contributed to, by the relevant injury—

an additional amount calculated under subsection (1C) is to be included in the worker's pre-injury average weekly earnings.

Note to
s. 5A(1B)
repealed by
No. 9/2010
s. 5(1).

* * * *

S. 5A(1C)
inserted by
No. 26/2000
s. 4(1),
substituted by
No. 95/2003
s. 5(1),
amended by
Nos 41/2006
s. 3(2), 9/2010
s. 5(2).

(1C) For the purposes of subsections (1AA), (1AB), (1A) and (1B), the additional amount to be included is the amount derived from the following formula—

$$\frac{A}{B}$$

where—

A is the total of the amounts paid or payable to the worker for overtime or as a shift allowance (as the case may be) during the relevant period under subsection (1);

B is the number of weeks in the relevant period under subsection (1) during which the worker worked or was on paid annual leave.

- (1D) For the purposes of subsections (1AB), (1B) and (1C), a reference to a shift allowance includes a reference to an allowance that was paid, or that is payable, for weekend work.

S. 5A(1D)
inserted by
No. 95/2003
s. 5(1),
amended by
No. 41/2006
s. 3(3).

- (2) For the purposes of subsection (1), if a worker voluntarily (otherwise than by reason of an incapacity resulting from an injury which entitled the worker to compensation)—

- (a) alters the normal number of hours worked; or
- (b) alters the nature of the work performed with the result that a change occurs in the worker's ordinary time rate of pay—

any period before the alteration takes effect shall be disregarded in calculating the worker's average weekly earnings.

- (2A) For the purposes of subsection (1), if during the 12 months immediately before the injury, a worker—

S. 5A(2A)
inserted by
No. 9/2010
s. 6.

- (a) is promoted; or
- (b) is appointed to a different position—

with the result that the worker's ordinary time rate of pay is increased, any period before the promotion or appointment takes effect is to be disregarded for the purpose of calculating the worker's average weekly earnings.

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S. 5A(4)
amended by
Nos 26/2000
s. 4(2),
95/2003
s. 5(2),
41/2006
s. 3(4).

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- (3) For the purposes of subsection (1), if the period for which the worker has been employed by the same employer is less than four weeks, the worker's pre-injury average weekly earnings may be calculated having regard to the weekly earnings which the worker could reasonably have been expected to have earned in that employment but for the relevant injury at the worker's ordinary time rate of pay for the worker's normal number of hours per week.
- (4) For the purposes of subsection (1), a worker's average weekly earnings shall, subject to subsections (1AA), (1AB), (1A) and (1B), be calculated by dividing the sum of amounts payable to the worker calculated at the worker's ordinary time rate of pay for the normal number of hours per week by the number of weeks during which the worker actually worked or was on annual, sick or other paid leave.
- (5) The worker's pre-injury average weekly earnings in relation to a worker who—
- (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 18 months preceding the injury—
- shall be deemed to be the average weekly earnings of the worker while employed in full-time employment during the 18 months preceding the injury.
- (6) For the purposes of subsection (1)—
- (a) if an ordinary time rate of pay is fixed for the worker's work under the terms of the worker's employment and in addition a piece rate is payable, the ordinary time rate of pay
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- shall be deemed to be the sum of the ordinary time rate of pay and the average weekly piece rate payment received by the worker during the relevant period under subsection (1); and
- (b) if an ordinary time rate of pay is not fixed for the worker's work under the terms of the worker's employment, the ordinary time rate of pay shall be deemed to be the average weekly rate earned by the worker during the relevant period under subsection (1); and
 - (c) if the normal number of work hours per week is fixed in any industrial award applicable to a worker, the worker's normal number of hours per week in that work shall be deemed to be the number so fixed; and
 - (d) if a normal number of work hours per week is not fixed for the worker's work under the terms of the worker's employment, the normal weekly number of hours shall be deemed to be the average weekly number of hours worked by the worker during the relevant period under subsection (1); and
 - (e) if the worker is employed by more than one employer at the time of the injury, the worker's average weekly earnings shall be calculated—
 - (i) if the worker works for one employer for at least the normal number of hours per week fixed in any industrial award applicable to the worker, with reference to that work; or
 - (ii) if there is no applicable industrial award but the worker works for one employer for at least the prescribed
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- number of hours per week, with reference to that work; or
- (iii) if the worker works for more than one employer for at least the normal number of hours per week fixed in any industrial award applicable to the worker, with reference to the work which yields the higher ordinary time rate of pay; or
 - (iv) if the worker works for one employer for at least the normal number of hours per week fixed in any industrial award applicable to the worker and for another employer for at least the prescribed number of hours per week with reference to the work which yields the higher ordinary time rate of pay; or
 - (v) if there is no applicable industrial award but the worker works for more than one employer for at least the prescribed number of hours per week, with reference to the work which yields the higher ordinary time rate of pay; or
 - (vi) in any other case, by obtaining the worker's average ordinary time rate of pay for all work carried out by the worker for all the employers and applying that rate to the prescribed number of hours per week or to the total of the worker's normal number of hours per week whichever is the lesser; and
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(f) if the worker is a person who—

- (i) under section 6, 7 or 8 is deemed to be working under a contract of service; or
- (ii) under section 9 is deemed to be a worker—

S. 5A(6)(f)
amended by
No. 60/2007
s. 24(2).

the worker's pre-injury average weekly earnings shall be calculated with reference to amounts payable to the worker and deemed to be remuneration under those sections less any part of those amounts attributable to the supply of capital or materials or to any employer superannuation contribution.

(7) Despite Division 2 of Part IV, for the purposes of subsections (1) and (6), if, at the time of the injury, the worker was—

- (a) under the age of 21 years; or
- (b) an apprentice; or
- (c) employed under a contract of service under which he or she is expressly required to undergo any training, instructions or examination for the purpose of becoming qualified for the occupation to which the contract of service relates—

and, in terms of his or her employment, the worker would have been entitled at subsequent stages to increments in earnings, the worker's pre-injury average weekly earnings shall be calculated—

- (d) until the worker attains the age or stage or would, but for the injury, have attained the stage at which the highest rate is payable— as if, at the time of the injury, the worker were being paid at the rate applicable to the age or stage of the worker for the time being; and

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(e) on and after the worker attains the age or stage or would, but for the injury, have attained the stage, at which the highest rate is payable—as if, at the time of the injury, the worker were being paid at the rate applicable to that age or stage.

S. 5A(8)
amended by
Nos 50/1994
s. 8(1), 7/1996
s. 49(a),
107/1997
s. 30(2),
102/2004
s. 38(1)(a),
9/2010 s. 7.

(8) Despite Division 2 of Part IV, where in a case to which subsection (7) applies there is not a rate applicable to a worker of or over the age of 21, the amount of each weekly payment for a worker of or over the age of 21 who is entitled to compensation under that Division shall be calculated as if the worker's pre-injury average weekly earnings were twice the State average weekly earnings.

(9) Where a worker at the time of the injury was a full-time student, the worker's pre-injury average weekly earnings under Division 2 of Part IV—

(a) until the time that the worker would have completed the course of studies in which the worker was a full-time student, shall be calculated in accordance with subsection (1); and

S. 5A(9)(b)
amended by
Nos 50/1994
s. 8(2), 7/1996
s. 49(a),
substituted by
No. 107/1997
s. 30(3),
amended by
Nos 102/2004
s. 38(1)(a),
9/2010 s. 7.

(b) as from the time that the worker would have completed the course of studies in which the worker was a full-time student shall be calculated as if the worker's pre-injury average weekly earnings were twice the State average weekly earnings.

S. 5A(10)
substituted by
Nos 107/1997
s. 30(4),
9/2010 s. 8(1).

(10) For the purposes of subsection (9), ***full-time student*** means a person who is undertaking a course of studies as a full-time student at a post-secondary education institution within the meaning of the **Education and Training Reform**

Act 2006, other than a student who is employed under a practical placement agreement within the meaning of Part 5.4 of that Act.

Note

The pre-injury average weekly earnings of a student at a post-secondary education institution within the meaning of Part 5.4 of the **Education and Training Reform Act 2006** who is employed under a practical placement agreement under that Part is the amount deemed by operation of section 5.4.16(5) of that Act.

- (11) Where a worker at the time of the injury was a full-time student at a primary or secondary school, the worker's pre-injury average weekly earnings under Division 2 of Part IV—

S. 5A(11)
inserted by
No. 107/1997
s. 30(4).

- (a) until the time that the worker would have completed secondary school shall be calculated in accordance with subsection (1); and

- (b) as from the time that the worker would have completed secondary school shall be calculated as if the worker's pre-injury average weekly earnings were \$1040.

S. 5A(11)(b)
amended by
Nos 102/2004
s. 38(1)(b),
9/2010 s. 8(2).

Note

The pre-injury average weekly earnings of a student at a school within the meaning of Part 5.4 of the **Education and Training Reform Act 2006** who is employed under a work experience arrangement or a structured workplace learning arrangement within the meaning of that Part is the amount deemed by operation of section 5.4.9(6) of that Act.

Note to
s. 5A(11)
inserted by
No. 9/2010
s. 8(3).

- (12) For the purposes of subsection (1), if at the time of the relevant injury the worker is a person within the meaning of section 16(1) engaged by an employer to participate as a contestant in a sporting or athletic activity and the relevant injury is not received while the person is—

S. 5A(12)
inserted by
No. 107/1997
s. 8(3).

- (a) participating as a contestant in a sporting or athletic activity; or

s. 5B

- (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—

any remuneration paid or payable for those activities is to be disregarded in calculating the worker's average weekly earnings.

S. 5B
inserted by
No. 64/1989
s. 6.

5B Current weekly earnings

- (1) In this Act, *current weekly earnings*, in relation to a worker, means the worker's earnings during the week in respect of which a weekly payment is made calculated at the worker's ordinary time rate of pay for the worker's normal number of hours per week or, if there is no such ordinary time rate, the worker's actual earnings during the week.
- (2) For the purposes of subsection (1), the worker's ordinary time rate of pay for the worker's normal number of hours per week shall be determined in accordance with section 5A(6)(a), (b) and (d) with such modifications as are necessary.
- (3) For the purposes of subsection (1) *current weekly earnings* includes the monetary value calculated on a weekly basis of any non-pecuniary benefit or advantage received by the worker in the course of his or her employment (including work as a self-employed person).

S. 5B(3)
inserted by
No. 67/1992
s. 8.

5C Value of remuneration comprising fringe benefits

For the purposes of this Act, 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—

S. 5C
inserted by
No. 50/1994
s. 7,
substituted by
No. 9/2010
s. 95.

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 under the **Accident Compensation (WorkCover Insurance) Act 1993** arises.

5D 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** for the purposes of the Act;
 - (b) exceeds the exempt component (if any), only that amount that exceeds the exempt component of the motor vehicle allowance is included as **remuneration** for the purposes of this Act.
- (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.

S. 5D
inserted by
No. 107/1997
s. 5(4),
amended by
No. 81/1998
s. 19(2),
repealed by
No. 60/2007
s. 23, new
s. 5D
inserted by
No. 9/2010
s. 95.

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- (3) Unless subsection (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 subsection (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 section, the ***exempt rate*** for the financial year concerned is—
- (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
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- (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**.

5E 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 section, 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**.

S. 5E
inserted by
No. 107/1997
s. 5(4),
amended by
No. 81/1998
s. 19(2),
repealed by
No. 60/2007
s. 23, new
s. 5E
inserted by
No. 9/2010
s. 95.

6 Timber contractors

- (1) Notwithstanding anything in this Act or any other law, where—
- (a) any person (in this section referred to as *the principal*) in the course of or for the purposes of a trade or business carried on by the person enters into a contract with any natural person or natural persons (in this

S. 6
amended by
No. 48/1986
s. 4(a)(b).

S. 6(1)
amended by
No. 107/1997
s. 5(5).

S. 6(1)(a)
amended by
No. 83/1987
s. 7(a).

section referred to as *the contractor*) under which the contractor agrees—

- (i) to fell trees or cut firewood and deliver the timber or firewood obtained from them to the principal;
 - (ii) to fell trees or cut scrub on land in the occupation of the principal; or
 - (iii) to clear such land of stumps or logs; and
- (b) the contractor does not either sublet the contract or employ workers or although employing workers actually performs any part of the work personally—

the contractor shall for the purposes of this Act be deemed to be working under a contract of service with an employer and the principal shall for those purposes be deemed to be the employer in relation to the contractor within the meaning of this Act and the amount payable by the principal to the contractor in respect of the performance of work under the contract shall be deemed to be remuneration and shall be deemed to include any payment that would be a superannuation benefit if made in relation to a person in the capacity of an employee.

S. 6(2)
inserted by
No. 48/1986
s. 4(c).

- (2) If an amount referred to in subsection (1) is included in a larger amount paid or payable by a principal under a contract referred to in subsection (1) that part of the larger amount which is not attributable to the performance of work relating to the contract by a contractor under the contract may be prescribed.

S. 6(3)
inserted by
No. 48/1986
s. 4(c).

- (3) If the contractor is a partnership, the contractor is deemed for the purposes of subsection (1)(b) to have performed a part of the work personally if

one or more members of the partnership actually performs any part of the work personally.

- (4) This section applies to contracts entered into whether before or after the appointed day.

S. 6(4)
inserted by
No. 83/1987
s. 7(b).

7 Passenger vehicles

Notwithstanding anything in this Act or any other law, where a person engaged in driving a vehicle used for carrying passengers for reward has the use of that vehicle pursuant to a contract of bailment (not being a bona fide contract for the purchase of the vehicle whether by hire purchase or otherwise) under which the person is required to pay any sum or sums (whether of fixed amount or proportionate to mileage or receipts or otherwise) for the use of the vehicle, then for the purposes of this Act—

- (a) the person shall be deemed to be working under a contract of service with an employer;
- (b) the person from whom the use of the vehicle is obtained under the contract of bailment shall be deemed to be that employer; and
- (c) the amount received by the person for carrying passengers, less the amount paid or payable for the use of the vehicle shall be deemed to be remuneration.

8 Contractors

S. 8
amended by
No. 48/1986
s. 5(a)–(c).

- (1) Notwithstanding anything in this Act or any other law, where any person (in this section referred to as *the principal*) in the course of and for the purposes of a trade or business carried on by the person enters into a contract with any natural

S. 8(1)
amended by
Nos 83/1987
s. 7(c),
107/1997
s. 5(6).

person or natural persons (in this section referred to as *the contractor*)³—

- (a) under or by which the contractor agrees to perform any work not being work incidental to a trade or business regularly carried on by the contractor in the name of the contractor or under a firm or business name; and
- (b) in the performance of which the contractor does not either sublet the contract or employ workers or although employing workers actually performs some part of the work personally—

then for the purposes of this Act the contractor shall be deemed to be working under a contract of service with an employer and the principal shall be deemed to be that employer and the amount payable by the principal to the contractor in respect of the performance of work under the first-mentioned contract shall be deemed to be remuneration and shall be deemed to include any payment that would be a superannuation benefit if made in relation to a person in the capacity of an employee.

S. 8(2)
inserted by
No. 48/1986
s. 5(d).

- (2) If an amount referred to in subsection (1) is included in a larger amount paid or payable by a principal under a contract referred to in subsection (1) that part of the larger amount which is not attributable to the performance of work relating to the contract by a contractor under the contract may be prescribed.

S. 8(3)
inserted by
No. 48/1986
s. 5(d).

- (3) If the contractor is a partnership, the contractor is deemed for the purposes of subsection (1)(b) to have performed a part of the work personally if one or more members of the partnership actually performs any part of the work personally.

- (4) This section applies to contracts entered into whether before or after the appointed day.

S. 8(4)
inserted by
No. 83/1987
s. 7(d).

9 Independent contractors

- (1) For the purposes of this section, a reference to a relevant contract in relation to a financial year is a reference to a contract under which a person during that financial year, in the course of a business carried on by that person—

S. 9(1)
amended by
Nos 48/1986
s. 6, 50/1994
s. 9(b).

- (a) supplies to another person services for or in relation to the performance of work;
- (b) has supplied to that person the services of persons for or in relation to the performance of work; or
- (c) gives out goods to natural persons for work to be performed by those persons in respect of those goods and for re-supply of the goods to the first-mentioned person or, where that person is a member of a group within the meaning of section 66 of the **Accident Compensation (WorkCover Insurance) Act 1993**, to another member of that group—

S. 9(1)(c)
amended by
Nos 50/1994
s. 9(a),
40/2004 s. 3.

but does not include a reference to a contract of service or a contract under which a person during a financial year—

- (d) has supplied to that person services for or in relation to the performance of work that are ancillary to the supply of goods under the contract by the person by whom the services are supplied or to the use of goods which are the property of that second-mentioned person;

- (e) has supplied to that person services for or in relation to the performance of work where—
- (i) those services are of a kind not ordinarily required by that person and are rendered by a person who ordinarily renders services of that kind to the public generally;
 - (ii) those services are of a kind ordinarily required by that person for less than 180 days in a financial year;
 - (iii) those services are provided for a period that does not exceed 90 days or for periods that, in the aggregate, do not exceed 90 days in that financial year and are not services—
 - (A) provided by a person by whom similar services are provided to the first-mentioned person; or
 - (B) for or in relation to the performance of work where any of the persons who perform the work also perform similar work for the first-mentioned person—for periods that, in the aggregate, exceed 90 days in that financial year;

S. 9(1)(e)(iv)
repealed by
No. 82/2001
s. 12(1)(b).

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S. 9(1)(e)(v)
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 78(1)(d),
81/1998
s. 19(2),
82/2001
s. 12(2).

- (v) those services are supplied under a contract to which subparagraphs (i) to (iv) do not apply and the Authority is satisfied that those services are rendered by a person who ordinarily renders services of that kind to the public generally in that financial year; or

(f) has supplied to that person by a person (in this paragraph called *the contractor*) services for or in relation to the performance of work under a contract to which paragraphs (d) and (e) do not apply where the work to which the services related is performed—

S. 9(1)(f)
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 78(1)(a),
50/1994
s. 9(c),
81/1998
s. 19(2).

- (i) by two or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor;
- (ii) where the contractor is a partnership of two or more natural persons, by one or more of the members of the partnership and one or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor; or
- (iii) where the contractor is a natural person, by the contractor and one or more persons employed by, or who provide services for, the contractor in the course of a business carried on by the contractor—

unless the Authority determines that the contract or arrangement under which the services are so supplied was entered into with an intention either directly or indirectly of avoiding or evading the payment of a premium by any person; or

(g) has supplied to that person services for or in relation to the door to door sale of goods or of services ancillary to the sale of those goods on behalf of that person unless the Authority determines that the contract or arrangement under which the services are so supplied was entered into with an intention,

S. 9(1)(g)
inserted by
No. 50/1994
s. 9(c),
amended by
No. 81/1998
s. 19(2).

either directly or indirectly, of avoiding or evading the payment of a premium by any person.

(2) For the purposes of this Act—

(a) a person—

- (i) who during a financial year under a relevant contract supplies services to another person;
- (ii) to whom during a financial year, under a relevant contract, the services of persons are supplied for or in relation to the performance of work; or
- (iii) who, during a financial year, under a relevant contract, gives out goods to other persons—

shall be deemed to be an employer in respect of that financial year;

(b) a person who during a financial year—

- (i) performs work for or in relation to which services are supplied to another person under a relevant contract; or
- (ii) being a natural person, under a relevant contract, re-supplies goods to an employer—

shall be deemed to be a worker in respect of that financial year;

(c) amounts paid or payable by an employer during a financial year for or in relation to the performance of work relating to a relevant contract or the re-supply of goods by a worker under a relevant contract shall be deemed to be remuneration paid or payable during that financial year; and

- (d) where an amount referred to in paragraph (c) is included in a larger amount paid or payable by an employer under a relevant contract during a financial year, that part of the larger amount which is not attributable to the performance of work relating to the relevant contract or the re-supply of goods by a worker under the relevant contract may be prescribed; and
- (e) an amount paid or payable for or in relation to the performance of work under a relevant contract is deemed to include any payment made by a person who is deemed to be an employer under a relevant contract in relation to a person who is deemed to be a worker under the relevant contract that would be a superannuation benefit if made in relation to a person in the capacity of an employee.
- (3) Where a contract is a relevant contract pursuant to both subsections (1)(a) and (1)(b)—
- (a) the person to whom, under the contract, the services of persons are supplied for or in relation to the performance of work shall be deemed to be an employer; and
- (b) notwithstanding subsection (2)(a)(i) the person who under the contract supplies the services shall not be deemed to be an employer.

S. 9(2)(d)
amended by
No. 107/1997
s. 5(7).

S. 9(2)(e)
inserted by
No. 107/1997
s. 5(7).

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S. 9(4)
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 78(1)(a)(d),
81/1998
s. 19(2),
repealed by
No. 82/2001
s. 12(1)(b).

Accident Compensation Act 1985
No. 10191 of 1985
Part I—Preliminary

s. 9

S. 9(5)
amended by
No. 50/1993
s. 78(1)(a).

(5) Where, in respect of a payment for or in relation to the performance of work that is deemed to be remuneration under this section, a premium is paid by a person deemed under this section to be an employer—

S. 9(5)(a)
amended by
No. 50/1993
s. 78(1)(a).

(a) no other person shall be liable to a premium in respect of that payment; and

S. 9(5)(b)
amended by
No. 50/1993
s. 78(1)(a).

(b) where another person is liable to make a payment for or in relation to that work, that person shall not be liable to a premium in respect of that payment unless it or the payment by the first-mentioned person is made with an intention either directly or indirectly of avoiding or evading the payment of premium whether by the first-mentioned person or another person.

(6) In this section—

S. 9(6)(c)
amended by
No. 50/1994
s. 9(d).

(a) a reference to a contract includes a reference to an agreement, arrangement or undertaking, whether formal or informal and whether express or implied;

(b) a reference to supply includes a reference to supply by way of sale, exchange, lease, hire or hire-purchase, and in relation to services includes a reference to the providing, granting or conferring of services;

(c) a reference to the re-supply of goods acquired from a person includes a reference to—

(i) a supply to the person of goods in an altered form or condition; and

(ii) a supply to the person of goods in which the first-mentioned goods have been incorporated;

- (d) a reference to services includes a reference to results (whether goods or services) of work performed; and
- (e) a reference to the door to door sale of goods or of services ancillary to the sale of those goods is a reference to the entering into of an agreement or the making of an offer for the sale of those goods or services to the end user, or the taking or soliciting of an order for the purchase of those goods or services by the end user at a place other than a place of business where goods or services of that kind are normally offered or displayed for retail sale.

S. 9(6)(e)
inserted by
No. 50/1994
s. 9(e).

10 Persons deemed to be workers under relevant contracts

- (1) This section applies to a person who would, but for section 9(1)(e)(iii), be a worker in relation to a relevant contract.
- (2) If a person to whom this section applies is injured, the Authority may, if it is satisfied that the services provided by that person under a contract would have been likely to have been provided for 90 days or more in the financial year, determine that the person is, for the purposes of this Act, to be deemed to be a worker.

S. 10(2)
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 78(1)(d),
81/1998
s. 19(2).

10A Sub-contracting where sub-contractor not a worker

- (1) If a person (in this section referred to as *the principal contractor*) in the course of or for the purposes of the person's trade or business contracts with any other person who is not, and is not deemed under section 8 or 9 to be, a worker (in this section referred to as *the contractor*) for the execution by or under the contractor of the whole or any part of any work undertaken by the principal contractor, the principal contractor, if the

S. 10A
inserted by
No. 50/1993
s. 83.

contractor does not have a WorkCover insurance policy or is not a self-insurer at the time a worker employed in the execution of the work receives an injury, is liable to pay any compensation under this Act in respect of that injury which the principal contractor would have been liable to pay if that worker and all other workers employed by the contractor in the execution of the work had been immediately employed by the principal contractor.

- (2) If compensation is claimed from or proceedings are taken against the principal contractor in respect of any such injury, then, in the application of this Act, a reference to the principal contractor shall be substituted for a reference to the employer, except that the amount of compensation shall be calculated with reference to the earnings of the worker under the employer by whom the worker is immediately employed.
- (3) In the case of sub-contracts—
 - (a) **principal contractor** includes not only the original principal contractor but also each contractor who constitutes himself, herself or itself as a principal contractor with respect to a sub-contractor by contracting with the sub-contractor for the execution by the sub-contractor of the whole or any part of the work; and
 - (b) **contractor** includes not only the original contractor but also each sub-contractor—

and each principal contractor's right to indemnity shall include a right against each contractor standing between the principal contractor and the contractor by whom the worker was employed at the time when the injury occurred.

(4) If the principal contractor is liable to pay compensation under this section, the principal contractor is entitled to be indemnified by any person who would have been liable to pay compensation to the worker independently of this section, and all questions as to the right to and amount of any such indemnity shall in default of agreement be settled by a court.

(5) Nothing in this section shall be construed as preventing a worker recovering compensation under this Act from the contractor instead of the principal contractor.

(6) If—

**S. 10A(6)
amended by
No. 81/1998
s. 19(3)(d).**

(a) a principal contractor under a contract referred to in subsection (1) is, at the time of an injury to a worker employed in the execution of the work under the contract, insured under a WorkCover insurance policy in respect of workers other than the workers employed in the execution of the work under the contract;

**S. 10A(6)(a)
amended by
No. 81/1998
s. 19(3)(a).**

(b) compensation payable by the principal contractor under subsection (1) in respect of the injury is paid in accordance with the principal contractor's WorkCover insurance policy; and

**S. 10A(6)(b)
amended by
No. 81/1998
s. 19(3)(b).**

(c) the principal contractor has not, in respect of the policy, paid a premium in respect of the principal contractor's liability under subsection (1)—

**S. 10A(6)(c)
amended by
No. 81/1998
s. 19(3)(c).**

the principal contractor is liable to pay the Authority, in addition to the premium payable or paid in respect of the policy, a premium calculated having regard to—

- (d) the insurance premiums order in force as at the commencement of the policy; and
- (e) the remuneration paid or payable to the workers employed in the execution of the work under the contract during the relevant policy period.

S. 10A(7)
amended by
No. 81/1998
s. 19(4).

- (7) A principal contractor under a contract referred to in subsection (1) is not, under subsection (6), liable to pay in respect of a WorkCover insurance policy more than one additional premium in respect of the workers employed in the execution of the work under the contract.

S. 10A(8)
repealed by
No. 81/1998
s. 19(5).

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11 Share farmers

- (1) Notwithstanding anything in this Act, a share farmer shall be deemed to be a worker for the purposes of this Act, if and only if—
 - (a) the share farmer is employed under a contract with the owner of the land under which the share farmer is entitled to receive as consideration whether in cash or in kind or partly in cash and partly in kind less than one-third of the income derived from the land; or
 - (b) the share farmer is employed under a contract in writing which provides that the owner of the land shall be 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.

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- (2) A share farmer is not a worker for the purposes of this Act unless the share farmer is deemed to be a worker by virtue of subsection (1).
- (3) If a share farmer is deemed to be a worker under subsection (1), the amounts paid to the share farmer by the owner of the land under the contract shall be deemed to be remuneration and the owner shall be deemed to be the employer of the worker.
- (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 shall be deemed not to be a worker in the employ of the owner of the land by reason of the performance of such duties.
- (5) In this section—
- income** in relation to land means the gross value of the production derived from the land;
- owner** in relation to land includes any person who is 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 a person who is under contract to the owner of land to perform any work in relation to land used substantially for primary production and who is to be remunerated in whole or in part by receiving a share of the income whether in cash or in kind, derived from the land.
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12 Religious bodies and organizations

S. 12(1)
amended by
No. 48/1986
s. 7.

- (1) Where, by Order of the Governor in Council published in the Government Gazette at the request of a religious body or organization specified in the Order as having made the request, the Governor in Council declares that persons (not otherwise workers within the meaning of this Act) within a specified class are workers of that body or organization, a person within that class shall be deemed to be a worker employed by a person specified in the Order as the employer in relation to persons within that class who shall, for the purposes of this Act, be deemed to be an employer.

S. 12(2)
amended by
No. 67/1992
s. 64(7)(a).

- (2) Where an Order is made under subsection (1) at the request of a religious body or organization, such amounts as are determined by agreement between the Authority and the religious body or organization shall be deemed to be remuneration for the purposes of this Act.

13 Secretaries of co-operative societies

S. 13(1)(b)
substituted by
No. 84/1996
s. 467(Sch. 6
item 1.1).

- (1) In this section *society* means—
- (a) a society within the meaning of section 3(1) of the **Co-operative Housing Societies Act 1958**; or
 - (b) a co-operative within the meaning of the **Co-operatives Act 1996**.
- (2) For the purposes of this Act but subject to subsection (3)—
- (a) a person who is the secretary of one society only shall be deemed to be a worker and the society shall be deemed to be the employer in relation to the person and the amounts

paid by the society to the person shall be deemed to be remuneration; and

- (b) a person who is the secretary of more than one society shall be deemed to be a worker and those societies shall be deemed to be the employers in relation to that person and the amounts paid by those societies to that person shall be deemed to be remuneration.
- (3) Subsection (2) does not operate to deem a person who is the secretary of a society to be a worker nor the society to be an employer if that person is entitled to receive as secretary of the society—
 - (a) payment of expenses only; or
 - (b) payment of expenses and a sum not exceeding \$200 per annum—or if the person is not entitled to receive any payment as secretary of the society.

14 Persons employed by Crown or administrative units

- (1) This Act applies to persons employed by or under the Crown or any department in all cases where this Act would apply if the employer were a private person.
- (2) For the purposes of this Act—
 - (a) a responsible Minister of the Crown; and
 - (b) a member of the Legislative Council or the Legislative Assembly; and
 - (c) a person holding any judicial or other office to which the person is appointed by the Governor in Council; and

S. 14(1)
amended by
No. 50/1994
s. 10(1).

S. 14(2)(a)
amended by
No. 74/2000
s. 3(Sch. 1
item 1.1).

S. 14(2)(c)
substituted by
No. 83/1987
s. 7(e).

Accident Compensation Act 1985
No. 10191 of 1985
Part I—Preliminary

s. 14A

S. 14(2)(d)
inserted by
No. 34/1990
s. 7(1).

(d) a bail justice—

shall be deemed to be a worker employed by or
under the Crown.

S. 14(3)
amended by
Nos 83/1987
s. 7(f)(i)(ii),
50/1994
s. 10(2),
9/2010 s. 9.

- (3) For the purposes of this Act any person being the holder of any office as member of any public corporation, institution or body or of the governing body thereof shall be deemed to be a worker employed thereby or thereunder.
- (4) For the purposes of this Act every member of the police force or member of the Retired Police Reserve of Victoria shall be deemed to be employed by the Crown under a contract of service, and notwithstanding any rule of law to the contrary, that contract of service and the relationship of master and servant shall be deemed to exist between the Crown and each member of the police force or member of the Retired Police Reserve of Victoria in respect of the exercise and performance of all the powers and duties as such a member, whether arising at common law or under any statute or by the instructions of superiors or otherwise.

S. 14A
inserted by
No. 28/2005
s. 7.

14A 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.

14AA Municipal Councillors

S. 14AA
inserted by
No. 9/2010
s. 10.

- (1) For the purposes of this Act, a Councillor, while carrying out duties as a Councillor, is deemed to be a worker.
- (2) For the purposes of this Act, the Council of which a Councillor is a member is deemed, while the Councillor is carrying out duties as a Councillor, to be the employer of the Councillor.
- (3) In this section—
Councillor and ***Council*** have the same respective meanings as they have in section 3(1) of the **Local Government Act 1989**.
- (4) The Minister may make guidelines for the purposes of this section specifying duties performed by a Councillor that may be taken not to be duties as a Councillor for the purposes of this Act.
- (5) Guidelines made under subsection (4) must be published—
 - (a) in the Government Gazette; and
 - (b) on a Government Internet website.

15 Places of pick-up

S. 15
amended by
No. 50/1994
s. 11.

Notwithstanding anything in this Act or any other law, where a person is ordinarily engaged in any employment in connexion with which persons customarily attend certain pre-arranged places (in this Act called ***places of pick-up***) at which employers select and engage persons for employment, any such person shall be 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 service with an employer, and the employer who last employed that person in customary employment shall be deemed to be that employer.

s. 16

16 Sporting contestants

S. 16(1)
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 78(1)(d),
50/1994 s. 12.

- (1) Except as provided in subsection (4), where 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 or authorised insurer is liable to pay compensation for an injury received by the person if—

- (a) the injury is received while the person is—
- (i) participating as a contestant in a sporting or athletic activity;
 - (ii) engaged 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.

S. 16(1)(a)(iii)
amended by
No. 107/1997
s. 8(1)(a).

S. 16(1)(b)
repealed by
No. 107/1997
s. 8(1)(b).

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S. 16(2)
amended by
No. 50/1993
s. 78(1)(a),
repealed by
No. 107/1997
s. 8(1)(c).

* * * * *

- (3) For the purposes of subsection (1) *person* does not include a person—

S. 16(3)(a)
amended by
No. 35/2001
s. 8(1)(a).

- (a) who holds a licence, permit or approval to ride granted in accordance with the Rules of Racing of Racing Victoria; or
- (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 authorized for the holding of race meetings under Part I of that Act.

(4) A person—

S. 16(4)
amended by
No. 35/2001
s. 8(1)(b)(iii).

(a) engaged to participate as a rider in a horse race at a race meeting held under the Rules of Racing of Racing Victoria; or

S. 16(4)(a)
amended by
No. 35/2001
s. 8(1)(b)(i).

(b) who, not being an apprentice or the owner or trainer of the horse to be ridden, holds a licence, permit or approval to ride granted in accordance with the Rules of Racing of Racing Victoria and who agrees to do ride work on a horse at any racecourse or training track or in the environs of a racecourse or training track—

S. 16(4)(b)
amended by
No. 35/2001
s. 8(1)(b)(ii).

shall be deemed for the purposes only of this Act 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 in respect of so participating or doing shall be deemed to be remuneration.

(5) On and from the relevant day for the purposes only of this Act—

S. 16(5)
inserted by
No. 35/2001
s. 8(2).

(a) the liability of The Victoria Racing Club to pay compensation under this Act in respect of a relevant injury is transferred to Racing Victoria;

(b) the liability of The Victoria Racing Club at common law or otherwise in respect of a relevant injury is transferred to Racing Victoria;

- (c) for the purposes of Parts III, IV and VI and section 242, Racing Victoria is deemed to be the employer in respect of each person who has suffered a relevant injury;
- (d) a WorkCover insurance policy obtained and kept in force by Racing Victoria is deemed to indemnify Racing Victoria in respect of all liabilities transferred to Racing Victoria under this subsection and the premium payable for such a policy may be calculated in accordance with the premiums order as if—
 - (i) claims in respect of relevant injuries had been made against Racing Victoria; and
 - (ii) remuneration under subsection (4) has been paid or was payable by Racing Victoria;
- (e) in—
 - (i) any claim or application made under this Act by or against The Victoria Racing Club; and
 - (ii) any proceeding brought by or against The Victoria Racing Club—in relation to a relevant injury suffered by a person, that has not been finalised, settled or determined, Racing Victoria is deemed to be substituted for The Victoria Racing Club as a party to the claim, application or proceeding.

- (6) In subsection (5)—

relevant day means the day on which section 8 of the **Racing (Racing Victoria Ltd) Act 2001** comes into operation;

S. 16(6)
inserted by
No. 35/2001
s. 8(2).

relevant injury means—

- (a) an injury to a person who, at the time of the injury, was, under subsection (4), deemed to be a worker employed by The Victoria Racing Club, being an injury—
 - (i) that occurred before the relevant day; and
 - (ii) that arose out of, or in the course of or was due to the nature of the deemed employment under subsection (4); and
 - (b) the death of a person who suffered an injury to which paragraph (a) applies, if the death resulted from or was materially contributed to by the injury.
- (7) For the purposes of giving effect to subsection (5), The Victoria Racing Club must transfer to Racing Victoria all relevant documents and reports that are in the possession, or under the control, of The Victoria Racing Club.
- (8) In this section, *Racing Victoria* has the same meaning as in the **Racing Act 1958**.
- (9) This section is deemed to have been enacted as amended by section 8(1) of the **Accident Compensation (Miscellaneous Amendment) Act 1997**.

S. 16(7)
inserted by
No. 35/2001
s. 8(2).

S. 16(8)
inserted by
No. 35/2001
s. 8(2).

S. 16(9)
inserted by
No. 41/2006
s. 4.

Note

The effect of this provision is that the amendments made by section 8(1) of the **Accident Compensation (Miscellaneous Amendment) Act 1997** have effect as from 30 July 1985.

s. 16A

S. 16A
inserted by
No. 9/2010
s. 11.

16A 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, for the purposes of this Act, while so participating, to be a worker; and
- (d) the club, association or body of persons holding the mixed sports gathering is deemed, for the purposes of this Act, to be the employer of the rider or driver.

S. 17
amended by
Nos 10255
s. 8(2)(a),
64/1989
s. 37(1)(a)(i)
(as amended
by No.
18/1991
s. 12(3)) (ii),
45/1990
s. 109(d),
67/1992
s. 64(7)(a),
50/1993
s. 78(1)(a),
50/1994
s. 92(5)(a)(b),
repealed by
No. 107/1997
s. 7, new s. 17
inserted by
No. 9/2010
s. 11.

17 Outworkers

(1) For the purposes of this Act—

(a) subject to subsection (2)—

(i) a natural person who is an outworker within the meaning of the **Outworkers (Improved Protection) Act 2003** is deemed to be a worker; and

(ii) 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;

(b) if a person engages a family entity to perform outwork within the meaning of the **Outworkers (Improved Protection) Act 2003**—

-
- (i) each person engaged by the family entity who performs outwork within the meaning of that Act is deemed to be a worker; and
 - (ii) the first-mentioned person is deemed to be the employer of each person referred to in subparagraph (i).
 - (2) Subsection (1)(a) does not apply if the outworker does not perform any of the outwork personally but engages a person to perform all the outwork.
 - (3) 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 the 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% 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% of the capital of the partnership; or
 - (ii) are entitled (whether or not beneficially) to more than 50% 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% of the value of the interests in the trust.
- (4) For the purposes of subsection (3)(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% of the value of the interests in the trust.
- (5) In this section—
- corporation** has the same meaning as in section 57A of the Corporations Act;
- family entity**, in relation to an outworker, means—
- (a) a corporation;
 - (b) a partnership;
-

(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.

s. 18

Pt 2
(Headings
and ss 18–38)
amended by
Nos 10255
s. 8(3),
18/1991
s. 12(1)(b)(c),
48/1986
ss 8(1)(2), 9,
83/1987
ss 8–13,
13/1988
s. 7(b),
18/1988 s. 4,
50/1988
s. 93(2)(Sch. 2
Pt 2 item 1),
64/1989 ss 7,
11(1), 12–14,
substituted as
Pt 2
(Headings
and
ss 18–38B) by
No. 67/1992
s. 9.

PART II—THE VICTORIAN WORKCOVER AUTHORITY⁴

Pt 2 Div. 1
(Heading)
inserted by
No. 67/1992
s. 9.

Division 1—Establishment

S. 18
substituted by
No. 67/1992
s. 9.

18 Establishment of Authority

- (1) There is established by this Act an Authority by the name of the Victorian WorkCover Authority.
- (2) The Authority—
 - (a) is a body corporate with perpetual succession;

S. 18(2)(b)
repealed by
No. 28/2005
s. 13(1).

* * * * *

- (c) may sue and be sued in its corporate name;

- | | |
|---|---|
| <p>(d) shall, subject to this Act, be capable of taking, purchasing, leasing, holding, selling and disposing of real and personal property for the purpose of performing its functions and exercising its powers under this Act or any other Act;</p> | <p>S. 18(2)(d)
amended by
No. 13/1996
s. 4(a).</p> |
| <p>(e) shall be capable of doing and suffering all such acts and things as bodies corporate may by law do and suffer and which are necessary or expedient for the purpose of performing its functions and exercising its powers under this Act or any other Act.</p> | <p>S. 18(2)(e)
amended by
No. 13/1996
s. 4(b).</p> |
| <p>(3) A document is executed by the Authority if the document is signed by—</p> <p style="margin-left: 40px;">(a) 2 Directors of the Board; or</p> <p style="margin-left: 40px;">(b) 1 Director of the Board and the person who is designated by the Board to be the Secretary to the Board.</p> | <p>S. 18(3)
substituted by
No. 28/2005
s. 13(2).</p> |
| <p>(4) 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 (3).</p> | <p>S. 18(4)
substituted by
No. 28/2005
s. 13(2).</p> |
| <p>(5) 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 subsection (3).</p> | <p>S. 18(5)
inserted by
No. 28/2005
s. 13(2).</p> |

18A Trading name

Despite anything to the contrary in the **Business Names Act 1962** or any other Act or law, the Victorian WorkCover Authority may carry on business under the name "WorkSafe Victoria".

S. 18A
inserted by
No. 9/2010
s. 147.

S. 19
substituted by
No. 67/1992
s. 9.

19 Objectives of the Authority

The objectives of the Authority are to—

- (a) manage the accident compensation scheme as effectively and efficiently and economically as is possible;
- (b) administer this Act, the **Accident Compensation (WorkCover Insurance) Act 1993**, the **Workers Compensation Act 1958**, the **Occupational Health and Safety Act 2004**, the **Equipment (Public Safety) Act 1994**, the **Dangerous Goods Act 1985** and any other relevant Act;
- (c) assist employers and workers in achieving healthy and safe working environments;
- (d) promote the effective occupational rehabilitation of injured workers and their early return to work;
- (e) encourage the provision of suitable employment opportunities to workers who have been injured;
- (f) ensure that appropriate compensation is paid to injured workers in the most socially and economically appropriate manner and as expeditiously as possible;
- (g) develop such internal management structures and procedures as will enable the Authority to perform its functions and exercise its powers effectively, efficiently and economically.

S. 19(b)
amended by
Nos 50/1994
s. 13(1)(a),
13/1996 s. 5,
107/2004
s. 177(1).

S. 19(d)
amended by
No. 50/1994
s. 13(1)(b).

S. 19(e)
amended by
No. 50/1994
s. 13(1)(c).

20 Functions of the Authority

(1) The functions of the Authority are to—

(a) administer the WorkCover Authority Fund;

S. 20
substituted by
No. 67/1992
s. 9.

(aa) receive and assess and accept or reject claims for compensation;

S. 20(1)(aa)
inserted by
No. 81/1998
s. 20(1)(a).

(b) pay compensation to persons entitled to compensation under this Act;

S. 20(1)(b)
substituted by
Nos 50/1994
s. 13(2),
81/1998
s. 20(1)(a).

(ba) administer the Uninsured Employers and Indemnity Scheme under the **Accident Compensation (WorkCover Insurance) Act 1993**;

S. 20(1)(ba)
inserted by
No. 50/1994
s. 13(2).

(c) regulate and make recommendations to the Minister in relation to self-insurers;

S. 20(1)(c)
substituted by
No. 50/1994
s. 13(2).

(d) ensure that the scheme of accident compensation is competitive and fully-funded;

(da) establish and fund a WorkCover Advisory Service;

S. 20(1)(da)
inserted by
No. 107/1997
s. 9.

(e) conduct or defend proceedings before a court or tribunal;

(f) provide insurance for the purposes of this Act and the **Accident Compensation (WorkCover Insurance) Act 1993**;

S. 20(1)(f)
substituted by
Nos 50/1994
s. 13(3)(a),
81/1998
s. 20(1)(b).

(g) defend actions against employers under this Act and at common law;

S. 20(1)(g)
substituted by
No. 81/1998
s. 20(1)(c).

s. 20

S. 20(1)(ga)
inserted by
No. 81/1998
s. 20(1)(c).

- (ga) determine, collect and recover premiums payable for WorkCover insurance policies issued in accordance with the **Accident Compensation (WorkCover Insurance) Act 1993**;

S. 20(1)(h)–(j)
repealed by
No. 102/2004
s. 35(1).

* * * * *

- (k) undertake and 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;
- (l) 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 any such injury or disease;
- (m) ensure the availability of high quality education and training in such prevention and rehabilitation;
- (n) develop equitable and effective programs to identify areas of unnecessarily high cost to the workers compensation system and, as far as practicable, to reduce those costs;
- (o) foster a co-operative consultative relationship between management and labour in relation to the health, safety and welfare of persons at work;
- (p) encourage liaison between employers, accredited occupational rehabilitation service providers, medical practitioners and other health professionals in the interests of early and effective rehabilitation of injured workers;

S. 20(1)(p)
amended by
Nos 50/1993
s. 81(a),
50/1994
s. 13(3)(b),
81/1998
s. 20(1)(d).

- (q) identify (and as far as practicable minimise or remove) disincentives for injured workers to return to work or for employers to employ injured workers;
- (r) implement measures to deter and detect fraudulent workers compensation claims;
- (s) 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;
- (t) provide assistance in relation to the establishment and operation of occupational rehabilitation programs of employers;
- (ta) develop and implement programs to provide incentives to employers and to assist employers in—
 - (i) implementing measures designed to prevent injuries and diseases at workplaces; and
 - (ii) improving occupational health and safety and return to work results;
- (u) facilitate the development of rehabilitation plans and facilities to assist injured workers;
- (v) monitor the operation of occupational health and safety, rehabilitation and workers compensation arrangements;
- (w) collect and publish statistics;
- (x) conduct statistical analysis of occupational injuries and diseases;
- (y) provide information services to workers, employers, and the general community;
- (z) arrange, or facilitate the provision of, interpreter services to assist injured workers;

S. 20(1)(ta)
inserted by
No. 95/2003
s. 6,
substituted by
No. 9/2010
s. 148(1).

s. 20

S. 20(1)(za)
substituted by
No. 9/2010
s. 148(2).

- (za) 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;
 - (ii) enhancing cooperation between Australian jurisdictions in relation to the health and safety of Australian workers;
 - (iii) improving occupational health and safety outcomes and workers' compensation arrangements in Australia;
 - (iv) harmonising workers' compensation arrangements across the Commonwealth, States and Territories;

S. 20(1)(zb)
inserted by
No. 9/2010
s. 148(2).

- (zb) carry out other functions specified under this Act or any other Act.

(2) In performing its functions, the Authority must—

S. 20(2)(b)
amended by
No. 50/1994
s. 13(3)(c).

- (a) promote the prevention of injuries and diseases at the workplace and the development of healthy and safe workplaces;
- (b) ensure the efficient, effective and equitable occupational rehabilitation and compensation of persons injured at work;
- (c) ensure the financial viability and efficient operation of the workers compensation arrangements;

S. 20(2)(d)
amended by
No. 50/1994
s. 13(3)(d).

- (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 or of the **Accident Compensation (WorkCover**

Insurance) Act 1993 and the Workers Compensation Act 1958 and the accident compensation scheme established by or under this Act.

- (3) The function of the Authority under subsection (1)(ta) does not create any obligation that gives rise to any liability of, or a claim against, the Authority or its agents.

S. 20(3)
inserted by
No. 9/2010
s. 148(3).

20A Powers of the Authority

S. 20A
inserted by
No. 67/1992
s. 9.

- (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 and the **Accident Compensation (WorkCover Insurance) Act 1993** 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.

S. 20A(3)
substituted by
Nos 50/1993
s. 73, 81/1998
s. 20(2).

20B Additional powers of the Authority

S. 20B
inserted by
No. 67/1992
s. 9,
amended by
No. 107/1997
s. 10(2) (ILA
s. 39B(1)).

- (1) 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 do all things necessary or convenient to be done for or in connection with the performance of its functions under Division 6A or 6B of Part IV; and

S. 20B(1)(a)
amended by
No. 9/2010
s. 149.

s. 20B

S. 20B(1)(b)
amended by
No. 9/2010
s. 149.

(b) the power to enter into agreements or arrangements and to settle or compromise any differences or disputes with other persons in relation to any matter arising under or in relation to Division 6A or 6B of Part IV; and

S. 20B(1)(c)
amended by
No. 107/1997
s. 10(1).

(c) the power to enter into agreements or arrangements with employers liable to pay compensation under the **Workers Compensation Act 1958**, employers liable to pay damages in respect of injury or disease before, on or after the appointed day and insurers liable to indemnify employers in whole or in part in respect of any such liability upon such terms as the Authority deems appropriate and in particular, and without limiting or derogating from the generality of the foregoing, agreements or arrangements pursuant to which the Authority undertakes to assume or discharge that liability or any part of that liability; and

S. 20B(1)(d)
inserted by
No. 107/1997
s. 10(1).

(d) 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;
- (ii) the Authority performing any works or providing services for the corresponding Authority;
- (iii) the Authority providing the corresponding Authority with the use of its facilities or the services of its staff;
- (iv) the corresponding Authority performing the functions or exercising the powers of the Authority as its agent;

- (v) the corresponding Authority performing any works or providing services for the Authority;
 - (vi) the corresponding Authority providing the Authority with the use of its facilities or the services of its staff;
 - (e) in addition to, and not limited by, any other power under this section, the power to provide related and ancillary services.
- (2) For the purposes of subsection (1)(d), *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 which is responsible for administering a law corresponding to the Acts specified in section 19(b).
- (3) An agreement or contract entered into or a service provided before the commencement of section 10 of the **Accident Compensation (Miscellaneous Amendment) Act 1997** is to be deemed to be as validly entered into or provided as it would have been if this Act as amended by that section had been in force at the time the agreement or contract was entered into or the service was provided.

S. 20B(1)(e)
inserted by
No. 107/1997
s. 10(1).

S. 20B(2)
inserted by
No. 107/1997
s. 10(2).

S. 20B(3)
inserted by
No. 107/1997
s. 10(2).

20C Accountability of the Authority

S. 20C
inserted by
No. 67/1992
s. 9.

- (1) The Authority shall exercise its powers and perform its functions under this Act, the **Accident Compensation (WorkCover Insurance) Act 1993**, the **Occupational Health and Safety Act 2004**, the **Equipment (Public Safety) Act 1994**, the **Dangerous Goods Act 1985** and the **Mines Act 1958** subject to—

S. 20C(1)
amended by
Nos 50/1993
s. 78(1)(b),
13/1996 s. 6,
107/2004
s. 177(1),
66/2008
s. 30(2).

s. 20D

- (a) the general direction and control of the Minister; and
 - (b) any specific written directions given by the Minister in relation to a matter or class of matter specified in the directions.
- (2) Where the Authority has been given a written direction under subsection (1)(b), the Authority—
- (a) may cause that direction to be published in the Government Gazette; and
 - (b) shall publish that direction in its next annual report.
- (3) A direction under subsection (1)(b) must not relate to a specific person.

S. 20C(3)
inserted by
No. 107/2004
s. 177(2).

S. 20D
inserted by
No. 50/1994
s. 14.

20D Advisory practice notes

The Authority may issue advisory practice notes for the purposes of improving the management of claims and assisting in the prevention of injuries and the return to work of injured workers within the WorkCover system generally.

S. 20E
inserted by
No. 9/2010
s. 132.

20E Power to give advice on compliance

- (1) The Authority may give advice to a person who has an obligation under this Act 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 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 22(5)).

21 Delegation

S. 21
substituted by
No. 67/1992
s. 9.

- (1) The Authority may, by instrument, delegate to any person any function or power of the Authority under this Act or any other Act including, subject to subsection (3), this power of delegation.

S. 21(1)
amended by
Nos 50/1994
s. 13(4)(a),
28/2005 s. 14.

* * * * *

S. 21(2)
repealed by
No. 50/1994
s. 13(4)(b).

- (3) 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, or in the case of a body corporate that has a common seal, under its common seal, authorise another person to perform the function or exercise the power so delegated.

- (4) An authority given by a delegate of the Authority under subsection (3) 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.

- (5) Any act or thing done in the performance of a function or the exercise of a power by a person to whom that function or power is delegated by the

S. 21(5)
amended by
No. 7/1996
s. 5(a).

s. 21

Authority under subsection (1) or by a person authorised by a delegate of the Authority under subsection (3) to perform that function or exercise that power has the same force or effect as if it had been done by the Authority.

S. 21(6)
amended by
No. 7/1996
s. 5(b).

- (6) Where the performance of a function or the exercise of a power by the Authority is dependent on the opinion, belief or state of mind of the Authority in relation to a matter and that function or power has been delegated under subsection (1), that function or power may be performed or exercised by the delegate or by a person authorised by the delegate under subsection (3) upon the opinion, belief or state of mind of the delegate or of the authorised person, as the case may be, in relation to that matter.
- (7) The giving of an authority under subsection (3) does not prevent a performance of the function or the exercise of the power by the person by whom the authority was given.

S. 21(8)
amended by
No. 7/1996
s. 5(b).

- (8) Where a person purports to perform a function or exercise a power under this Act, it shall 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 (3) given pursuant to such a delegation to perform the function or exercise the power.

S. 21(9)
amended by
No. 7/1996
s. 5(b).

- (9) A delegation under subsection (1) or the giving of an authority under subsection (3) may be made subject to such conditions or limitations as to the performance or exercise of any of the functions or powers to which it relates or as to time or circumstance as is specified in the instrument of delegation or in the authority.

- (10) A delegation must not be made under this section to any person, other than a Director of the Board appointed under section 25 or 26 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.

S. 21(10)
inserted by
No. 13/1996
s. 7,
amended by
Nos 60/1996
s. 5, 31/2005
s. 35.

21A Investigation of certain delegates by Ombudsman

S. 21A
inserted by
No. 46/2005
s. 3.

- (1) The Ombudsman may enquire into or investigate—
- (a) any administrative action of a person as a delegate of the Authority in administering claims under the **Workers Compensation Act 1958**; and
 - (b) any matter relating to such an administrative action.

Note

Under the **Ombudsman Act 1973**, an *administrative action* is defined as including, among other things, a refusal or failure to take a decision, or to perform an act. As a result of subsection (2), this definition applies to references to administrative actions in this subsection.

- (2) For the purposes of subsection (1), the **Ombudsman Act 1973** applies as if—
- (a) the delegate was a public statutory body within the meaning of that Act; and
 - (b) the delegate, or if the delegate is a body corporate, the senior executive officer of the delegate (by whatever title he or she is known), was the principal officer of that public statutory body; and
 - (c) a reference to the responsible Minister in sections 17 and 23(3) of that Act was a reference to the Minister responsible for administering this section.

s. 22

S. 22
substituted by
No. 67/1992
s. 9.

22 Chief executive of the Authority and officers and employees⁵

S. 22(2)
substituted by
No. 50/1994
s. 15(1).

- (1) The Authority shall appoint such officers and employees as are necessary to enable the Authority to perform its functions, exercise its powers and achieve its objectives.
- (2) The Authority may employ any persons necessary to enable the Authority to perform its objectives and functions and exercise its powers.
- (3) If any person at the date of appointment as the chief executive 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 shall notwithstanding that appointment be deemed to continue subject to that Act to be an officer within the meaning of that Act.

S. 22(4)
amended by
No. 46/1998
s. 7(Sch. 1).

- (4) If a person—

S. 22(4)(a)
amended by
No. 46/1998
s. 7(Sch. 1).

- (a) was an employee in the public service immediately before appointment as chief executive of the Authority or as an officer or employee of the Authority; or

S. 22(4)(b)
amended by
No. 46/1998
s. 7(Sch. 1).

- (b) became an officer or employee of the Authority by reason of subsection (6) and was an employee in the public service, immediately before becoming an officer or employee of the Accident Compensation Commission or of the Victorian Accident Rehabilitation Council or the Registrar or an officer or employee of the WorkCare Appeals Board or an officer or employee assisting the Complaints Investigator—

the person shall upon ceasing to be chief executive or an officer or employee of the Authority be eligible to be employed in the public

service with a classification and emolument corresponding with or higher than that which the person last held in the public service as if the period of service as chief executive or an officer or employee of the Authority, officer or employee of the Accident Compensation Commission or the Victorian Accident Rehabilitation Council or Registrar or an officer or employee of the WorkCare Appeals Board or an officer or employee assisting the Complaints Investigator had been service in the public service.

- (5) 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.

S. 22(5)
substituted by
No. 50/1994
s. 15(2).

* * * * *

S. 22(6)(7)
repealed by
No. 7/1996
s. 6.

23 Authorised agents

S. 23
substituted by
No. 67/1992
s. 9.

- (1) The Authority may for the purposes of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**—
- (a) appoint by an instrument any person to be an authorised agent of the Authority; and

S. 23(1)
amended by
No. 81/1998
s. 20(3).

S. 23(1)(a)
amended by
No. 28/2005
s. 14.

s. 23

S. 23(1)(b)
amended by
No. 28/2005
s. 14.

(b) terminate any such appointment by an instrument.

- (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.

S. 23(4)
substituted by
Nos 81/1998
s. 20(4),
9/2010 s. 150.

- (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).

S. 23(5)
substituted by
No. 9/2010
s. 150.

- (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 the period specified by the Authority.
- (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.
- (8) The requirement under subsections (6) and (7) to retain accounting records applies for 7 years.

23AA Investigation of authorised agent by Ombudsman

S. 23AA
inserted by
No. 46/2005
s. 4.

- (1) The Ombudsman may enquire into or investigate—
 - (a) any administrative action of an authorised agent in its capacity as an authorised agent under this Act; and
 - (b) any matter relating to such an administrative action.

Note

Under the **Ombudsman Act 1973**, an *administrative action* is defined as including, among other things, a refusal or failure to take a decision, or to perform an act. As a result of subsection (2), this definition applies to references to administrative actions in this subsection.

- (2) For the purposes of subsection (1), the **Ombudsman Act 1973** applies as if—
 - (a) the authorised agent was a public statutory body within the meaning of that Act; and
 - (b) the senior executive officer of the authorised agent (by whatever title he or she is known) was the principal officer of that public statutory body; and

- (c) a reference to the responsible Minister in sections 17 and 23(3) of that Act was a reference to the Minister responsible for administering this section.

S. 23A
inserted by
No. 81/1998
s. 20(5).

23A Existing authorised insurers

- (1) The Authority must before the commencement of section 12 of the **Accident Compensation (Amendment) Act 1998** offer to each corporation who is the holder of a licence to be an authorised insurer under the **Accident Compensation (WorkCover Insurance) Act 1993** immediately before the commencement of section 20(5) of the **Accident Compensation (Amendment) Act 1998** an appointment as an authorised agent under section 23 in accordance with this section.
- (2) The instrument of appointment must—
- (a) provide that the corporation is authorised to act on behalf of the Authority in the issuing of WorkCover insurance policies, the collection of premiums and the administration of claims, subject to such terms, conditions and limitations as are specified;
 - (b) subject to any termination provisions, be for a minimum period equal to the unexpired term of the licence held by the corporation as at the commencement of section 12 of the **Accident Compensation (Amendment) Act 1998**;
 - (c) contain terms and conditions as to remuneration which are certified by the Minister as being no less favourable than the terms and conditions as to remuneration which apply in relation to the licence to be an authorised insurer;

- (d) include any other terms and conditions required for the purposes of section 23.

Division 2—Board of Management

Pt 2 Div. 2
(Heading)
inserted by
No. 67/1992
s. 9.

24 Establishment of Board

S. 24
substituted by
No. 67/1992
s. 9.

- (1) There is to be a Board of Management of the Authority which—
- (a) may exercise all the powers of the Authority;
 - (b) must give general directions as to the carrying out of the objectives and functions of the Authority;
 - (c) must ensure that the Authority is managed and operated in an efficient and economic manner.
- (2) The Board is to consist of—
- (a) one full-time Director, who is to be the Chief Executive of the Authority; and
 - (b) not more than 7 part-time Directors—

S. 24(2)(b)
amended by
No. 45/1997
s. 3.

being natural persons appointed by the Governor in Council.

25 Full-time Director and Chief Executive

S. 25
substituted by
No. 67/1992
s. 9.

- (1) The Governor in Council must appoint a full-time Director of the Board, who is to act as Chief Executive of the Authority.
- (2) The affairs of the Authority are to be managed and controlled by the Chief Executive in accordance with the policies of the Board.

S. 25(4)
amended by
No. 50/1994
s. 15(3).

- (3) Any act, matter or thing done in the name of, or on behalf of, the Authority, by the Chief Executive is to be taken to have been done by the Authority.
- (4) The Chief Executive is entitled to be paid—
 - (a) 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
 - (b) such travelling and other allowances and expenses as may be fixed from time to time by the Governor in Council.
- (5) The terms and conditions of the appointment of the Chief Executive include those contained in any instrument of appointment.

S. 26
substituted by
No. 67/1992
s. 9.

26 Part-time Directors

- (1) The Governor in Council may on the recommendation of the Minister appoint part-time Directors of the Board from time to time, being persons who have such managerial, commercial or other qualifications or experience as the Minister considers necessary to enable the Authority to perform its functions and exercise its powers.
- (2) Subject to this section, a part-time Director holds office for a term not exceeding 5 years as is specified in the instrument of appointment of that Director and is eligible for re-appointment.
- (3) A part-time 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. 26(3)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 1.1).

- (a) 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
- (b) such travelling and other allowances and expenses as may be fixed from time to time by the Governor in Council.
- (4) The terms and conditions of the appointment of any part-time Director include those contained in any instrument of appointment.

27 Chairperson

S. 27
substituted by
No. 67/1992
s. 9.

- (1) The Governor in Council may appoint one of the Directors to be Chairperson.
- (2) Where the Chairperson is unable whether by reason of illness or otherwise to perform the duties of the office or the office of Chairperson is vacant, the Governor in Council may appoint any other Director to act in the place of the Chairperson.
- (3) A person appointed under this section while acting in the place of the Chairperson—
 - (a) has all the powers and may perform all the duties of and has the same privileges as the Chairperson; and
 - (b) is if that person is not 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 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

S. 27(3)(b)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 1.1).

(ii) such travelling and other allowances as may be fixed from time to time by the Governor in Council.

(4) The Governor in Council may at any time terminate an appointment under subsection (1), with effect to such person's appointment as a part-time Director.

S. 27(5)
amended by
No. 50/1993
s. 110(1)(a).

(5) If a person has been appointed under subsection (2) 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 person 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.

S. 28
substituted by
No. 67/1992
s. 9.

28 Meetings of the Board

(1) The Chairperson—

- (a) may at any time; and
- (b) must at least 10 times in each calendar year—

S. 28(1)(b)
amended by
No. 50/1994
s. 16(1).

convene a meeting of the Board to be held at a place and time determined by the Chairperson.

S. 28(1A)
inserted by
No. 50/1994
s. 16(2).

(1A) 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 in any other similar way.

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- (2) The Chairperson must preside at any meeting of the Board at which the Chairperson is present.
 - (3) 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.
 - (4) A majority of Directors in office at the time constitute a quorum at a meeting of the Board.
 - (5) Subject to the presence of a quorum the Board may act notwithstanding any vacancy in the office of a Director.
 - (6) Every 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.
 - (7) In the event of an equality of votes on any question at a meeting of the Board the Chairperson or other person presiding at that meeting has a second or casting vote.
 - (8) Subject to this Act, the Board may regulate its own procedure.
 - (9) 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.
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s. 29

S. 29
substituted by
No. 67/1992
s. 9.

29 General terms of appointment of Directors

(1) The Governor in Council may at any time remove a Director from office.

(2) The office of a Director becomes vacant—

(a) at the expiration of the term of office;

(b) if the Director dies;

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S. 29(2)(c)
repealed by
No. 42/1995
s. 224(Sch. 2
item 1).

(d) if the Director resigns by writing delivered to the Governor in Council;

(e) if the Director is removed from office under subsection (1);

(f) if the Director becomes bankrupt;

(g) if the Director is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence;
or

(h) if the Director is wilfully absent from three consecutive meetings in any year of the Board without leave granted by the Minister.

S. 29(3)
substituted by
No. 50/1994
s. 17,
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 1.2),
80/2006
s. 26(Sch.
item 1.1).

(3) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a Director in respect of the office of Director.

- (4) A Director 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 Act or any other Act.

S. 29(4)
amended by
No. 50/1993
s. 78(1)(b),
substituted by
No. 50/1994
s. 17.

30 Acting Directors

S. 30
substituted by
No. 67/1992
s. 9.

- (1) If a Director is unable to perform the duties of the office of Director, the Governor in Council may appoint a person to act in the place of that Director during the period of the inability.
- (2) A person appointed under this section while acting in the place of a Director—
- (a) has all the powers and may perform all the duties of and has the same privileges as the Director for whom the person is acting; and
- (b) is if that person is not 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 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.
- (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 that Director and that Director

S. 30(2)(b)
amended by
Nos 46/1998
s. 7(Sch. 1),
108/2004
s. 117(1)
(Sch. 3
item 1.3).

ceases to hold office without having resumed the performance of the duties of the office, the period of appointment of the person so appointed shall be 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 for whom that person is acting ceases to hold office—

whichever first occurs.

S. 31
substituted by
No. 67/1992
s. 9.

31 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) that Director must not be present during any deliberation of the Board with respect to that matter; and

- (b) that Director is not entitled to vote on the matter; and
- (c) if that Director does vote on the matter, the vote must be disallowed.

31A WorkCover Advisory Committee

- (1) There shall be a WorkCover Advisory Committee to advise the Board in relation to its objectives—

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S. 31A
inserted by
No. 67/1992
s. 9.

S. 31A(1)(a)
repealed by
No. 107/2004
s. 177(3)(a).

- (b) to ensure that appropriate compensation is paid to injured workers in the most socially and economically appropriate manner and as expeditiously as possible; and
- (c) to promote the occupational rehabilitation and early return to work of injured workers.

S. 31A(1)(c)
amended by
No. 50/1994
s. 18(a).

- (2) The WorkCover Advisory Committee is to consist of members appointed by the Minister from time to time, being—

- (a) persons with a sound knowledge of the law relating to accident compensation;
- (b) persons with experience in the provision of hospital services or medical services;
- (c) persons with experience in accident compensation who are nominated by Victorian employer and employee groups;

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S. 31A(2)(d)
repealed by
No. 107/2004
s. 177(3)(b).

s. 31A

S. 31A(2)(e)
amended by
No. 50/1994
s. 18(b).

(e) persons with knowledge and experience in occupational rehabilitation.

(3) The functions of the WorkCover Advisory Committee are to inquire into and report to the Board upon any matters referred to it by the Board in accordance with the terms of reference supplied by the Board including—

(a) to examine, review and make recommendations to the Board in relation to 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;

(b) to make recommendations to the Board with respect to—

(i) the operation and administration of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** and any relevant regulations; and

(ii) regulations which the Board or the Minister proposes should be made or approved;

(c) to examine, review and make recommendations to the Board in relation to the establishment, administration and operation of occupational rehabilitation, vocational re-education facilities and programs available to injured workers.

(4) Subject to this Act, the Board may regulate the procedures of the WorkCover Advisory Committee.

S. 31A(3)(b)(i)
amended by
No. 50/1994
s. 18(c).

Division 3—Financial matters

Pt 2 Div. 3
(Heading)
inserted by
No. 67/1992
s. 9.

32 WorkCover Authority Fund

S. 32
substituted by
No. 67/1992
s. 9.

- (1) The Authority must establish and maintain a Fund to be called the WorkCover Authority Fund.
- (2) The following funds established under this Act as in force immediately before the commencement of section 9 of the **Accident Compensation (WorkCover) Act 1992**—
 - (a) The Accident Compensation Fund;
 - (b) The Accident Compensation Tribunal Fund;
 - (ba) The Appeals Board Fund;
 - (c) The Medical Panels Fund;
 - (d) The Victorian Accident Rehabilitation Fund—

S. 32(2)(b)
re-numbered
as s. 32
(2)(ba) by
No. 50/1994
s. 19(a).

become, on that commencement, part of the WorkCover Authority Fund and any money authorised by the Act prior to that commencement to be paid into those Funds or any payments authorised by the Act prior to that commencement to be paid out of those Funds shall be paid into or may be paid out of the WorkCover Authority Fund.

- (2A) The following funds established under the **Accident Compensation (WorkCover Insurance) Act 1993** as in force immediately before the commencement of Part 2 of the **Accident Compensation (Amendment) Act 1998**—

S. 32(2A)
inserted by
No. 81/1998
s. 21(1).

- (a) the statutory funds of authorised insurers;
- (b) the Uninsured Employers and Indemnity Fund—

become, on that commencement, part of the WorkCover Authority Fund and any money authorised by the **Accident Compensation (WorkCover Insurance) Act 1993** prior to that commencement to be paid into those funds or any payments authorised by the **Accident Compensation (WorkCover Insurance) Act 1993** prior to that commencement to be paid out of those funds must be paid into or may be paid out of the WorkCover Authority Fund.

- (3) There must be paid into the Fund—

S. 32(3)(a)
repealed by
No. 102/2004
s. 35(2).

* * * *

S. 32(3)(b)
amended by
No. 50/1994
s. 19(b).

- (b) any amount recovered as penalties for offences against this Act, the **Accident Compensation (WorkCover Insurance) Act 1993** or the **Workers Compensation Act 1958**;

S. 32(3)(ba)
inserted by
No. 13/1996
s. 8(1).

- (ba) any amount—

S. 32(3)(ba)(i)
amended by
Nos 107/2004
s. 177(4),
66/2008
s. 30(3).

- (i) recovered as a penalty for an offence against the **Occupational Health and Safety Act 2004**, the **Equipment (Public Safety) Act 1994**, the **Dangerous Goods Act 1985** or the **Mines Act 1958** or the regulations made under any of those Acts if the proceedings were brought by or on behalf of the Authority or by an

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- inspector appointed by the Authority
under any of those Acts; or
- (ii) received as payment for a penalty for
an offence against any of the Acts
specified in subparagraph (i) or the
regulations made under any of those
Acts for which an infringement notice
has been issued;
- (bb) any fee payable under—
- S. 32(3)(bb)
inserted by
No. 13/1996
s. 8(1).
- (i) the **Occupational Health and Safety
Act 2004** or the **Equipment (Public
Safety) Act 1994** or regulations made
under either of those Acts, unless the
regulations made under either of those
Acts provide that those fees are
otherwise payable; and
- S. 32(3)(bb)(i)
amended by
No. 107/2004
s. 177(4).
- (ii) the **Dangerous Goods Act 1985** and
the regulations made under that Act;
- S. 32(3)(bb)(ii)
substituted by
No. 66/2008
s. 30(4).
- (bc) any amount certified by the Treasurer, after
consultation with the Minister, as a
contribution from the Consolidated Fund 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**,
the **Dangerous Goods Act 1985** and the
Mines Act 1958;
- S. 32(3)(bc)
inserted by
No. 13/1996
s. 8(1),
amended by
Nos 107/2004
s. 177(4),
66/2008
s. 30(5).
- (c) any income from the investment of any
money credited to the Fund and the proceeds
of the sale of any investment;
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s. 32

S. 32(3)(d)
amended by
No. 100/1995
s. 10(1)(Sch. 1
item 1.1(a)).

(d) any money that the Authority borrows;

(e) any money required or permitted to be paid into the Fund under this Act or any other Act;

S. 32(3)(f)
amended by
No. 50/1994
s. 19(c).

(f) all other money that the Authority receives under or for the purposes of occupational health and safety, accident compensation or occupational rehabilitation;

S. 32(3)(fa)
inserted by
No. 50/1993
s. 74(a),
substituted by
No. 81/1998
s. 21(2).

(fa) premiums received for WorkCover insurance policies;

S. 32(3)(fb)
inserted by
No. 81/1998
s. 21(2).

(fb) any other amount or penalty paid in connection with WorkCover insurance policies;

S. 32(3)(fc)
inserted by
No. 81/1998
s. 21(2).

(fc) registration fees paid under section 58 of the **Accident Compensation (WorkCover Insurance) Act 1993**;

S. 32(3)(fd)
inserted by
No. 81/1998
s. 21(2).

(fd) any amount recovered or penalty received from uninsured employers;

S. 32(3)(fe)
inserted by
No. 81/1998
s. 21(2).

(fe) any amount recovered in relation to claims against the Uninsured Employers and Indemnity Scheme;

(g) all other money that the Authority receives under or for the purposes of this Act or any other Act.

(4) There may be paid out of the Fund—

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|--|---|
| <p>(a) payments of compensation or any other payments required under this or any other Act or any regulation made under this or any other Act to be paid out of the Fund;</p> | <p>S. 32(4)(a) amended by No. 13/1996 s. 8(2)(a).</p> |
| <p>(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 (as defined by the Ombudsman Act 1973) of the Authority, of authorised agents and self-insurers under this Act and of delegates in administering claims under the Workers Compensation Act 1958;</p> | <p>S. 32(4)(b) repealed by No. 102/2004 s. 35(2), new s. 32(4)(b) inserted by No. 46/2005 s. 5.</p> |
| <p style="text-align: center;">* * * *</p> | <p>S. 32(4)(c) repealed by No. 13/1996 s. 8(2)(b).</p> |
| <p>(d) any payment of an amount certified by the Minister on the advice of the Attorney-General toward costs incurred by the County Court, the Magistrates' Court or the Tribunal arising out of the operation of this Act;</p> | <p>S. 32(4)(d) amended by No. 52/1998 s. 311(Sch. 1 item 1.2).</p> |
| <p>(e) 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;</p> | |
| <p>(f) the remuneration (including allowances) of the Board of Directors and staff of the Authority and, where appropriate, any member of the WorkCover Advisory Committee or Occupational Health and Safety Advisory Committee (within the</p> | <p>S. 32(4)(f) amended by No. 107/2004 s. 177(5).</p> |

meaning of the **Occupational Health and Safety Act 2004**);

S. 32(4)(fa)
inserted by
No. 50/1993
s. 84(1).

- (fa) any remuneration (including allowances) of members of Medical Panels and such costs and expenses incurred in connection with the operation of Division 3 of Part III as are approved by the Authority;

S. 32(4)(fb)
inserted by
No. 82/2001
s. 9(a).

- (fb) any payment required to meet the obligation imposed on the Authority by section 52L;

- (g) all money required for the repayment of borrowings by the Authority and for the payment of interest payable in respect of the borrowings;

- (h) any remuneration payable to authorised agents and any payment whether for the whole or part of the cost of studies or programmes approved by the Authority carried out or developed for in respect of employers or industries by agents appointed under section 23; and

S. 32(4)(ha)
inserted by
No. 50/1993
s. 74(b),
substituted by
No. 81/1998
s. 21(3).

- (ha) any payment arising under or in connection with a WorkCover insurance policy;

S. 32(4)(hb)
inserted by
No. 50/1993
s. 74(b),
substituted by
No. 81/1998
s. 21(3).

- (hb) any payment towards a claim against the Uninsured Employers and Indemnity Scheme;

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- | | |
|--|--|
| <p>(hc) any payment of costs and expenses in relation to a claim against the Uninsured Employers and Indemnity Scheme;</p> | <p>S. 32(4)(hc) inserted by No. 81/1998 s. 21(3).</p> |
| <p>(hd) any payment of expenses incurred by or on behalf of the Authority in administering the Uninsured Employers and Indemnity Scheme;</p> | <p>S. 32(4)(hd) inserted by No. 81/1998 s. 21(3).</p> |
| <p>(i) any other costs and expenses incurred by the Authority under this Act or any other Act.</p> | |
| <p>(5) For the purposes of this section and the Accident Compensation (WorkCover Insurance) Act 1993 the Authority may open and maintain one or more accounts in the name of the Authority with any authorised deposit-taking institution or institutions.</p> | <p>S. 32(5) amended by Nos 50/1993 s. 74(c), 11/2001 s. 3(Sch. item 2.2).</p> |
| <p>(6) 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.</p> | <p>S. 32(6) amended by No. 100/1995 s. 10(1)(Sch. 1 item 1.1(b)).</p> |
| <p>(7) Where any money is invested in accordance with subsection (6) in the purchase of any land or the construction or alteration of any 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.</p> | <p>S. 32(7) amended by Nos 100/1995 s. 10(1)(Sch. 1 item 1.1(c)), 13/1996 s. 8(3).</p> |
| <p>(8) In the performance of its functions the Authority may for the purposes of and in accordance with any rule of any court in that behalf execute and lodge with the proper officer of the court a bond conditioned for the payment into court by the Authority of a sum of money in satisfaction of any claim.</p> | |
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s. 33

S. 33
substituted by
Nos 67/1992
s. 9, 100/1995
s. 10(1)(Sch. 1
item 1.2).

33 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**.

* * * * *

S. 33A
inserted by
No. 67/1992
s. 9,
amended by
Nos 50/1993
ss 78(1)(a),
84(2), 50/1994
s. 20, 60/1996
s. 6,
repealed by
No. 9/2010
s. 125.

S. 34
substituted by
No. 67/1992
s. 9.

34 Budget

- (1) 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.
- (2) The Budget must be in a form and contain such matters as may be required by the Minister.

S. 34A
inserted by
No. 50/1994
s. 21.

34A Operating and financial report

- (1) The Authority must as soon as possible after 31 December but not later than 28 February 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.

Division 4—Independent review

Pt 2 Div. 4
(Heading and
s. 35)
inserted by
No. 9/2010
s. 96.

35 Review of setting of premium and contributions by self-insurers

New s. 35
inserted by
No. 9/2010
s. 96.

- (1) The Minister must cause a review—
- (a) on any matter relating to the setting of premiums to be undertaken by an independent expert body;
 - (b) to be conducted once every 5 years.
- (2) The Minister may cause a review on any matter relating to self-insurer contributions to be undertaken by an independent expert body.

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S. 35
substituted by
No. 67/1992
s. 9,
repealed by
No. 31/1994
s. 4(Sch. 2
item 1).

* * * *

S. 36
substituted by
No. 67/1992
s. 9,
amended by
No. 50/1993
s. 85,
repealed by
No. 31/1994
s. 4(Sch. 2
item 1).

* * * *

S. 37
substituted by
No. 67/1992
s. 9,
amended by
No. 50/1993
s. 86,
repealed by
No. 50/1994
s. 22(1).

Accident Compensation Act 1985
No. 10191 of 1985
Part II—The Victorian WorkCover Authority3F

s. 37A

S. 37A substituted by No. 67/1992 s. 9, repealed by No. 50/1994 s. 22(1).	*	*	*	*	*
S. 38 substituted by No. 67/1992 s. 9, amended by No. 50/1994 s. 22(2), repealed by No. 7/1996 s. 7.	*	*	*	*	*
S. 38A inserted by No. 67/1992 s. 9, amended by No. 50/1994 s. 22(2), repealed by No. 7/1996 s. 7.	*	*	*	*	*
S. 38B inserted by No. 67/1992 s. 9, amended by No. 50/1994 s. 22(3), repealed by No. 31/1994 s. 4(Sch. 2 item 1).	*	*	*	*	*

PART III—DISPUTE RESOLUTION⁶

Pt 3
(Heading and
ss 39–80)
amended by
Nos 48/1986
ss 10, 11,
12(a)–(e), 13,
17(2), 33(2),
83/1987
ss 14–17(1)
(2)(a)–(c) (as
amended by
No. 64/1989
s. 57(3)(a))(3),
18–28, 29(2)–
34, 13/1988
s. 7(c)–(f),
50/1988
s. 93(2)(Sch. 2
Pt 2 item 1),
19/1989
s. 16(Sch.
items 1.1, 1.2),
64/1989
s. 15(1)–(3),
substituted as
Pt 3
(Headings
and ss 39–
73D) by
No. 64/1989
s. 8,
amended by
No. 18/1991
s. 12(1)(d)–(f),
substituted as
Pt 3
(Headings
and ss 39–68)
by No.
67/1992 s. 10.

Division 1—County Court

Pt 3 Div. 1
(Heading)
substituted by
No. 67/1992
s. 10.

39 Jurisdiction—general

S. 39
substituted by
No. 67/1992
s. 10.

- (1) Subject to the **County Court Act 1958**, the
County Court has exclusive jurisdiction to inquire
into, hear and determine any question or matter
under this Act arising after the commencement of

section 10 of the **Accident Compensation
(WorkCover) Act 1992**, out of⁷—

S. 39(1)(a)
amended by
Nos 50/1993
s. 78(1)(h),
81/1998
s. 22(a).

(a) any decision of the Authority, employer or a
self-insurer; or

(b) any recommendation or direction of a
conciliation officer.

S. 39(1AA)
inserted by
No. 28/2005
s. 21.

(1AA) 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 relating to
any termination or alteration of any entitlement to
weekly payments by virtue of this Act.

S. 39(1A)
inserted by
No. 107/1997
s. 11(1),
amended by
Nos 26/2000
s. 20(1),
102/2004 s. 3.

(1A) Subsection (1) does not apply to a question or
matter arising out of a decision of the Authority
under section 134AB(20), 134AB(20A),
135A(6A) or 135A(6B).

S. 39(2)
amended by
Nos 50/1994
s. 60(2),
60/1996
s. 18(a),
substituted by
No. 107/1997
s. 11(2).

(2) Subsection (1) does not apply to any question or
matter arising under—

S. 39(2)(a)
amended by
Nos 82/2001
s. 4, 102/2004
s. 13.

(a) Division 3A, 6, 6A or 9A of Part IV; or

(b) Part V; or

(c) Part VII.

- (3) This section as amended by section 11 of the **Accident Compensation (Miscellaneous Amendment) Act 1997** applies in respect of any proceedings commenced on or after the commencement of that section.

S. 39(3)
inserted by
No. 107/1997
s. 11(2).

- (4) Any proceedings commenced before the commencement of section 11 of the **Accident Compensation (Miscellaneous Amendment) Act 1997** may be continued as if that section had not been enacted.

S. 39(4)
inserted by
No. 107/1997
s. 11(2).

40 Jurisdiction under Workers Compensation Act 1958

S. 40
substituted by
No. 67/1992
s. 10.

- (1) Subject to the **County Court Act 1958**, the County Court—
- (a) has exclusive jurisdiction to inquire into, hear and determine⁸—
- (i) any question or matter with respect to whether a claim for compensation should be made under the **Workers Compensation Act 1958** or this Act; and
- (ii) any question or matter in relation to whether liability to pay compensation arises under the **Workers Compensation Act 1958** or this Act; and
- (iii) 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—

s. 42

- (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 or the **Workers Compensation Act 1958**⁹.

S. 40(2)
 repealed by
 No. 107/1997
 s. 11(3).

* * * *

S. 41
 substituted by
 No. 67/1992
 s. 10,
 amended by
 Nos 50/1994
 s. 23, 60/1996
 s. 18(b),
 repealed by
 No. 107/1997
 s. 11(3).

* * * *

S. 42
 substituted by
 No. 67/1992
 s. 10.

42 Transitional: proceedings commenced but not determined

- (1) Where, before the commencement of section 10 of the **Accident Compensation (WorkCover) Act 1992**, any matter, other than a matter arising under section 99, 120, 218 or Division 6A of Part IV of this Act or section 26 of the **Workers Compensation Act 1958**, had been commenced before the Accident Compensation Tribunal but the Tribunal had not commenced to hear the matter, the County Court shall hear and determine the matter in all respects as if the matter had been commenced before it.

- (2) Where, before the commencement of section 10 of the **Accident Compensation (WorkCover) Act 1992**, the Accident Compensation Tribunal had commenced to hear any matter, other than a matter arising under section 99, 120, 218 or Division 6A of Part IV of this Act or section 26 of the **Workers Compensation Act 1958**, but had not completed the hearing or had not determined the matter, the County Court shall commence to hear and shall determine the matter in all respects as if the matter had been commenced before it.
- (3) The County Court must not hear proceedings to which this section applies unless the parties have attended a conference with a conciliator.
- (4) The Minister—
 - (a) may appoint persons to act as conciliators for the purposes of subsection (3); and
 - (b) may give directions about the procedures for conferences under that subsection.

42A Transitional: medical or like matters commenced but not determined

S. 42A
inserted by
No. 67/1992
s. 10.

- (1) Where, before the commencement of section 10 of the **Accident Compensation (WorkCover) Act 1992**, any matter arising under section 99, 120, 218 or Division 6A of Part IV of this Act or section 26 of the **Workers Compensation Act 1958** had been commenced before the Accident Compensation Tribunal (in this section called the *former Tribunal*) but the former Tribunal had not commenced to hear the matter, the Administrative Appeals Tribunal (in this section called the *new Tribunal*) should hear and determine the matter in all respects as if the matter had been commenced before it.

s. 42B

- (2) Where, before the commencement of section 10 of the **Accident Compensation (WorkCover) Act 1992**, the former Tribunal had commenced to hear any matter but had not completed the hearing or had not determined the matter, the new Tribunal shall commence to hear and shall determine the matter in all respects as if the matter had been commenced before it.

S. 42B
inserted by
No. 67/1992
s. 10.

42B Transitional: final conclusion of proceedings

- (1) This section applies to proceedings in the Accident Compensation Tribunal that had been determined by the Tribunal before the commencement of section 10 of the **Accident Compensation (WorkCover) Act 1992** but that were not finally concluded before that commencement.

S. 42B(2)
substituted by
No. 50/1994
s. 24.

- (2) For the purposes of this section any judge of the County Court may act as a member of the Accident Compensation Tribunal.

S. 42B(2A)
inserted by
No. 50/1994
s. 24.

- (2A) The Accident Compensation Tribunal continues in existence for the purposes of determining any matter arising after the commencement of section 10 of the **Accident Compensation (WorkCover) Act 1992** in any proceedings to which this section applies.

S. 42B(2B)
inserted by
No. 50/1994
s. 24.

- (2B) This section as amended by section 24 of the **Accident Compensation (Amendment) Act 1994** applies to any application which is lodged in the County Court or Magistrates' Court on or after the commencement of that section.
- (3) For the purposes of this section, the Tribunal may exercise such powers and perform such functions as it could have exercised or performed in relation to the proceedings immediately before the commencement of section 10 of the **Accident Compensation (WorkCover) Act 1992** and, for

the purpose of finally concluding the proceedings, this Act applies as if it had not been amended by that section.

43 Jurisdiction of Magistrates' Court

S. 43
substituted by
No. 67/1992
s. 10.

(1) If the County Court would have had jurisdiction under this Act 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.¹¹

s. 43(1)
amended by
Nos 50/1993
s. 87(1)(a),
7/1996 s. 8(1),
substituted by
No. 9/2010
s. 75(1)¹⁰.

(1A) 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 107 or 107A.

S. 43(1A)
inserted by
No. 102/2004
s. 29(1).

(1B) The Magistrates' Court has exclusive jurisdiction to hear and determine any application made under section 92AA.

S. 43(1B)
inserted by
No. 9/2010
s. 65.

* * * * *

S. 43(2)
amended by
Nos 50/1993
s. 87(1)(b)(i)(ii),
7/1996 s. 8(2),
41/2006
s. 5(1),
repealed by
No. 9/2010
s. 75(2).

(3) 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.

(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.

44 Evidence

S. 44
substituted by
No. 67/1992
s. 10.

(1) In proceedings under this Act or the **Workers Compensation Act 1958**, the County Court is not bound by the rules or practice as to evidence, but may inform itself in any manner it thinks fit and may take evidence in writing or orally.

(2) The County Court may take evidence on oath and may administer an oath or take an affirmation or declaration.

S. 44(3)
substituted by
No. 50/1994
s. 25(1).

(3) Evidence given before the County Court must not be used in any civil or criminal proceedings in any court or tribunal other than proceedings—

(a) for an offence against this Act, the **Accident Compensation (WorkCover Insurance) Act 1993** or the **Workers Compensation Act 1958**;

S. 44(3)(b)
substituted by
No. 107/1997
s. 12.

(b) for an offence against the **Crimes Act 1958** which arises in connection with a claim for compensation under this Act.

S. 44(3)(c)
repealed by
No. 107/1997
s. 12.

* * * * *

S. 44(4)
amended by
No. 50/1994
s. 25(2).

(4) The County Court may, of its own motion or on the application of any party to the proceedings before it, issue to any person a summons to appear before the Court to give evidence or to produce the documents specified in the summons.

S. 44(5)
inserted by
No. 69/2009
s. 54(Sch. Pt 1
item 1.1).

(5) Nothing in subsection (1) prevents the application of Part 3.10 of the **Evidence Act 2008** to the proceedings.

45 Medical questions

S. 45
substituted by
No. 67/1992
s. 10.

- (1) If the court exercises jurisdiction under this Part, the court—
- (a) may on the court's own motion, refer a medical question to a Medical Panel for an opinion under this Division; or
 - (b) subject to subsections (1B), (1C) and (1D), must refer a medical question to a Medical Panel for an opinion under this Division if—
 - (i) a party to the proceedings requests that a medical question or medical questions be referred; and
 - (ii) that party notified the court of the party's intention to make the request no later than 14 days prior to the date fixed for hearing of the proceedings or another time determined by the court.

S. 45(1)
substituted by
No. 107/1997
s. 21(5),
amended by
No. 26/2000
s. 5(1),
substituted by
No. 9/2010
s. 76(1).

- (1A) This section extends to, and applies in respect of, an application for leave under section 134AB(16)(b)—

S. 45(1A)
inserted by
No. 26/2000
s. 5(2).

- (a) so as to enable in accordance with subsection (1)(a) the court hearing the application to refer a medical question (including a medical question as defined in paragraphs (h) and (i) of the definition of *medical question* in section 5(1)); or
- (b) so as to require in accordance with subsection (1)(b) the court hearing the application at the request of a party to the application to refer a medical question (including a medical question as defined in paragraph (h) of the definition of *medical question* in section 5(1) but excluding a

medical question as defined in paragraph (i)
of that definition)—

for the opinion of a Medical Panel.

S. 45(1B)
inserted by
No. 26/2000
s. 5(3),
amended by
No. 9/2010
s. 76(2).

- (1B) The Court may refuse to refer a medical question to a Medical Panel on an application under subsection (1)(b) if the Court is of the opinion that the referral would, in all the circumstances, constitute an abuse of process.

S. 45(1C)
inserted by
No. 26/2000
s. 5(3),
amended by
No. 9/2010
s. 76(2).

- (1C) The Court has on an application under subsection (1)(b) the discretion as to the form in which the medical question is to be referred to a Medical Panel.

S. 45(1D)
inserted by
No. 9/2010
s. 76(3).

- (1D) The court must not refer a medical question if it appears to the court 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 the court than by a Medical Panel.

S. 45(1E)
inserted by
No. 9/2010
s. 76(3).

- (1E) If under subsection (1D) a 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 subsection (1D); 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.

S. 45(1F)
inserted by
No. 9/2010
s. 76(3).

- (1F) After answering a question referred to in subsection (1E) the court may refer a medical question to a Medical Panel for an opinion.

(1G) If, under subsection (1F), the court refers a medical question to a Medical Panel, the court must provide the Medical Panel with—

S. 45(1G)
inserted by
No. 9/2010
s. 76(3).

- (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.

(1H) In forming an opinion on the medical question referred to a Medical Panel under subsection (1F), the Medical Panel is bound by the answer to the question stated and answered by the court under subsection (1E).

S. 45(1H)
inserted by
No. 9/2010
s. 76(3).

(2) If the Court refers a medical question to the Panel, the Court must give each party to the proceedings, copies of all documents in the possession of the Court relating to the medical question.

S. 45(2)
amended by
Nos 107/1997
s. 21(6),
9/2010
s. 76(4).

* * * * *

S. 45(3)
repealed by
No. 107/1997
s. 21(7).

(4) If the Court refers a medical question to a Medical Panel, the Court must give a copy of the Panel's opinion to the worker and to the employer, Authority or self-insurer and may give a copy to a party to the proceedings.

S. 45(4)
amended by
Nos 50/1993
s. 78(1)(c),
81/1998
s. 22(a),
9/2010
s. 76(4).

s. 46

S. 46
substituted by
No. 67/1992
s. 10.

46 Admissibility of statements by injured workers

S. 46(1)
amended by
Nos 50/1993
s. 78(1)(d),
35/1996
s. 453(Sch. 1
item 1.1),
81/1998
s. 22(b).

- (1) If a worker after receiving an injury makes any statement in writing in relation to that injury to the worker's employer or to the Authority or to any person acting on behalf of the employer or the Authority, the statement shall not be admitted to evidence if tendered or used by the employer or the Authority in any proceedings under this Act unless the employer or the Authority has, at least 14 days before the hearing, furnished to the worker or to the worker's legal practitioner or agent a copy in writing of the statement.

S. 46(2)
amended by
No. 52/1998
s. 311(Sch. 1
item 1.2).

- (2) In proceedings for revocation of a direction given by a Conciliation Officer, the County Court or the Tribunal, as the case requires, may dispense with the requirement that a copy of the statement be furnished at least 14 days before the hearing or may shorten that period.

S. 47
substituted by
No. 67/1992
s. 10.

47 Admissibility of medical reports

S. 47(2)
amended by
No. 52/1998
s. 311(Sch. 1
item 1.2).

- (1) A medical report arising from an examination is admissible in evidence in any proceedings under this Act.
- (2) Subsection (1) is subject to any provision of the rules of the County Court or the Tribunal, as the case requires, or the regulations relating to the giving of notice of the admission in evidence of the medical report.

S. 47(3)
amended by
No. 52/1998
s. 311(Sch. 1
item 1.2).

- (3) A medical practitioner whose medical report is, pursuant to subsection (1), admissible in evidence, may be required, in accordance with the rules of the County Court or the Tribunal, as the case requires or the regulations, to attend and be cross-examined on the contents of the report.

- (4) In this section *medical report* means any written report of a medical practitioner or registered psychologist relating to the worker, but does not include a certificate or report to which section 48 applies.

S. 47(4)
amended by
No. 50/1994
s. 25(3).

48 Admissibility of certificates and reports of Medical Panels

S. 48
substituted by
No. 67/1992
s. 10.

- (1) A certificate or report given by a Medical Panel is admissible in evidence in any proceedings under this Act or Part VBA of the **Wrongs Act 1958**.
- (2) A member of a Medical Panel is competent to give evidence as to matters in a certificate or report given by the Medical Panel of which he or she was a member, but the member may not be compelled to give any such evidence.
- (3) A consultant engaged to provide expert advice to a Medical Panel is competent to give evidence as to matters relating to that expert advice, but the consultant may not be compelled to give any such evidence.

S. 48(1)
amended by
No. 60/2003
s. 19(1).

S. 48(3)
inserted by
No. 26/2000
s. 6.

48A Use of documents relating to worker's claim

S. 48A
inserted by
No. 9/2010
s. 77.

Despite anything to the contrary in any Act (other than the **Charter of Human Rights and Responsibilities**), 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 or any other proceeding under this Act or at common law, whether before, on or after the commencement of section 77 of the **Accident Compensation Amendment Act 2010** may be used in and for the purposes of any claim, proceeding or payment under, or in accordance with, this Act.

49 Certain proceedings referred for conciliation

S. 49
substituted by
Nos 67/1992
s. 10, 50/1994
s. 26,
amended by
No. 107/1997
s. 13(2) (ILA
s. 39B(1)).

S. 49(1)
amended by
Nos 82/2001
s. 13, 9/2010
s. 66(1).

S. 49(1)(a)
amended by
No. 7/1996
s. 9(1).

S. 49(1)(b)
amended by
No. 7/1996
s. 9(2),
substituted by
No. 107/1997
s. 13(1).

S. 49(1A)
inserted by
No. 9/2010
s. 78.

S. 49(2)
inserted by
No. 107/1997
s. 13(2).

- (1) Proceedings, other than proceedings which relate solely to a claim under section 92, 92A, 92AA, 92B, 98 or 98A, must not be commenced in the County Court or Magistrates' Court—
 - (a) unless the dispute between the parties has been referred for conciliation under Division 2 of Part III; and
 - (b) until the Conciliation Officer has issued a certificate, which the Conciliation Officer must issue if the Conciliation Officer is satisfied that all reasonable steps have been taken by the claimant to settle the dispute.
- (1A) Despite the requirements of subsection (1), if proceedings have already been commenced in a court in respect of a claim under this Act and 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 of Part III, 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.
- (2) This section as amended by section 13 of the **Accident Compensation (Miscellaneous Amendment) Act 1997** applies in respect of any referral lodged on or after the commencement of that section.

50 Costs

S. 50
substituted by
No. 67/1992
s. 10,
amended by
No. 50/1993
s. 88(1)(a)(b).

- (1) Subject to this Act, in proceedings before the County Court under this Act or the **Workers Compensation Act 1958** being proceedings brought by a person other than the Authority, employer or a self-insurer, the Court—

S. 50(1)
amended by
Nos 50/1993
ss 78(2)(a),
88(1)(c),
107/1997
s. 14(a),
81/1998
s. 22(a).

- (a) must award costs against the party against whom a judgement or decision is made; and

S. 50(1)(a)
substituted by
No. 107/1997
s. 14(b).

- (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 judgement 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, employer or a self-insurer.

S. 50(2)
inserted by
No. 50/1993
s. 88(2),
amended by
Nos 50/1993
s. 78(2)(a),
81/1998
s. 22(a).

- (2AA) Subsections (3) to (6) do not apply in proceedings before the County Court commenced before the commencement of section 5 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** if the only reason why those subsections would apply is because of the amendment of section 43 by that section.

S. 50(2AA)
inserted by
No. 41/2006
s. 5(2).

Accident Compensation Act 1985
No. 10191 of 1985
Part III—Dispute Resolution5F

s. 50

S. 50(2A)
inserted by
No. 50/1994
s. 27,
amended by
Nos 7/1996
s. 24(2),
60/1996
s. 7(1)(a),
substituted by
No. 107/1997
s. 35(6).

(2A) In proceedings before the County Court under this Act which relate to a claim under section 98 or 98A, if a judgment or order is made by the County Court for the payment of an amount of compensation to the claimant—

S. 50(2A)(a)
amended by
No. 81/1998
s. 22(a).

(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 party and party costs and must bear their own costs; or

S. 50(2A)(b)
amended by
No. 81/1998
s. 22(a).

(b) which is equal to or less than the statutory offer made by the Authority, employer or self-insurer—the claimant must pay the party and party costs of the Authority, employer or self-insurer and bear his or her own costs; or

S. 50(2A)(c)
amended by
No. 81/1998
s. 22(a).

(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. 50(2B)
inserted by
No. 7/1996
s. 10(1).

(2B) If a direction of a Conciliation Officer under Division 2 of Part III is revoked by the County Court or Magistrates' Court in an application under section 60, unless the County Court or Magistrates' Court has made an order under section 60(4)(b), the County Court or Magistrates' Court must order that the costs of the worker are to be paid by the person who made the application

and must not order that the costs of the person who made the application be paid by the worker¹².

- (3) Costs awarded to a worker or claimant by the County Court in proceedings brought by the worker or claimant in which the judgement or decision is a judgement 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.
- S. 50(3) inserted by No. 50/1993 s. 88(2), amended by No. 60/1996 s. 7(1)(b).
- (4) If a settlement or compromise is made in respect of proceedings in the County Court brought under this Act 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' Court¹³—
- S. 50(4) inserted by No. 7/1996 s. 11(1), amended by No. 60/1996 s. 7(2).
- (a) subsection (5) and (6) apply in respect of that settlement or compromise; and
- S. 50(4)(a) inserted by No. 60/1996 s. 7(2).
- (b) whether or not an agreement referred to in subsection (5) 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.
- S. 50(4)(b) inserted by No. 60/1996 s. 7(2).

s. 50A

S. 50(5)
inserted by
No. 7/1996
s. 11(1).

- (5) 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 which 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 applied¹⁴.

S. 50(6)
inserted by
No. 7/1996
s. 11(1).

- (6) An agreement which does not comply with subsection (5) is void but the validity of the settlement or compromise is not otherwise affected¹⁵.

S. 50(7)
inserted by
No. 60/1996
s. 7(3).

- (7) This section has effect despite anything to the contrary in any other Act or law.

S. 50A
inserted by
No. 7/1996
s. 12.

50A Costs liability of legal practitioner

- (1) This section is to be construed as being in addition to, and not in derogation from, section 78A of the **County Court Act 1958**.
- (2) If the legal practitioner for a party to proceedings before the County Court brought under this Act 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 County Court may make an order as specified in subsection (3).

- (3) The County 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.

- (4) Without limiting subsection (2), 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.

s. 51

- (5) The County Court must not make an order under subsection (3) without giving the legal practitioner a reasonable opportunity to be heard.
- (6) The County 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 County Court directs.

S. 51
substituted by
No. 67/1992
s. 10.

51 Appeals to Supreme Court

- (1) On the hearing of an appeal under section 52 by the Supreme Court, the Supreme Court may make such order as it thinks fit and may by such order confirm, reduce, increase or vary the assessment, decision or determination.
- (2) The costs of the appeal shall be in the discretion of the Supreme Court.

S. 52
substituted by
No. 67/1992
s. 10,
amended by
No. 109/1994
s. 34(1).

52 Appeals

- (1) Any person who was a party to proceedings before the County Court at which a judgement or decision was given or made may appeal to the Court of Appeal on a question of law raised during those proceedings.
- (2) If a person intends to appeal to the Supreme Court under subsection (1), the person, within 21 days after the giving of the judgement or making of the decision, must serve notice of intention to appeal on the County Court and on each other party to the proceedings.
- (3) If a person has served a notice under subsection (2), that person must lodge the appeal application within 6 months after the making of the determination or by leave of the Supreme Court (obtained before or after that period) after that period.

(4) The Supreme Court must not consider an appeal if—

- (a) notice of intention to appeal has not been served under subsection (2); or
- (b) the appeal application is not lodged as required by subsection (3).

* * * * *

**S. 52(5)
repealed by
No. 9/2010
s. 151.**

(6) If the determination appealed against included a determination that compensation in the form of weekly payments be paid, the weekly payments must continue despite service of notice of intention to appeal or lodging the appeal application until the County Court reviews the determination in accordance with subsection (8).

(7) If the determination appealed against included a determination that compensation in a form other than weekly payments be paid, the compensation in dispute—

- (a) must not be paid until the period specified in subsection (2) has elapsed; and
- (b) if a notice of intention to appeal has been served under subsection (2), must not be paid until the period of six months has elapsed; and
- (c) if an application has been lodged under subsection (3), must not be paid until the Supreme Court has considered the appeal and the County Court has made a determination under subsection (8) or the appeal has been withdrawn.

s. 52A

- (8) On the making of a determination by the Supreme Court on an appeal under this section, the County Court must review its determination and make a new determination not inconsistent with the Supreme Court's determination.
- (9) Section 74 of the **County Court Act 1958** does not apply to a judgement or order of the County Court in proceedings under this Act or the **Workers Compensation Act 1958**.

Pt 3 Div. 1A
(Heading and
ss 52A–52M)
inserted by
No. 82/2001
s. 8.

Division 1A—Accident Compensation Conciliation Service

S. 52A
inserted by
No. 82/2001
s. 8.

52A Establishment of the Service

- (1) There is established a body corporate called the Accident Compensation Conciliation Service.
- (2) The Service consists of one member, who is to be the person who is, or who is acting as, the Senior Conciliation Officer.
- (3) The Service—
 - (a) has perpetual succession;
 - (b) is capable of acquiring, holding and disposing of property;
 - (c) may sue and be sued in its corporate name;

* * * * *

S. 52A(3)(d)
repealed by
No. 28/2005
s. 15.

- (e) subject to this Act, may do and suffer all acts and things that a body corporate may by law do and suffer.

* * * * *

S. 52A(4)(5)
repealed by
No. 28/2005
s. 15.

52B Function

The function of the Service is to provide conciliation services for the purposes of this Act.

S. 52B
inserted by
No. 82/2001
s. 8.

52C Powers

The Service may do all things that are necessary or convenient to enable it to carry out its function.

S. 52C
inserted by
No. 82/2001
s. 8.

52D Appointment of Conciliation Officers

(1) The Governor in Council must appoint—

(a) a person to be the Senior Conciliation Officer; and

(b) one or more other people to be Conciliation Officers.

S. 52D
inserted by
No. 82/2001
s. 8.

(2) The appointment of a person as the Senior Conciliation Officer is to be made on the terms and conditions specified by the Minister.

S. 52D(2)
amended by
No. 41/2006
s. 6.

(2A) The appointment of a person as a Conciliation Officer is to be made on the advice of the Senior Conciliation Officer.

S. 52D(2A)
inserted by
No. 9/2010
s. 79.

(3) A person may only be appointed as a Conciliation Officer if the person has consented—

(a) to make himself or herself available for engagement as a Conciliation Officer by the Service; and

(b) to act as a Conciliation Officer on the terms, and for the remuneration, specified in writing by the Minister.

s. 52E

S. 52E
inserted by
No. 82/2001
s. 8.

52E Engagement of Conciliation Officers

S. 52E(2)
amended by
No. 41/2006
s. 7(1).

- (1) The Service must engage people appointed as Conciliation Officers to assist it to carry out its functions.
- (2) Unless subsection (3A) applies, a person may only be engaged as a Conciliation Officer on the terms and conditions specified by the Minister and given to the person before his or her appointment as a Conciliation Officer.
- (3) In engaging a Conciliation Officer the Service is not to be taken as employing the Conciliation Officer.

S. 52E(3A)
inserted by
No. 41/2006
s. 7(2).

- (3A) The Minister may approve in writing any written variation approved by a Conciliation Officer in the terms and conditions on which the Conciliation Officer is engaged.
- (4) Despite subsection (3), for the purposes of this Act (other than this Division), a Conciliation Officer is deemed to be a worker employed by the Service.

S. 52F
inserted by
No. 82/2001
s. 8,
substituted by
No. 9/2010
s. 80.

52F Senior Conciliation Officer

- (1) The functions of the Senior Conciliation Officer are—
 - (a) to ensure conciliations are conducted by the Service in an expeditious and consistent manner;
 - (b) to ensure Conciliation Officers comply with any protocols for the conduct of conciliations;
 - (c) to ensure the Service operates in a transparent and accountable manner;
 - (d) to monitor the performance of the Service;

- (e) to collect data specified in section 52FA and provide that data to the Minister on an annual basis;
 - (f) any other functions conferred on the Senior Conciliation Officer by or under this Act.
- (2) The Minister may, from time to time, issue guidelines in respect of the carrying out of functions of, and the exercise of powers by, the Senior Conciliation Officer for the purposes of this section.
- (3) In exercising his or her powers and carrying out his or her functions under this Act, the Senior Conciliation Officer (and any person acting as the Senior Conciliation Officer) must observe any guidelines issued by the Minister.
- (4) In this Act, a reference to a Conciliation Officer includes a reference to the Senior Conciliation Officer unless the contrary intention appears.

52FA Data to be collected by the Senior Conciliation Officer

**S. 52FA
inserted by
No. 9/2010
s. 80.**

- (1) The Senior Conciliation Officer must on or before 1 September each year, collect and provide the Minister with the following data in respect of the year ending 30 June—
- (a) the number of disputes referred for conciliation;
 - (b) the number of matters referred to a medical panel;
 - (c) the nature and number of complaints referred to the Service about the conduct of the Service;
 - (d) the number and nature of the outcomes of the disputes referred for conciliation;

- (e) the number of medical reports received or requested by the Service under section 56(5A);
 - (f) the number of instances the Senior Conciliation Officer allowed an extension of time for lodging an application or allowed an application to be lodged out of time under section 55(3);
 - (g) any other information that the Minister might request for inclusion.
- (2) A person may request the Senior Conciliation Officer to make the data collected under subsection (1) publicly available.
 - (3) If the Senior Conciliation Officer receives a request under subsection (2), the Senior Conciliation Officer must make the data publicly available as soon as reasonably possible.

S. 52G
inserted by
No. 82/2001
s. 8.

52G Appointment of acting Senior Conciliation Officer

- (1) The Minister must appoint a Conciliation Officer to act as the Senior Conciliation Officer if—
 - (a) the office of Senior Conciliation Officer becomes vacant; or
 - (b) the Senior Conciliation Officer or an acting Senior Conciliation Officer becomes unable to carry out the duties of office; or
 - (c) the Senior Conciliation Officer or an acting Senior Conciliation Officer is given notice of an investigation under section 52I(2).
- (2) An acting appointment—
 - (a) under subsection (1)(a) continues until the Governor in Council appoints another person as the Senior Conciliation Officer or until the Minister (acting under this section) or the

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- Governor in Council appoints another person to act as the Senior Conciliation Officer;
- (b) under subsection (1)(b) continues until the Senior Conciliation Officer becomes able to carry out the duties of office or until the Minister (acting under this section) or the Governor in Council appoints another person to act as the Senior Conciliation Officer;
- (c) under subsection (1)(c) continues until the Senior Conciliation Officer is given written notice under section 52I(3)(a) that a recommendation will not be made or until the Minister (acting under this section) or the Governor in Council appoints another person to act as the Senior Conciliation Officer.
- (3) If the Minister appoints a person to act as the Senior Conciliation Officer under this section, the appointment is deemed to have taken effect immediately after the happening of the event that required the Minister to make the appointment.

52H When a Conciliation Officer ceases to hold office

**S. 52H
inserted by
No. 82/2001
s. 8.**

- (1) A person ceases to be a Conciliation Officer—
- (a) at the expiry of any term of office specified in the terms and conditions referred to in section 52D(2) or 52E(2) (unless that term is extended in accordance with those terms and conditions); or
- (b) if he or she resigns in accordance with subsection (2); or
- (c) if he or she is removed from office under section 52I; or
- (d) if he or she becomes bankrupt; or
- (e) if he or she is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence.
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s. 52I

- (2) A Conciliation Officer may resign by writing signed by the Conciliation Officer and delivered to the Minister.

S. 52I
inserted by
No. 82/2001
s. 8.

52I Removal from office

S. 52I(1A)
inserted by
No. 9/2010
s. 81.

- (1A) The Senior Conciliation Officer may advise the Minister on the removal or suspension of a Conciliation Officer having regard to—
- (a) the capability of the Conciliation Officer in the performance of official duties; or
 - (b) any refusal or neglect by the Conciliation Officer in performance of those duties; or
 - (c) any serious breaches of confidentiality by the Conciliation Officer; or
 - (d) any serious breach of one or more of the Conciliation Officer's terms or conditions of engagement;
 - (e) any other matter the Senior Conciliation Officer considers relevant to the removal or suspension of a Conciliation Officer.
- (1) The Minister may recommend to the Governor in Council that a Conciliation Officer be removed or suspended from office if the Minister is of the opinion, after having given the Conciliation Officer an opportunity to be heard, that the Conciliation Officer—
- (a) is incapable of performing official duties; or
 - (b) has refused or neglected to perform those duties; or
 - (c) has committed a serious breach of confidentiality; or

-
- (d) has committed a serious breach of one or more of his or her terms or conditions of engagement.
- (2) To begin an investigation into whether or not to make a recommendation under subsection (1), the Minister must give the Conciliation Officer written notice of the investigation, together with an outline of the reasons why the investigation is to be conducted.
- (3) On receiving such notice, the Conciliation Officer is, by virtue of this section, suspended from office until he or she—
- (a) is given written notice that the Minister does not intend to make a recommendation under this section in relation to the matters investigated; or
 - (b) is removed from office under subsection (5); or
 - (c) completes any term of suspension imposed under subsection (5).
- (4) A Conciliation Officer who is suspended under subsection (3) remains entitled to his or her remuneration and allowances as a Conciliation Officer during the period of suspension.
- (5) On receiving a recommendation from the Minister under this section that a Conciliation Officer be removed or suspended from office, the Governor in Council may remove or suspend the Conciliation Officer from office.
- (6) Subsection (4) ceases to apply if a suspension is imposed on a Conciliation Officer under subsection (5).
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s. 52J

S. 52J
inserted by
No. 82/2001
s. 8.

52J Other staff and administrative services

- (1) The Service may appoint any other officers or employees that are necessary to enable it to carry out its function.
- (2) The Service may enter into arrangements with the Authority or with any other person or body for the provision of administrative services to the Service.

S. 52K
inserted by
No. 82/2001
s. 8.

52K Service budget

- (1) Each year, on or before the date required by the Minister, the Service 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.

S. 52L
inserted by
No. 82/2001
s. 8.

52L Authority to fund the Service

- (1) The Authority must give the Service sufficient resources to enable the Service to meet all the expenses it incurs.
- (2) Despite subsection (1), the Authority must not with respect to any financial year, without the written approval of the Minister, give the Service a total amount greater than the amount shown in the Service's annual budget as the Service's proposed total expenditure for that year.

S. 52LA
inserted by
No. 28/2005
s. 16.

52LA Signature

- (1) Any document or copy of a document issuing out of the office of the Service and bearing the written, stamped or printed signature of the Senior Conciliation Officer or a person authorised by the Senior Conciliation Officer is, until the contrary is proved, deemed to have been duly signed by the person by whom it purports to have been signed.

- (2) Judicial notice is to be taken of every such signature and of the fact that the person whose signature it purports to be holds or has held the office of the Senior Conciliation Officer or is or has been a person authorised by the Senior Conciliation Officer.

52M Savings and transitional provisions

S. 52M
inserted by
No. 82/2001
s. 8.

- (1) In this section—

amending Act means the **Accident Compensation (Amendment) Act 2001**;

relevant date means the date of commencement of section 8 of the amending Act.

- (2) The person who was the Senior Conciliation Officer immediately before the relevant date—
- (a) is deemed to have been appointed as the Senior Conciliation Officer by the Governor in Council under section 52D(1); and
 - (b) subject to section 52H, is not to have his or her terms and conditions affected by the coming into operation of section 8 of the amending Act.
- (3) Any person who was a Conciliation Officer immediately before the relevant date—
- (a) is deemed to have been appointed as a Conciliation Officer by the Governor in Council under section 52D(1); and
 - (b) subject to section 52H, is not to have his or her terms and conditions affected by the coming into operation of section 8 of the amending Act.

s. 53

- (4) Any conciliation proceeding in relation to a dispute that had not been completed immediately before the relevant date is to continue as if Part 3 of the amending Act was not in force.

Pt 3 Div. 2
(Heading)
inserted by
No. 67/1992
s. 10.

Division 2—Conciliation of disputes

S. 53
substituted by
No. 67/1992
s. 10.

53 Definitions

In this Division—

conciliation conference means any conference held with or before a conciliation officer—

- (a) to resolve a dispute referred for conciliation; or
- (b) for the purpose of giving directions in connection with any such dispute;

S. 53 def. of
dispute
amended by
No. 50/1993
s. 78(1)(e),
substituted by
No. 50/1994
s. 28,
amended by
No. 107/1997
s. 15,
substituted by
No. 81/1998
s. 22(c).

dispute means a dispute in connection with a claim for compensation between the person who makes or has made the claim and any one or more of the following—

- (a) the employer (not being a self-insurer or a subsidiary of a self-insurer) of the relevant worker;
- (b) where the compensation is or may be payable by the Authority, the Authority;
- (c) where the compensation is or may be payable by a self-insurer, that self-insurer.

S. 54
substituted by
No. 67/1992
s. 10,
repealed by
No. 82/2001
s. 9(b).

* * * * *

55 Lodging of disputes

- (1) Any party to a dispute may refer the dispute for conciliation by a Conciliation Officer.
- (2) A referral for conciliation of a dispute must be lodged with the Senior Conciliation Officer by sending or delivering notice in the form approved by the Minister within 60 days after notice of the decision was given to or served on the worker or claimant.
- (2A) A referral must be signed or sealed personally by the party making the application unless the Senior Conciliation Officer is satisfied that there are special circumstances preventing the party from personally doing so.
- (3) The Senior Conciliation Officer may, on application, allow—
 - (a) an extension of time for lodging an application; or
 - (b) an application to be lodged out of time—if he or she considers it appropriate in the circumstances of the particular case.

S. 55
substituted by
No. 67/1992
s. 10.

S. 55(2)
amended by
No. 41/2006
s. 8.

S. 55(2A)
inserted by
No. 50/1994
s. 29(1).

S. 55(4)
substituted by
No. 50/1994
s. 29(2),
repealed by
No. 107/1997
s. 16(1).

* * * * *

55AA Referral of medical question without consent

- (1) Where a medical question arises in a dispute relating to section 93CD, the Conciliation Officer must, within 7 days after becoming aware of the medical question, refer the medical question to a Medical Panel.

S. 55AA
inserted by
No. 9/2010
s. 29.

- (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. 55A
inserted by
No. 26/2000
s. 7(1).

55A Referral of medical question by consent

- (1) Without limiting any other provision of this Act, the Authority or a self-insurer may apply to the Senior Conciliation Officer in accordance with this section for a medical question relevant to a claim for compensation by a worker to be referred by a Conciliation Officer to a Medical Panel.
- (2) The Authority or a self-insurer can only make an application under this section with the consent of the worker and in the absence of a dispute.
- (3) If a Conciliation Officer is satisfied after considering an application under this section that—
- (a) the medical question is in an appropriate form; and
 - (b) the worker has given informed and genuine consent; and
 - (c) the medical question is relevant and would assist in the consideration and management of the worker's claim; and
 - (d) the Authority or the self-insurer, and the worker, have provided all the relevant documents and information—
- the Conciliation Officer must refer the medical question to a Medical Panel.
- (4) The Authority or a self-insurer must bear all the costs reasonably incurred by a worker in relation to an application under this section.

55AB Production and disclosure of information

S. 55AB
inserted by
No. 9/2010
s. 82.

A party to a dispute who participates in a conciliation, must produce all documents in the party's possession, custody or power and disclose all information, to the conciliation officer that—

- (a) relate to the dispute; and
- (b) are reasonably available to the party—

unless the party claims privilege or immunity from producing that document or disclosing that information.

56 Procedures before Conciliation Officers

S. 56
substituted by
No. 67/1992
s. 10.

- (1) The Senior Conciliation Officer may give directions as to the arrangement of the business of the Conciliation Officers.
- (2) A Conciliation Officer must, having regard to the need to be fair, economical, informal and quick, and having regard to the objects of the Act, make all reasonable efforts to conciliate in connection with a dispute and to bring the parties to agreement.
- (3) A person who is a party to any dispute is not entitled to be represented by a legal practitioner at any conciliation conference.
- (4) The Conciliation Officer and each party to a dispute may agree to a party being represented by a legal practitioner at a conciliation conference.
- (5) A provider of a medical service or a provider of a service under section 99 or 99A who has examined a worker may, with the consent of the worker and at the request of the Conciliation Officer—
 - (a) meet with the Conciliation Officer and answer questions; and

S. 56(5)
amended by
Nos 50/1993
s. 81(b),
107/1997
s. 16(2).

s. 56

(b) supply relevant documents to the Conciliation Officer.

S. 56(5A)
inserted by
No. 9/2010
s. 83(1).

(5A) The Authority or a self-insurer must pay the reasonable costs of a report provided by a registered health practitioner specified in subsection (5B) who has examined a worker if—

- (a) the report has been requested by a Conciliation Officer; and
- (b) the worker has consented to a report being provided.

S. 56(5B)
inserted by
No. 9/2010
s. 83(1).

(5B) The following registered health practitioners are specified for the purposes of subsection (5A)—

- (a) a registered medical practitioner;
- (b) a registered dentist;
- (c) a registered optometrist;
- (d) a registered physiotherapist;
- (e) a registered chiropractor;
- (f) a registered osteopath;
- (g) a registered podiatrist;
- (h) a registered psychologist.

S. 56(6)
substituted by
No. 107/1997
s. 21(8).

(6) A Conciliation Officer may refer a medical question to a Medical Panel for an opinion under this Division.

S. 56(7)
repealed by
No. 107/1997
s. 21(8).

* * * * *

(8) If the Conciliation Officer is satisfied that sufficient information has been supplied to him or her in connection with a dispute, the Conciliation Officer may exercise functions under this Division—

- (a) without having any conciliation conference;
and
- (b) without requesting further information from
any party to the dispute.

- (9) The Conciliation Officer may request a party who participates in a conciliation to produce a document or a class of documents specified, or provide information or information of a kind specified, that the Conciliation Officer considers may be relevant to the resolution of the dispute.

S. 56(9)
amended by
No. 50/1993
s. 89,
substituted by
No. 107/1997
s. 16(3).

* * * * *

S. 56(9A)
inserted by
No. 107/1997
s. 16(3),
repealed by
No. 9/2010
s. 83(2).

- (10) A Conciliation Officer may at his or her discretion make any documents or information provided under subsection (9) available to any other party.
- (11) A person who, in connection with a dispute referred for conciliation, makes a statement that the person knows to be false or misleading in a material particular is guilty of an offence.

S. 56(11)
amended by
No. 9/2010
s. 156.

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.

57 Conciliation of disputes

S. 57
substituted by
No. 67/1992
s. 10.

- (1) The Conciliation Officer may do any one or more of the following things in connection with the dispute or any part of the dispute—
- (a) make such recommendations to the parties to the dispute as he or she considers to be appropriate;

Accident Compensation Act 1985
No. 10191 of 1985
Part III—Dispute Resolution5F

s. 57

S. 57(1)(b)
amended by
No. 107/1997
s. 30(5)(a).

(b) in the case of a dispute to which section 59 applies, give directions under this Division;

S. 57(1)(ba)
inserted by
No. 102/2004
s. 29(2).

- (ba) in the case of a dispute arising under section 107 or 107A—
- (i) give a direction that information relevant to a claim made under this Act 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;
- (c) decline to make any recommendation or give any direction.

S. 57(2)
amended by
No. 107/1997
s. 11(7)(a).

(2) A Conciliation Officer may conciliate with respect to a dispute (and make or give relevant recommendations or directions) even though the dispute is pending determination in proceedings under this Act, unless the County Court determines otherwise.

S. 57(3)
inserted by
No. 9/2010
s. 84.

(3) Subject to subsection (6), a Conciliation Officer must issue an outcome certificate within 7 days of the conclusion of a conciliation if—

- (a) the dispute that is the subject of the conciliation was referred to conciliation under section 55; and
- (b) the dispute was resolved.

S. 57(4)
inserted by
No. 9/2010
s. 84.

(4) The outcome certificate must—

- (a) be in a form approved by the Senior Conciliation Officer; and
- (b) be provided to the worker and employer and the Authority or self-insurer; and

- (c) set out any terms on which the dispute was 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.
- (5) 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.
- (6) A Conciliation Officer is not required to comply with subsection (3) in relation to a dispute referred to in that subsection if the Conciliation Officer issues a certificate under section 49(1)(b) or 104(7) in respect of that dispute.

S. 57(5)
inserted by
No. 9/2010
s. 84.

S. 57(6)
inserted by
No. 9/2010
s. 84.

58 Protection against liability for Conciliation Officers

- (1) A Conciliation 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. 58
amended by
Nos 7/1996
s. 13(1),
26/2000 s. 8,
substituted by
Nos 67/1992
s. 10, 82/2001
s. 10.

s. 58A

- (2) Any liability resulting from an act or omission that would but for subsection (1) attach to a Conciliation Officer attaches instead to the Service.

S. 58A
inserted by
No. 50/1994
s. 30.

58A Protection of legal practitioners

S. 58A(1)
amended by
No. 7/1996
s. 13(2),
repealed by
No. 82/2001
s. 9(b).

* * * * *

S. 58A(2)
amended by
No. 35/1996
s. 453(Sch. 1
item 1.2).

- (2) A legal practitioner appearing at a conciliation conference on behalf of a party in accordance with section 56(4) has the same protection and immunity as a legal practitioner has in appearing for a party in proceedings in the Supreme Court.

S. 58B
inserted by
No. 82/2001
s. 11,
amended by
No. 9/2010
s. 157.

58B Offence to not comply with direction

A person who is given a direction by a Conciliation Officer under this Division 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.

S. 59
substituted by
No. 67/1992
s. 10.

59 Disputes relating to weekly payments

S. 59(1)
amended by
Nos 107/1997
s. 30(5)(b),
9/2010 s. 38.

- (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 whether a worker has no current work capacity or has a current work capacity or as to any other

matter which affects the amount of the weekly payments but does not include a dispute as to compensation in the form of superannuation contributions.

(2) This section applies if a dispute relating to—

- (a) a claim for weekly payments of compensation; or
- (b) a continuation of weekly payments of compensation; or

S. 59(2)(b)
amended by
No. 107/1997
s. 18(1).

- (c) a claim for the payment of compensation under section 99—

S. 59(2)(c)
inserted by
No. 107/1997
s. 18(1).

has been referred to conciliation under this Division, but a Conciliation Officer is unable to bring the parties to agreement by conciliation.

(3) If the Conciliation Officer is satisfied that there is no genuine dispute with respect to the liability to make or continue to make weekly payments, the Conciliation Officer 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. 59(3)
amended by
Nos 50/1993
s. 78(1)(f),
81/1998
s. 22(a).

(4) If the Conciliation Officer is satisfied that there is a genuine dispute with respect to the liability to make or continue to make weekly payments, the Conciliation Officer must notify the person who made the claim for weekly payments, or who was receiving weekly payments, of that fact and that an application may be made to the County Court to determine the matter.

(5) A direction or further direction of a Conciliation Officer under this section may require the Authority, employer or self-insurer to pay or continue to pay weekly payments for such period

S. 59(5)
amended by
Nos 50/1993
s. 78(1)(f),
81/1998
s. 22(a).

s. 59

not exceeding 12 weeks as is specified in the direction.

S. 59(6)
amended by
No. 50/1993
s. 110(1)(b).

- (6) Nothing in this section prevents a Conciliation Officer 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 County Court.

S. 59(7)
amended by
No. 107/1997
s. 17(a)(b).

- (7) In addition to the power conferred by subsection (5), a Conciliation Officer may direct payment of weekly payments during a period that is before the direction is given, but that period must not exceed 24 weeks.

S. 59(8)
inserted by
No. 107/1997
s. 18(2),
amended by
No. 81/1998
s. 22(a).

- (8) If a Conciliation Officer gives a direction or further direction to pay or continue to pay weekly payments, the Conciliation Officer may also give a general direction to the Authority, employer or self-insurer, to pay subject to and in accordance with section 99 the reasonable costs of services specified in that section that were or are to be provided during the period specified in the direction under subsection (5) or (7) as the case may be.

S. 59(9)
inserted by
No. 107/1997
s. 18(2),
amended by
Nos 81/1998
s. 22(a),
9/2010 s. 85.

- (9) If the dispute is, or includes, a dispute as to the liability for the payment of compensation under section 99 in respect of an injury and the Conciliation Officer is satisfied that there is no genuine dispute with respect to such liability, the Conciliation Officer, unless subsection (8) applies, may give a general direction to the Authority, employer or self-insurer, to pay subject to and in accordance with section 99 the reasonable costs of services specified in that section up to a total of \$5000 in respect of the relevant injury.

(10) For the purposes of this section a Conciliation Officer is to be taken to be satisfied that—

S. 59(10)
inserted by
No. 107/1997
s. 18(2).

- (a) there is a genuine dispute if the Conciliation Officer is satisfied that there is an arguable case in support of the denial of liability;
- (b) there is no genuine dispute if the Conciliation Officer is satisfied that there is no arguable case in support of the denial of liability.

60 Revocation of directions of Conciliation Officer

S. 60
substituted by
No. 67/1992
s. 10.

(1) A direction given by a Conciliation Officer under this Division may be revoked by the Conciliation Officer or by any other Conciliation Officer.

(2) The County Court may, on the application of a person who is liable to make payments of compensation in accordance with a direction of a Conciliation Officer under this Division, revoke the direction.

S. 60(2)
amended by
No. 107/1997
s. 30(5)(c).

(3) If a direction is revoked, the obligation to make payments of compensation under the direction ceases.

S. 60(3)
amended by
No. 107/1997
s. 30(5)(c).

(4) If the County Court subsequently determines that a person is not liable to make the payments of compensation that have been paid in accordance with a direction of a Conciliation Officer, the following provisions apply—

- (a) the worker or other person who received those payments is not required to refund those payments unless the County Court otherwise orders under paragraph (b);
- (b) if the County Court is satisfied that the claim for compensation was wholly or partly fraudulent or made without proper justification, it may order the worker or other

s. 61

person concerned to refund the whole or a specified part of those payments;

- (c) the County 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.

S. 60(5)
inserted by
No. 102/2004
s. 29(3).

- (5) The Magistrates' Court may, on the application of a person to whom a direction has been given under section 57(1)(ba), revoke the direction.

S. 61
substituted by
No. 67/1992
s. 10.

61 Payments under direction etc. not admission of liability

- (1) The fact that a person—
- (a) pays or continues to pay compensation in accordance with a direction or recommendation of a Conciliation Officer under this Division; 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 the County Court of an application for revocation of a direction is not a finding as to liability in respect of the matter in dispute.

S. 61A
inserted by
No. 50/1993
s. 90,
amended by
No. 9/2010
s. 86 (ILA
s. 39B(1)).

61A Certain evidence inadmissible in proceedings

- (1) Evidence of—
- (a) anything said at, and any admission or agreement made at or during; or
- (b) any document prepared for the purposes of—
- a conciliation of a dispute is not admissible in any court or tribunal in any proceedings other than proceedings for—
- (c) the enforcement of such an agreement; or

- (d) an offence against this Act, the **Accident Compensation (WorkCover Insurance) Act 1993** or the **Workers Compensation Act 1958**; or
 - (e) an offence against the **Crimes Act 1958** which arises in connection with a claim for compensation under this Act.
- (2) This section does not apply to evidence of an outcome certificate issued under section 57(3).

S. 61A(e)
substituted by
No. 107/1997
s. 19.

S. 61A(2)
inserted by
No. 9/2010
s. 86.

62 Costs

- (1) 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);
 - (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 \$50 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 \$350 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.

S. 62
substituted by
No. 67/1992
s. 10,
amended by
No. 9/2010
s. 87 (ILA
s. 39B(1)).

S. 62(2)
inserted by
No. 9/2010
s. 87.

S. 62(3)
inserted by
No. 9/2010
s. 87.

S. 62(4)
inserted by
No. 9/2010
s. 87.

s. 63

S. 62(5)
inserted by
No. 9/2010
s. 87.

- (5) A payment made in accordance with subsection (2) is not a payment of compensation under this Act except for the purposes of—
- (a) calculating employer premiums;
 - (b) contributions under Division 6A of Part IV;
 - (c) seeking an indemnity from a third party under section 138;
 - (d) seeking a refund of payments under section 249A.

Pt 3 Div. 3
(Heading)
inserted by
No. 67/1992
s. 10.

Division 3—Medical Panels

S. 63
substituted by
No. 67/1992
s. 10.

63 Establishment and constitution

S. 63(1)
amended by
No. 60/2003
s. 19(2).

- (1) Medical Panels must be constituted as necessary for the purposes of this Act and Part VBA of the **Wrongs Act 1958** to carry out such functions as may be conferred on a Medical Panel under this Act or that Part.
- (2) For the purpose of constituting Panels, there is to be a list of members consisting of medical practitioners appointed by the Governor in Council.

S. 63(3)
substituted by
No. 26/2000
s. 9.

- (3) From the list of members under subsection (2), the Minister—
- (a) must appoint a Convenor; and
 - (b) may appoint a Deputy Convenor.

S. 63(3A)
inserted by
No. 26/2000
s. 9.

- (3A) The Deputy Convenor may, subject to the direction of the Convenor, exercise the functions and powers conferred on the Convenor by or under this Act.

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|---|--|
| <p>(3B) In the temporary absence of the Convenor, the Deputy Convenor has, and may exercise, the functions and powers conferred on the Convenor by or under this Act.</p> | <p>S. 63(3B)
inserted by
No. 26/2000
s. 9.</p> |
| <p>(4) The Convenor may—</p> <ul style="list-style-type: none"> (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. | <p>S. 63(4)
substituted by
Nos 81/1998
s. 27, 9/2010
s. 88.</p> |
| <p style="text-align: center;">* * * *</p> | <p>S. 63(4A)
inserted by
No. 81/1998
s. 27,
repealed by
No. 9/2010
s. 88.</p> |
| <p>(5) 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 capacity as a member of a Medical Panel) he or she must not be a member of a Medical Panel examining the worker.</p> | <p>S. 63(5)
amended by
No. 60/1996
s. 8.</p> |
| <p>(6) A matter or thing done or omitted to be done by a member of a Medical Panel or the Convenor of the Medical Panels in the exercise of the functions and powers of a member of a Medical Panel or the Convenor does not, if the matter or thing was done or omitted in good faith, subject the member of a Medical Panel or the Convenor of the Medical Panels personally to any action, liability, claim or demand.</p> | <p>S. 63(6)
substituted by
No. 7/1996
s. 13(3).</p> |
| <p>(6A) 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.</p> | <p>S. 63(6A)
inserted by
No. 26/2000
s. 10.</p> |
-

s. 63A

S. 63(8)
amended by
No. 46/1998
s. 7(Sch. 1),
substituted by
Nos 108/2004
s. 117(1)
(Sch. 3
item 1.4),
80/2006
s. 26(Sch.
item 1.2).

- (7) A member of a Panel is entitled to be paid a remuneration (if any) and the travelling and other allowances specified in the instrument of appointment.
- (8) The **Public Administration Act 2004** (other than Part 3 of that Act) applies to a member in respect of the office of member.

- (9) An instrument of appointment of a member may specify other terms and conditions not inconsistent with the Act.
- (10) The Authority must appoint such officers and employees as are necessary for the proper functioning of medical panels.

S. 63A
inserted by
No. 7/1996
s. 14.

63A Advisory functions

- (1) The Convenor of the Medical Panels—
 - (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 of the Medical Panels 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 of the Medical Panels in respect of any matter referred to the Convenor of the Medical Panels under subsection (1)(a).

64 Term of and removal from office and vacancies

S. 64
substituted by
No. 67/1992
s. 10.

- (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—
 - (a) at the expiry of a member's term of office; or
 - (b) if the member resigns; or
 - (c) if the member is removed; or
 - (d) if, as a result of disciplinary or similar action, the member ceases to be entitled to practise as a medical practitioner; or
 - (e) if the member ceases to be a medical practitioner; or
 - (f) if the member becomes bankrupt; or
 - (g) if the member is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence.

S. 64(4)(g)
amended by
No. 50/1993
s. 110(1)(c).

65 Procedures and powers

S. 65
substituted by
No. 67/1992
s. 10.

- (1) A 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.

s. 65

S. 65(3)
substituted by
No. 50/1994
s. 31(1).

S. 65(3)(a)
amended by
No. 52/1998
s. 311(Sch. 1
item 1.2).

S. 65(3)(c)
substituted by
No. 107/1997
s. 20.

S. 65(3)(d)
repealed by
No. 107/1997
s. 20.

S. 65(4A)
inserted by
No. 9/2010
s. 89(1).

S. 65(5)(b)
amended by
No. 107/1997
s. 21(9).

- (2) The Panel must act informally, without regard to technicalities or legal forms and as speedily as a proper consideration of the reference allows.
- (3) Information given to a Panel cannot be used in any civil or criminal proceedings in any court or tribunal, other than proceedings—
- (a) before the County Court, the Magistrates' Court or the Tribunal under this Act or the **Workers Compensation Act 1958**;
- (b) for an offence against this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** or the **Workers Compensation Act 1958**;
- (c) for an offence against the **Crimes Act 1958** which arises in connection with a claim for compensation under this Act.
- * * * * *
- (4) 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.
- (4A) 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.
- (5) A Panel may ask a worker—
- (a) to meet with the 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 Panel;

(c) to submit to a medical examination by the Panel or by a member of the Panel.

(5A) Notwithstanding sections 67(1A) and 68(1), if a Conciliation Officer refers a medical question to a Medical Panel under section 56(6) 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 than by a Medical Panel—

S. 65(5A)
inserted by
No. 9/2010
s. 89(2).

(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.

(5B) The Convenor must inform the Conciliation Officer, in writing, of a decision made by the Convenor or the Medical Panel under subsection (5A)(a) or (b).

S. 65(5B)
inserted by
No. 9/2010
s. 89(2).

(5C) If a Medical Panel has been referred a medical question and the Medical Panel considers that further information is required to enable the medical panel to form a medical opinion on the question—

S. 65(5C)
inserted by
No. 9/2010
s. 89(2).

(a) the Medical Panel may request the person or body referring the medical question to provide the information within the period specified in the requirement; and

(b) the time limit specified in section 68(1) is suspended from the date a request under paragraph (a) is made until the end of the period specified in the requirement.

s. 65

(6) If a Panel so requests and the worker consents, a person who is—

S. 65(6)(a)
amended by
No. 50/1994
s. 31(2).

(a) a provider of a medical service (within the meaning of paragraph (a) of the definition of *medical service* in section 5(1));

S. 65(6)(b)
repealed by
No. 50/1993
s. 81(c).

* * * * *

who has examined the worker must—

(c) meet with the Panel and answer questions;
and

(d) supply relevant documents to the Panel.

S. 65(6A)
inserted by
No. 26/2000
s. 11(1).

(6A) A person or body referring a medical question to a Medical Panel must submit a document to the Medical Panel specifying—

(a) the injury or alleged injury to, or in respect of, which the medical question relates;

(b) the facts or questions of fact relevant to the medical question which the person or body is satisfied have been agreed and those facts or questions that are in dispute.

S. 65(6B)
inserted by
No. 26/2000
s. 11(1).

(6B) A person or body referring a medical question to a Medical Panel must submit copies of all documents relating to the medical question in the possession of that person or body to the Medical Panel.

(7) The Convenor may give directions as to the arrangement of the business of the Panels.

S. 65(8)
substituted by
No. 26/2000
s. 12.

(8) 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—

issue guidelines as to the procedures of Medical Panels.

(8A) The Minister must consult with the Attorney-General before issuing any guidelines under this section.

S. 65(8A)
inserted by
No. 60/2003
s. 19(3).

(9) The Convenor may give directions as to the procedures of the Panels but may not give directions inconsistent with any guidelines issued by the Minister.

(10) The Convenor of the Medical Panels and a member of a Medical Panel has in the performance of his or her duties as the Convenor of the Medical Panels 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.

S. 65(10)
inserted by
No. 7/1996
s. 15.

(11) In this section—

representative of the worker means—

S. 65(11)
inserted by
No. 9/2010
s. 89(3).

(a) if proceedings have not been commenced in respect of the worker's claim, an administrator appointed in respect of the worker under the **Guardianship and Administration Act 1986**;

(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 (4A).

s. 66

S. 66
substituted by
No. 67/1992
s. 10.

66 Validity of acts or decisions

An act or decision of a Panel is not invalid by reason only of any defect or irregularity in or in connection with the appointment of a member.

S. 67
substituted by
No. 67/1992
s. 10.

67 Examination by a Medical Panel

S. 67(1)
amended by
Nos 50/1993
s. 78(1)(c),
50/1994
s. 32(1),
81/1998
s. 22(a).

- (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 before, on or after the commencement of section 10 of the **Accident Compensation (WorkCover) Act 1992** referred by a Conciliation Officer or the County Court or the Authority or a self-insurer.

S. 67(1A)
inserted by
No. 107/1997
s. 21(1).

- (1A) A Medical Panel must give its opinion on a medical question in accordance with this Division.

S. 67(1B)
inserted by
No. 107/1997
s. 21(1).

- (1B) This Division as amended by section 21 of the **Accident Compensation (Miscellaneous Amendment) Act 1997** applies to and in respect of the opinion of a Medical Panel given on a medical question referred to a Medical Panel on or after the commencement of that section.

S. 67(2)
amended by
Nos 50/1993
s. 78(1)(c),
81/1998
s. 22(a).

- (2) A Conciliation Officer, the County Court, the Authority or a self-insurer may, at any time or from time to time, require any worker—
- (a) who claims compensation under this Act; or
 - (b) who is in receipt of weekly payments of compensation under this Act—

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.

(3) If—

- (a) a 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—

S. 67(3)(a)
amended by
Nos 50/1993
s. 78(1)(c),
81/1998
s. 22(a).

S. 67(3)(b)
amended by
Nos 50/1993
s. 78(1)(c),
81/1998
s. 22(a).

the Medical Panel may refuse to proceed with an examination if it is not provided with a copy of the medical practitioner's report of the examination.

- (4) If a worker unreasonably refuses to comply with section 65(5) or in any way hinders the examination—

S. 67(4)
amended by
No. 50/1994
s. 32(2).

- (a) the worker's rights to recover compensation under this Act with respect to the injury; or
- (b) the worker's rights to weekly payments—

are suspended until the examination has taken place, and when it takes place, any period between the date on which the worker refused to comply with section 65(5) or in any way hindered the examination and the date of the examination shall be taken into account for the purpose of calculating, subject to this Act, a period of time for the purposes of Part IV.

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S. 67(4A)
inserted by
No. 107/1997
s. 21(2),
repealed by
No. 26/2000
s. 11(2).

s. 68

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

S. 68
substituted by
No. 67/1992
s. 10.

68 Opinions

S. 68(1)
amended by
Nos 50/1993
s. 78(1)(c),
107/1997
s. 21(3),
81/1998
s. 22(a).

- (1) A Medical Panel must form its opinion on a medical question referred to it within 60 days after the reference is made or such longer period as is agreed by the Conciliation Officer, the County Court, the Authority or self-insurer.

S. 68(2)
amended by
No. 9/2010
s. 90(1).

- (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. 68(3)
amended by
Nos 50/1993
s. 78(1)(c),
81/1998
s. 22(a),
9/2010
s. 90(2).

- (3) Within seven days after forming its opinion on a medical question referred to it, a Medical Panel must give the relevant Conciliation Officer or the County Court or the Authority or self-insurer its written opinion and a written statement of reasons for that opinion.

S. 68(4)
inserted by
No. 107/1997
s. 21(4).

- (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 is to be adopted and applied by any court, body or person and 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.

Ss 69–80
repealed by
No. 67/1992
s. 10.

* * * * *

PART IV—PAYMENT OF COMPENSATION

Division 1—Application

80 Entitlement to compensation only if employment connected with Victoria

New s. 80
inserted by
No. 95/2003
s. 15.

- (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 by 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 by 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 by subsection (3), a 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.

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- (5) If no State is identified by subsection (3) or (if applicable) (4), a worker's employment is connected with this State if—
- (a) a 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 Territory and, in a geographical sense, a State's or Territory's relevant adjacent area as described in Schedule 3.

81 Application to sailors

(1) In this section—

port includes place or harbour;

sailor means any person working in any capacity on board a ship;

S. 81(1) def. of *sailor* amended by No. 95/2003 s. 16(1)(a).

ship has the same meaning as in section 80.

S. 81(1) def. of *ship* substituted by No. 95/2003 s. 16(1)(b).

* * * * *

S. 81(1) def. of *Victorian ship* repealed by No. 95/2003 s. 16(1)(c).

(2) 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—

S. 81(2) amended by Nos 83/1987 s. 35, 95/2003 s. 16(2).

(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 shall not be necessary to give any notice of injury;

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- (c) a claim for compensation in respect of the death of a sailor shall be made within six 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 shall be made within 18 months after the date on which the ship is deemed under subsection (3) to have been lost with all hands;
 - (e) if a sailor dies without leaving any dependants compensation shall not be 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 shall not be 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 shall be paid in full.
- (3) Without prejudice to any other means of proof available—
- (a) a ship shall be 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
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- (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 shall in the absence of proof to the contrary be sufficient evidence that the sailors named were on board at the time the ship was lost.

82 Entitlement to compensation

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

S. 82(1)
amended by
Nos 67/1992
s. 11(1),
95/2003
s. 3(3).

S. 82(2)
amended by
Nos 67/1992
s. 11(1),
107/1997
s. 22, 95/2003
s. 3(4)(a)(b).

Note

Subsections (1) and (2), as amended by sections 3(3) and 3(4) of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**, only apply to injuries that occur on or after the date of commencement of section 3 of that Act—see section 262.

Note to
s. 82(2)
inserted by
No. 95/2003
s. 3(4)(c).

- (2A) 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; or
- (b) a decision of the worker's employer, on reasonable grounds, to take, or not to take any management action; or

S. 82(2A)
inserted by
No. 67/1992
s. 11(2),
substituted by
No. 9/2010
s. 12.

- (c) any expectation by the worker that any management action would, or would not, be taken or a decision made to take, or not to take, any management action; or
- (d) an application under section 81B of the **Local Government Act 1989**, or proceedings as a result of that application, in relation to the conduct of a worker who is a Councillor within the meaning of section 14AA.

S. 82(2B)
inserted by
No. 95/2003
s. 3(5),
amended by
No. 9/2010
s. 13(1).

- (2B) 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.

S. 82(2C)
inserted by
No. 95/2003
s. 3(5),
amended by
No. 9/2010
s. 13(1).

- (2C) 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 (2B) 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.

Note

Sections 82(2B) and 82(2C) only apply to injuries that occur on or after the date of commencement of section 3 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 262.

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 82

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| <p>(3) 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.</p> | <p>S. 82(3)
substituted by
No. 64/1989
s. 9(1),
amended by
No. 9/2010
s. 13(2).</p> |
| <p>(4) Subject to sections 82A, 82B and 82C, 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), there is no entitlement to compensation in respect of that injury.</p> | <p>S. 82(4)
amended by
No. 64/1989
s. 9(2),
substituted by
No. 9/2010
s. 13(3).</p> |
| <p style="text-align: center;">* * * *</p> | <p>S. 82(4A)
inserted by
No. 83/1987
s. 36,
amended by
Nos 64/1989
s. 37(1)(b),
94/2003 s. 40,
93/2009
s. 49(5),
repealed by
No. 9/2010
s. 13(3).</p> |
| <p>(5) Subsection (4) shall not apply if the injury results in death or severe injury.</p> | <p>S. 82(5)
amended by
No. 9/2010
s. 13(4).</p> |
| <p>(6) Subject to subsections (2B) and (2C), 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 shall be entitled to compensation under this Act as if the injury were an injury arising out of or in the course of employment.</p> | <p>S. 82(6)
amended by
Nos 67/1992
s. 11(3),
95/2003
s. 3(6)(a)(b).</p> |
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Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 82

S. 82(7)
inserted by
No. 107/1997
s. 23.

- (7) 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 (8) 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 (8) on the worker's entitlement to compensation; and
 - (c) the worker failed to make such a disclosure or made a false or misleading disclosure—
- subsection (8) applies.

S. 82(8)
inserted by
No. 107/1997
s. 23.

- (8) 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.

S. 82(9)
inserted by
No. 107/1997
s. 23.

- (9) If this section 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 this Act or otherwise.

(10) In this section—

S. 82(10)
inserted by
No. 9/2010
s. 14.

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—

- (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.

82A Circumstances in which weekly payments are reduced because of conviction for drink-driving offence

S. 82A
inserted by
No. 9/2010
s. 15.

- (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 the **Road Safety Act 1986**.
- (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 this Part 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 114(10)—

- (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;
 - (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 this Part 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 114(10)—
- (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;
 - (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 82; 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.

82B Circumstances in which weekly payments are reduced because of conviction for drug-driving offence

S. 82B
inserted by
No. 9/2010
s. 15.

- (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 the **Road Safety Act 1986**.
- (2) Compensation in the form of weekly payments under this Part 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 under section 114(10).

- (3) This section does not apply—
- (a) if the injury results in death or is a severe injury within the meaning of section 82; 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. 82C
inserted by
No. 9/2010
s. 15.

82C 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), (f) or (g) 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
 - (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**.

- (2) This section does not apply—
- (a) if the injury results in death or is a severe injury within the meaning of section 82; or
 - (b) where the worker is convicted or found guilty of an offence specified in subsection (1)(b)(i) or (iii), 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.

82D Where conviction or finding of guilt overturned

S. 82D
inserted by
No. 9/2010
s. 15.

If—

- (a) compensation in the form of weekly payments to a worker—
 - (i) has been reduced in accordance with section 82A or 82B; or
 - (ii) in accordance with section 82C, 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—

the Authority or self-insurer must pay to the worker, subject to and in accordance with this Act—

- (c) 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.

S. 83
amended by
Nos 48/1986
s. 14, 64/1989
s. 35(b)(i)(ii)(c),
substituted by
No. 67/1992
s. 12.

83 Out of or in the course of employment

S. 83(1)
amended by
No. 50/1994
s. 33(1).

(1) An injury to a worker is deemed to arise out of or in the course of employment for the purposes of section 82(1) and 82(2) if the injury occurs—

(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;

(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;

S. 83(1)(c)
amended by
No. 50/1994
s. 33(2).

(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; and

S. 83(1)(d)
amended by
No. 50/1993
s. 81(d).

(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—

S. 83(2)
amended by
No. 50/1994
s. 33(3).

- (a) **place of employment** where 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.

84 Compensation for workers injured outside Victoria

S. 84(1)
amended by
Nos 83/1987
s. 37(1)(a),
95/2003
s. 17(1).

- (1) Where 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—

shall be entitled to compensation in accordance with this Act.

S. 84(2)
amended by
Nos 83/1987
s. 37(1)(b),
95/2003
s. 17(1).

- (2) If an injury is caused to or suffered by a worker outside Australia who is employed by the Crown, any administrative unit or any public statutory body constituted by or under the law of Victoria 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—

shall be entitled to compensation in accordance with this Act.

- (3) For the purposes of this Act a worker who—

- (a) is employed by the Crown, any administrative unit or any public statutory body constituted by or under the law of Victoria; and

(b) is directed by the Crown, administrative unit or public statutory body to work for or under the direction of any other person outside Victoria (whether within or outside Australia)—

S. 84(3)(b)
amended by
No. 95/2003
s. 17(2).

shall be deemed to continue to be employed by the Crown, administrative unit or public statutory body.

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

S. 84(4)
inserted by
No. 83/1987
s. 37(2),
amended by
No. 95/2003
s. 17(1).

(a) has never resided in Australia; or

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

84B Person not to be compensated twice

S. 84B
inserted by
No. 95/2003
s. 18.

(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.

S. 85
(Heading)
inserted by
No. 95/2003
s. 19(1).

85 Entitlement to damages outside Victoria

S. 85(1)
amended by
Nos 83/1987
s. 37(3),
95/2003
s. 19(2)(a)(b).

(1) This section shall apply where an injury is caused to or suffered by a worker which gives the worker a right of action under the law of any 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.

S. 85(2)
amended by
No. 95/2003
s. 19(3)(c)(d).

(2) Subject to subsection (3), if—

S. 85(2)(a)
amended by
No. 95/2003
s. 19(3)(a).

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

S. 85(2)(b)
amended by
No. 95/2003
s. 19(3)(b).

(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 shall be entitled to compensation under this Act as if there were no right of action under the law of any place outside Victoria.

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- (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) shall not be 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; S. 85(3) amended by No. 95/2003 s. 19(4)(a)(b).
 - (b) judgment for damages has been given or entered; S. 85(3)(b) substituted by No. 95/2003 s. 19(4)(d).
 - (c) any payment into court has been accepted;
 - (d) there has been a settlement or compromise of any claim; or
 - (e) any action for damages is pending. S. 85(3)(e) amended by No. 95/2003 s. 19(4)(e).
- (4) If— S. 85(4) amended by No. 95/2003 s. 19(5)(c).
- (a) damages has been paid or recovered; or S. 85(4)(a) amended by No. 95/2003 s. 19(5)(a).
 - (b) judgment for damages has been given or entered— S. 85(4)(b) amended by No. 95/2003 s. 19(5)(b).
- 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 shall not be entitled to compensation under this Act.
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S. 85(5)
amended by
No. 95/2003
s. 19(6).

- (5) The worker or in the case of the death of the worker the worker's dependants shall not be entitled to compensation under this Act if a payment into court has been accepted by the worker or the worker's dependants in proceedings or 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).

S. 85(6)
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 78(1)(h),
81/1998
s. 23(a),
95/2003
s. 19(7)(a).

- (6) If a person—
- (a) receives compensation under this Act in respect of any injury; and

S. 85(6)(b)
amended by
No. 95/2003
s. 19(7)(a)(b).

- (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 shall be 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.

S. 85(7)
amended by
No. 50/1994
s. 35(1).

- (7) Any dispute under subsection (6) shall 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 shall be presumed to be damages for the same injury in respect of which the worker claims compensation or a right of action under this Act.

S. 85(8)
amended by
No. 95/2003
s. 19(8)(a)(b).

86 Compensation for disease due to employment

- (1) Subject to section 82(2B), if—

S. 86
amended by
Nos 67/1992
s. 13(1),
95/2003
s. 3(7)(a)–(c)
(ILA s. 39B(1)).

- (a) a worker is suffering from a disease within the meaning of section 5 which incapacitates the worker from earning full wages at the work at which the worker was employed; or

S. 86(a)
amended by
No. 50/1994
s. 35(2).

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

and the disease is due to the nature of any employment in which the worker was employed at any time prior to the date of incapacity, the worker or the worker's dependants shall be entitled to compensation in accordance with this Act as if the disease were an injury.

- (2) 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.

S. 86(2)
inserted by
No. 95/2003
s. 3(7)(c).

Note

This section in its current form only applies to injuries that occur on or after the date of commencement of section 3 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 263.

87 Proclaimed diseases

S. 87(1)
amended by
No. 67/1992
s. 64(7)(a).

- (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.

S. 87(2)
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 78(1)(d),
81/1998
s. 23(b).

- (2) Without derogating from section 86, 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 shall be 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.

S. 87(3)
amended by
Nos 64/1989
s. 35(d),
67/1992
s. 13(2),
50/1993
s. 78(1)(f),
81/1998
s. 23(a).

- (3) A disease contracted by a worker shall be deemed to be a disease specified in a proclamation under subsection (1) in relation to a place, process or occupation if the Authority, self-insurer, a Conciliation Officer 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.

88 Compensation for industrial deafness

- (1) Industrial deafness or a proportion of industrial deafness which has occurred in circumstances which do not create any liability to pay compensation under this Act shall be excluded from the assessment of deafness for the purposes of calculating compensation under this section.

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- (2) Compensation for industrial deafness shall be in accordance with this section, section 89 and Division 2. S. 88(2) amended by No. 64/1989 s. 35(e)(i).
- (3) Unless the Authority, self-insurer, a Conciliation Officer, the Medical Panel or the County Court (as the case requires) determines otherwise industrial deafness shall be deemed to have occurred at a constant rate within the total number of years of exposure to industrial noise in employment. S. 88(3) amended by Nos 64/1989 s. 35(e)(ii), 67/1992 s. 13(3), 50/1993 s. 78(1)(f), 50/1994 s. 35(3), 81/1998 s. 23(a), 102/2004 s. 17(2).
- (4) Notwithstanding subsection (3), the date of injury shall be deemed to be—
- (a) the last day of the worker's employment out of which or in the course of which the injury arose; or S. 88(4)(a) substituted by No. 64/1989 s. 9(3).
- (b) the date of the claim if the worker is still employed in that employment at the date of the claim. S. 88(4)(b) substituted by No. 64/1989 s. 9(3).

89 Further loss of hearing

- (1) In this section and sections 88, 91 and 98C— S. 89(1) amended by No. 102/2004 s. 15(1).

Compensation law means this Act, the **Workers Compensation Act 1958** or any other workers compensation law of the Commonwealth or a State or Territory of the Commonwealth; S. 89(1) def. of *Compensation law* inserted by No. 102/2004 s. 15(2).

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

S. 89(1) def. of *prior hearing loss* inserted by No. 102/2004 s. 15(2).

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

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

S. 89(2) amended by No. 102/2004 s. 15(3)(a)(b).

- (2) Subject to subsection (3A), a worker who suffers a further injury shall be entitled to receive in respect of the further injury, in addition to any other compensation payable under section 88, compensation in accordance with section 98C(3A), being compensation referable to a percentage calculated in accordance with subsection (3) of the amount that would have been payable for a total loss of hearing.

S. 89(3)(a) amended by No. 102/2004 s. 15(4)(a).

- (3) The percentage shall be the difference between—
- (a) the total percentage of the loss of hearing in respect of industrial deafness from which the worker was suffering immediately after the further injury in respect of which the claim is made; and

Note to s. 89(3)(a) inserted by No. 28/2005 s. 17(1).

Note

The percentage NAL loss is to be determined in accordance with section 91(4). The percentage NAL loss is then converted in accordance with section 91(3).

S. 89(3)(b) amended by No. 102/2004 s. 15(4)(b).

- (b) the total percentage of the loss of hearing in respect of industrial deafness immediately after the prior injury or prior hearing loss or in the case of more than one prior injury or

prior hearing loss the latest of the prior injuries or prior hearing losses.

Note

The percentage NAL loss is to be determined in accordance with section 89(3C). The percentage NAL loss is then converted in accordance with section 91(3A).

**Note to
s. 89(3)(b)
inserted by
No. 28/2005
s. 17(2).**

(3A) Despite anything to the contrary in this Act, a worker who suffers a further injury is not entitled to compensation under this section or section 98C unless the worker has suffered in total a binaural loss of hearing of at least 10 percent NAL resulting from the further injury and any prior injury or prior hearing loss.

**S. 89(3A)
inserted by
No. 102/2004
s. 15(5).**

(3B) The total percentage referred to in subsection (3)(a) is to be determined in accordance with section 91(4).

**S. 89(3B)
inserted by
No. 102/2004
s. 15(5).**

(3C) The total percentage referred to in subsection (3)(b) is to be determined by reference to—

**S. 89(3C)
inserted by
No. 102/2004
s. 15(5).**

- (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.

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S. 89(3D)
inserted by
No. 102/2004
s. 15(5).

- (3D) If a worker disputes the total percentage referred to in subsection (3)(b) as determined in accordance with subsection (3C), the Authority, self-insurer or a court must refer the question of what is the amount of the total percentage referred to in subsection (3)(b) as a medical question to a Medical Panel for an opinion.
- (4) For the purposes of this section the register kept under section 90 shall be taken into account.

S. 89(5)
inserted by
No. 107/1997
s. 24,
repealed by
No. 102/2004
s. 15(6).

* * * * *

90 Effect of determination for industrial deafness

- (1) A determination for the payment of compensation for industrial deafness which is not reviewed shall be a final determination in respect of the percentage of the diminution of the worker's hearing on the date of the assessment.
- (2) A determination for the payment of compensation shall 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 shall fully extinguish all rights of the worker to compensation for industrial deafness under section 98, 98C or 98E or under the **Workers Compensation Act 1958** up to the date of the determination but shall not prevent the worker from obtaining compensation under section 98, 98C or 98E for further industrial deafness suffered after that date.

S. 90(3)
amended by
No. 107/1997
s. 37(1)(a)(b).

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

S. 90(4)
amended by
Nos 67/1992
s. 14(a),
50/1994
s. 35(4).

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

S. 90(5)
amended by
No. 67/1992
s. 14(b)(i)(ii).

91 Assessment of impairment

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

S. 91
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 78(1)(h),
repealed by
No. 50/1994
s. 36,
new s. 91
inserted by
No. 60/1996
s. 9.

(a) made in accordance with—

(i) the A.M.A Guides as applicable subject to subsections (1A) and (1B); or

S. 91(1)(a)(i)
amended by
No. 107/1997
s. 25(1),
substituted by
No. 26/2000
s. 13(1),
amended by
No. 60/2007
s. 25(1).

(ia) the A.M.A Guides as applicable subject to subsections (1A) and (1B) and guidelines in accordance with subsection (6), (6A) or (6B); or

S. 91(1)(a)(ia)
inserted by
No. 41/2006
s. 9(1),
amended by
No. 60/2007
s. 25(2).

(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

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- (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.

S. 91(1A)
inserted by
No. 60/2007
s. 25(3).

- (1A) Despite anything to the contrary in the A.M.A Guides, an assessment under subsection (1) of the degree of impairment resulting from an injury must be made—
 - (a) after the injury has stabilised; and
 - (b) subject to subsection (7), 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.

S. 91(1B)
inserted by
No. 60/2007
s. 25(3).

- (1B) 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".

- (2) In assessing a degree of impairment under subsection (1), 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.

S. 91(3)
inserted by
No. 107/1997
s. 25(2).

- (3) For the purposes of assessing the degree of impairment of the whole person resulting from binaural hearing impairment, the percentage of the diminution of hearing determined in accordance

with subsection (4) is to be converted as follows—

- (a) if the binaural loss of hearing is less than 10 per cent NAL, the degree of impairment is zero;
- (b) if the binaural loss of hearing is 10 per cent NAL, the degree of impairment is 10 per cent;
- (c) if the 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—

$$10 + [0.278 (NAL - 10)]—$$

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

- (3AA) In the case of a further injury, for the purposes of assessing the degree of impairment of the whole person resulting from binaural hearing impairment from which the worker was suffering immediately after the further 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 (3).

S. 91(3AA)
inserted by
No. 28/2005
s. 18.

- (3A) In the case of a further injury, for the purposes of assessing the degree of impairment of the whole person resulting from binaural hearing impairment in respect of prior injury or prior hearing loss, the percentage of the diminution of hearing is to be determined in accordance with sections 89(3C) and 89(3D) and converted as follows—

S. 91(3A)
inserted by
No. 102/2004
s. 16(1),
substituted by
No. 28/2005
s. 18.

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- (a) if the 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 binaural loss of hearing is 10 per cent NAL, the degree of impairment is 10 per cent;
- (c) if the 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—

$$10 + [0.278 (NAL - 10)]—$$

where NAL is the percentage of diminution of hearing determined in accordance with sections 89(3C) and 89(3D).

S. 91(4)
inserted by
No. 107/1997
s. 25(2),
amended by
No. 102/2004
s. 16(2).

- (4) For the purposes of this section and section 89(3)(a), the percentage of diminution of hearing—
 - (a) shall be determined—
 - (i) by a person or class of persons approved; and
 - (ii) in the manner approved—
by the Minister; and
 - (b) shall 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. 91(5)
inserted by
No. 107/1997
s. 25(2),
amended by
No. 82/2001
s. 14.

- (5) An approval by the Minister for the purposes of subsection (4)(a)(i) continues in force for the period not exceeding 3 years as is specified by the Minister in the approval unless revoked by the Minister.

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- (6) For the purposes of assessing the degree of psychiatric impairment the A.M.A Guides apply, subject to any regulations made for the purposes of this section, as if for Chapter 14 there were substituted the guidelines entitled "The Guide to the Evaluation of Psychiatric Impairment for Clinicians".
- (6A) For the purposes of assessing the degree of occupational asthma impairment—
- (a) the A.M.A Guides apply, subject to any regulations made for the purposes of this section, as if for Chapter 5, Tables 8 and 10, there were substituted the guidelines entitled "Impairment Assessment in Workers with Occupational Asthma"; and
- (b) occupational asthma has the meaning given by the guidelines entitled "Impairment Assessment in Workers with Occupational Asthma".
- (6B) For the purposes of assessing the degree of infectious occupational diseases impairment—
- (a) the A.M.A Guides apply, subject to any regulations made for the purposes of this section and subject to the guidelines entitled "Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases"; and
- (b) infectious occupational disease has the meaning given by the guidelines entitled "Clinical Guidelines to the Rating of Impairments arising from Infectious Occupational Diseases".
- S. 91(6)**
inserted by
No. 107/1997
s. 25(2),
amended by
No. 26/2000
s. 13(2),
substituted by
No. 41/2006
s. 9(2).
- S. 91(6A)**
inserted by
No. 41/2006
s. 9(2).
- S. 91(6B)**
inserted by
No. 41/2006
s. 9(2).

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S. 91(6C)
inserted by
No. 41/2006
s. 9(2).

(6C) The guidelines referred to in subsections (6), (6A) and (6B)—

- (a) must be published by the Authority in the Government Gazette;
- (b) have effect on the day after the day on which the guidelines are published in the Government Gazette;
- (c) may be amended, varied or substituted by a subsequent edition of the guidelines published by the Authority in the Government Gazette.

S. 91(7)
inserted by
No. 107/1997
s. 25(2).

(7) For the purposes of section 98C—

- (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 tables in the A.M.A Guides;
- (b) 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;
- (c) impairments from unrelated injuries or causes are to be disregarded in making an assessment;
- (d) assessments are to specify the whole person values for each chapter of the A.M.A Guides used in the assessment.

S. 91(7)(c)
amended by
No. 95/2003
s. 8(3)(a).

S. 91(7)(d)
inserted by
No. 95/2003
s. 8(3)(b),
amended by
No. 60/2007
s. 25(4).

Note

Paragraph (d) only applies in respect of assessments for injuries that occur on or after the date of commencement of section 8 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 264(2).

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| <p>(7AA) For the purposes of section 98C(2A)(a)(ii) and (iii), assessments of spinal impairment are to specify the whole person values derived in accordance with section 3.3 of Chapter 3 of the A.M.A. Guides.</p> | <p>S. 91(7AA)
inserted by
No. 9/2010
s. 53.</p> |
| <p>(7A) For the purposes of Subdivision 1 of Division 3A and of section 134AB—</p> <p style="margin-left: 40px;">(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</p> <p style="margin-left: 40px;">(b) impairments from unrelated injuries or causes are to be disregarded in making an assessment.</p> | <p>S. 91(7A)
inserted by
No. 26/2000
s. 13(3),
amended by
No. 82/2001
s. 5.</p> |
| <p>(7B) Regulations made under this Act may modify the A.M.A. Guides.</p> | <p>S. 91(7B)
inserted by
No. 26/2000
s. 13(4).</p> |
| <p>(7C) If a regulation is made under subsection (7B), the A.M.A. Guides as modified by the regulation only apply in respect of an injury occurring on or after the date the modification takes effect.</p> | <p>S. 91(7C)
inserted by
No. 82/2001
s. 15,
amended by
No. 60/2007
s. 25(4).</p> |
| <p>(8) In this section <i>A.M.A. Guides</i> 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 any regulations made under this Act.</p> | <p>S. 91(8)
inserted by
No. 107/1997
s. 25(2),
amended by
No. 26/2000
s. 13(5).</p> |
| <p>(9) Despite anything to the contrary in the A.M.A. Guides, in determining a person's degree of impairment, no number determined under the A.M.A. Guides is to be rounded up or down, 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.</p> | <p>S. 91(9)
inserted by
No. 107/1997
s. 25(2),
substituted by
No. 95/2003
s. 7,
amended by
No. 60/2007
s. 25(4).</p> |
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S. 91(10)
inserted by
No. 107/1997
s. 25(2),
substituted by
No. 95/2003
s. 7,
amended by
No. 60/2007
s. 25(4).

- (10) A number determined under the A.M.A Guides must be rounded to the nearest whole percent.

Example

A final degree of impairment of 9.5% must be rounded to 10%. A final degree of impairment of 8.4% must be rounded to 8%.

Note

Section 264(1) sets out the transitional provisions that apply to subsections (9) and (10). Section 255 re-enacts former sections 91(9) and 91(10) (which were transitional provisions in relation to amendments made by the **Accident Compensation (Miscellaneous Amendment) Act 1997**).

S. 91(11)
inserted by
No. 95/2003
s. 7.

- (11) This subsection applies if—
- (a) an assessment is made for the purposes of section 98C of a worker's degree of impairment; and
 - (b) the injury in respect of which the assessment is made occurred before the commencement of section 8 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**; and
 - (c) the degree of impairment is determined to be 8% or 9%.

S. 91(12)
inserted by
No. 95/2003
s. 7,
amended by
No. 60/2007
s. 25(4).

- (12) If subsection (11) applies, the degree of impairment may be rounded in accordance with the A.M.A Guides.

Division 1A—Determination by courts and recognition of determinations

Pt 4 Div. 1A
(Heading and
ss 91A–91D)
inserted by
No. 95/2003
s. 20.

91A Determination of State with which worker's employment is connected in proceedings under this Act

S. 91A
inserted by
No. 95/2003
s. 20.

- (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, that court must—
 - (a) determine the State with which the worker's employment is connected in accordance with section 80; 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 91C.

91B Determination by County Court of State with which worker's employment is connected

S. 91B
inserted by
No. 95/2003
s. 20.

- (1) If a claim for compensation has been made under this Act, a party to the claim may apply to the County Court for a determination of the question of which State is the State with which the worker's employment is connected.
- (2) The County Court must determine an application under subsection (1) in accordance with section 80 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 91C.

s. 91C

S. 91C
inserted by
No. 95/2003
s. 20.

91C 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 91A or 91B; or
 - (b) by a designated court under a provision of a law that corresponds with section 91A or 91B; 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 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. 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 80;

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

S. 91C(3)
def. of
designated court
amended by
No. 41/2006
s. 10.

section by a notice published in the
Government Gazette;

State includes Territory.

91D Determination may be made by consent

S. 91D
inserted by
No. 95/2003
s. 20.

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.

Division 2—Benefits

Pt 4 Div. 2
(Heading and
ss 92–100)
amended by
Nos 48/1986
ss 5, 15, 16,
48/1987 s. 5,
83/1987
ss 38–43,
substituted as
Pt 4 Div. 2
(Heading and
ss 92–100A)
by No.
64/1989 s. 10.

91E Definitions applicable to this Division

S. 91E
inserted by
No. 9/2010
s. 30.

In this Division—

first entitlement period, in relation to a claim for
compensation in the form of weekly
payments made by a worker—

- (a) if the claim is made by a
pre-12 November 1997 claimant and
relates to an injury arising before that
date, means an aggregate period of
incapacity for work not exceeding
26 weeks (whether or not consecutive)
after the worker became entitled to
compensation in the form of weekly
payments in respect of the incapacity;

- (b) if the claim is made on or after 12 November 1997, 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;

pre-12 November 1997 claimant, in relation to a claim for compensation in the form of weekly payments given, served or lodged before 12 November 1997 in respect of an injury arising before that date, means a worker who—

- (a) as at that date, was entitled to compensation in the form of weekly payments in accordance with section 93A or 93B (as in force before the commencement of section 31 of the **Accident Compensation Amendment Act 2010**); or
- (b) on or after that date, was determined under this Act to have been so entitled as at 12 November 1997; or
- (c) but for the operation of section 96 (as in force before the commencement of section 31 of the **Accident Compensation Amendment Act 2010**) would have been so entitled as at 12 November 1997;

second entitlement period, in relation to a claim for compensation in the form of weekly payments made by a worker—

- (a) if the claim is made by a pre-12 November 1997 claimant and relates to an injury arising before that date, means an aggregate period of

78 weeks (whether or not consecutive) after the first entitlement period in respect of which a weekly payment has been paid or is payable to the worker;

- (b) if the claim is made on or after 12 November 1997 and received by the Authority of self-insurer before 1 January 2005, means an aggregate period of 91 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;
- (c) if the claim is received by the Authority or self-insurer on or after 1 January 2005, 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;

serious injury, in relation to a claim for compensation in the form of weekly payments made before 12 November 1997, means an injury to a worker in respect of which the worker's degree of impairment, if assessed by the Authority or self-insurer in accordance with section 91, would be 30 per cent or more.

92 Compensation for death of a worker

S. 92
substituted by
No. 64/1989
s. 10.

- (1A) This section does not apply in respect of a death occurring on or after 12 November 1997.

S. 92(1A)
inserted by
No. 107/1997
s. 26.

Accident Compensation Act 1985
No. 10191 of 1985
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S. 92(1)
amended by
Nos 67/1992
s. 64(9)(a),
50/1993
s. 78(1)(c),
50/1994
s. 37(1),
substituted by
No. 9/2010
s. 67(1).

(1) 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 the compensation must be determined—

(a) if a dependant does not have legal representation, or is a minor or a person under a disability, by the court in accordance with this section; or

(b) in all other cases, by the Authority or self-insurer in accordance with this section.¹⁶

(2) If the worker leaves any dependants wholly or mainly dependent on the worker's earnings the amount of compensation shall be—

S. 92(2)(a)
amended by
No. 7/1996
s. 49(b).

(a) the sum of \$128 420; and

S. 92(2)(b)
amended by
No. 7/1996
s. 49(c).

(b) the appropriate additional sum specified in Column 2 of the Table to this subsection in the case of each child under the age and having the status specified in Column 1 of that Table who—

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

(ii) would, but for the incapacity of the worker prior to the worker's death, have been wholly or mainly dependent on the earnings of the worker at the time of death.

<i>Column 1</i>	<i>Column 2</i>
<i>Years of Age</i>	<i>Amounts of Compensation</i>
	\$
Under 1	24 470
Under 2	22 870
Under 3	21 310

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<i>Column 1</i>	<i>Column 2</i>
<i>Years of Age</i>	<i>Amounts of Compensation</i>
Under 4	19 720
Under 5	18 140
Under 6	16 540
Under 7	14 970
Under 8	13 410
Under 9	11 840
Under 10	10 260
Under 11	8 690
Under 12	7 120
Not under 12 but under 16	5 530
Not under 16 but under 21 (full-time student)	5 530

- (3) If the worker does not leave any dependants wholly or mainly dependent on the worker's earnings but leaves any dependants partly dependent upon the worker's earnings, the amount of compensation shall be a sum not exceeding \$128 420 which the court, Authority or self-insurer¹⁷ considers is reasonable and appropriate to the injury to those dependants.
- (4) If the worker being under the age of 21 years at the time of the injury leaves no dependants but immediately before the injury was contributing towards the maintenance of the home of the members of the worker's family, the members of the worker's family shall be deemed to be dependants of the worker partly dependent on the worker's earnings and the amount of compensation shall be a sum not exceeding \$128 420 which the court, the Authority or self-insurer¹⁸ considers is reasonable and appropriate to the injury to those dependants.
- (5) In determining whether a spouse was wholly, mainly or in part dependent on the worker at the time of the death of the worker or other relevant time, no regard shall be had to any money which the spouse had earned or was earning by his or her

S. 92(3)
amended by
Nos 67/1992
s. 64(9)(a),
50/1993
s. 78(1)(c),
50/1994
s. 37(1),
7/1996
s. 49(b),
9/2010
s. 67(2).

S. 92(4)
amended by
Nos 67/1992
s. 64(9)(a),
50/1993
s. 78(1)(c),
50/1994
s. 37(1),
7/1996
s. 49(b),
9/2010
s. 67(3).

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own personal exertion or to any savings arising from any such earnings.

S. 92(6)
amended by
Nos 67/1992
s. 64(9)(a),
50/1993
s. 78(1)(c),
50/1994
s. 37(1),
9/2010
s. 67(4).

- (6) If there are both total and partial dependants, the court, the Authority or self-insurer¹⁹ shall determine the amount of compensation payable and shall allot the compensation to the total dependants and to the partial dependants in such proportions as it determines.

S. 92(7)
substituted by
No. 67/1992
s. 64(9)(b),
amended by
Nos 50/1993
s. 78(1)(c),
50/1994
s. 37(1),
substituted by
No. 9/2010
s. 67(5).

- (7) A dependant is entitled to interest at the prescribed rate on an amount of compensation determined in accordance with this section—
- (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 103 and ending on the date of the determination; or
- (b) in the case of a determination made by the Authority or self-insurer—in respect of the period beginning on the date the claim was lodged in accordance with section 103 and ending on the date the Authority or self-insurer makes the determination.²⁰

S. 92A
inserted by
No. 107/1997
s. 27(1).

92A Revised compensation for death of worker

- (1) In this section—

S. 92A(1)
def. of
child
amended by
No. 9/2010
s. 68(1).

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;

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;

S. 92A(1)
def. of
corresponding law
inserted by
No. 9/2010
s. 68(2)(a).

dependent child means a child who is a dependant of the worker and includes—

S. 92A(1)
def. of
dependent child
substituted by
No. 9/2010
s. 68(2)(b).

- (a) an orphan child;
- (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 wholly or mainly dependent on the worker's earnings;

S. 92A(1)
def. of
dependent spouse
substituted as
dependent partner by
No. 27/2001
s. 4(Sch. 2
item 1.4(a)).

orphan child means a child—

S. 92A(1)
def. of
orphan child
amended by
Nos 27/2001
s. 4(Sch. 2
item 1.4(b)),
102/2004
s. 14(1)(a).

- (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

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(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;

S. 92A(1)
def. of
*partially
dependent
partner*
inserted by
No. 102/2004
s. 14(1)(b).

partially dependent partner means a partner who is to any extent dependent on the worker's earnings.

S. 92A(2)
amended by
No. 27/2001
s. 4(Sch. 2
item 1.4(c)).

(2) In determining, for the purposes of this section, whether a partner was wholly or mainly dependent on the worker's earnings at the time of the death of the worker or other relevant time, no regard shall be had to any money which the partner had earned or was earning by his or her own personal exertion or to any savings arising from any such earnings.

S. 92A(2A)
inserted by
No. 9/2010
s. 68(3).

(2A) For the purposes of this section and section 92B, 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. 92A(2B)
inserted by
No. 9/2010
s. 68(3).

(2B) Subsection (2A) applies to all claims first received on and from 10 December 2009—

- (a) by the Authority, whether forwarded by the employer or lodged by a partner to which that subsection applies; or
- (b) by a self-insurer, having been given or served on the self-insurer by a partner to which that subsection applies.

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|---|---|
| <p>(3) 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—</p> <p style="margin-left: 40px;">(a) if a dependant does not have legal representation, or is a minor or a person under a disability, by the court in accordance with this section; or</p> <p style="margin-left: 40px;">(b) in all other cases, by the Authority or self-insurer in accordance with this section.</p> | <p>S. 92A(3)
substituted by
No. 9/2010
s. 68(4).</p> |
| <p>(4) If the worker leaves a dependent partner, or dependent partners, and no dependent child, the amount of compensation is \$503 000 payable to the dependent partner or, if there is more than one, in equal shares to the dependent partners.</p> | <p>S. 92A(4)
amended by
Nos 27/2001
s. 4(Sch. 2
item 1.4(d)
(i)(ii)),
102/2004
s. 38(1)(c),
41/2006
s. 11(1),
9/2010
s. 68(5).</p> |
| <p>(5) If the worker leaves no dependent partner and no dependent children other than an orphan child or orphan children, the amount of compensation is \$503 000 payable to that orphan child or, if there are 2 or more, in equal shares for those children.</p> | <p>S. 92A(5)
amended by
Nos 27/2001
s. 4(Sch. 2
item 1.4(e)),
102/2004
s. 38(1)(c),
41/2006
s. 11(1),
9/2010
s. 68(5).</p> |
| <p>(6) If the worker leaves a dependent partner, or dependent partners, and one, and only one, dependent child, the amount of compensation is—</p> | <p>S. 92A(6)
amended by
No. 27/2001
s. 4(Sch. 2
item 1.4(f)
(i)(ii)).</p> |
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S. 92A(6)(a)
amended by
Nos 27/2001
s. 4(Sch. 2
item 1.4(f)
(i)(ii)),
102/2004
s. 38(1)(d),
41/2006
s. 11(2),
9/2010
s. 68(6)(a).

(a) \$452 700 payable to the dependent partner
or, if more than one, in equal shares to the
dependent partners; and

S. 92A(6)(b)
amended by
Nos 102/2004
s. 38(1)(e),
41/2006
s. 11(3),
9/2010
s. 68(6)(b).

(b) \$50 300 payable to the dependent child.

S. 92A(7)
amended by
Nos 27/2001
s. 4(Sch. 2
item 1.4(f)
(i)(ii)),
102/2004
s. 38(1)(c),
41/2006
s. 11(1),
9/2010
s. 68(7)(a).

(7) 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 503 000 payable in the following
shares—

S. 92A(7)(a)
amended by
Nos 102/2004
s. 38(1)(f),
41/2006
s. 11(4),
9/2010
s. 68(7)(b).

(a) \$25 150 to each dependent child; and

S. 92A(7)(b)
amended by
No. 27/2001
s. 4(Sch. 2
item 1.4(f)
(i)(ii)).

(b) the balance to the dependent partner or, if
more than one, in equal shares to the
dependent partners.

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(8) If the worker leaves a dependent partner, or dependent partners, and more than 5 dependent children, the amount of compensation is \$503 000 payable in the following shares—

S. 92A(8)
amended by
Nos 27/2001
s. 4(Sch. 2
item 1.4(f)
(i)(ii)),
102/2004
s. 38(1)(c),
41/2006
s. 11(1),
9/2010
s. 68(8)(a).

(a) \$377 250 to the dependent partner or, if more than one, in equal shares to the dependent partners; and

S. 92A(8)(a)
amended by
Nos 27/2001
s. 4(Sch. 2
item 1.4(f)
(i)(ii)),
102/2004
s. 38(1)(g),
41/2006
s. 11(5),
9/2010
s. 68(8)(b).

(b) \$125 750 to the dependent children in equal shares.

S. 92A(8)(b)
amended by
Nos 102/2004
s. 38(1)(h),
41/2006
s. 11(6),
9/2010
s. 68(8)(c).

(8A) If the worker does not leave a dependent partner but leaves a dependent child (not being an orphan child) or 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 \$503 000 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.

S. 92A(8A)
inserted by
No. 26/2000
s. 14,
amended by
Nos 27/2001
s. 4(Sch. 2
item 1.4(g)),
102/2004
s. 38(1)(c),
41/2006
s. 11(1),
9/2010
s. 68(9).

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S. 92A(8B)
inserted by
No. 102/2004
s. 14(2),
amended by
Nos 41/2006
s. 11(1),
9/2010
s. 68(9).

(8B) If the worker leaves—

- (a) a partially dependent partner or partially dependent partners; and
- (b) a dependent partner or dependent partners or a dependent child or dependent children or any combination thereof—

each of those dependants is entitled to the amount of compensation being such share of a sum not exceeding \$503 000 which the court, the Authority or self-insurer considers is reasonable and appropriate to the injury to that dependant.

S. 92A(9)
amended by
Nos 27/2001
s. 4(Sch. 2
item 1.4(g)),
102/2004
ss 14(3),
38(1)(c),
41/2006
s. 11(1),
9/2010
s. 69(10).

- (9) 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 \$503 000 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.**

S. 92A(10)
amended by
Nos 27/2001
s. 4(Sch. 2
item 1.4(g)),
102/2004
s. 14(3),
9/2010
s. 68(11).

- (10) 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 be dependants of the worker partly dependent on the worker's earnings.**

S. 92A(11)
amended by
No. 9/2010
s. 68(12).

- (11) If, under this section, 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 child as the trustee thinks fit.

- (12) A claimant is entitled to interest at the prescribed rate on an amount of compensation determined in accordance with this section—

S. 92A(12)
substituted by
No. 9/2010
s. 68(13).

- (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 103 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 103 and ending on the date the Authority or self-insurer makes the determination.

92AA Reimbursement of expenses incurred by non-dependent family members of a deceased worker

S. 92AA
inserted by
No. 9/2010
s. 69.

- (1) In this section—

expenses does not include—

- (a) the cost of any service or contribution that may be claimed under section 99;
- (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) the cost of the loss of a service provided to a member of the deceased worker's family;

maximum amount means an amount of \$30 000 in total for expenses incurred as a result of a worker's death, regardless of how many

members of the deceased worker's family
apply under this section.

- (2) If a worker's death results from, or is materially contributed to by, an injury arising out of or in the course of employment and if—
- (a) had the worker had a dependant, or dependants at the time of his or her death, the injury would have entitled that dependant or dependants to compensation under this Act; and
 - (b) the worker did not have any dependants at the time of his or her death (including any *dependent child* within the meaning of section 92A(1))—

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.

- (3) 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;
 - (b) be made within 2 years after the date of the worker's death unless subsection (4) applies.
- (4) 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.
- (5) 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 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.
- (6) 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 however the total amount ordered 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 if 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 employer premiums;
 - (b) contributions under Division 6A of Part IV;
 - (c) seeking indemnity from a third party under section 138;
 - (d) seeking a refund of payments under section 249A.

92B Weekly pensions for dependants of worker who dies

- (1) Words and expressions defined in section 92A have the same meaning in this section as in that section.

**S. 92B
inserted by
No. 107/1997
s. 27(1).**

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(2) In addition to compensation under section 92A, compensation in the form of weekly payments of pension is payable subject to and in accordance with this section.

S. 92B(3)
amended by
No. 27/2001
s. 4(Sch. 2
item 1.5(a)).

(3) 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—

S. 92B(3)(a)(ii)
amended by
Nos 102/2004
s. 38(1)(i),
9/2010
s. 39(1).

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 5 dependent children who are entitled to a pension under this section and subsection (11) applies, an amount calculated in accordance with the formula—

S. 92B(3)(b)(i)
amended by
Nos 102/2004
s. 38(1)(i),
9/2010
s. 39(1).

S. 92B(3)(b)(ii)
amended by
Nos 102/2004
s. 38(1)(i),
9/2010
s. 39(1).

$$\text{twice the State average weekly earnings} \times \frac{50}{50 + 5N}$$

where—

N is the number of dependent children so entitled; or

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- (iii) if the worker leaves more than 5 dependent children who are entitled to a pension under this section and subsection (11) applies, two thirds of twice the State average weekly earnings.
- (4) 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 5 dependent children who are entitled to a pension under this section and subsection (11) applies, an amount calculated in accordance with the formula—
- S. 92B(3)(b)(iii) amended by Nos 102/2004 s. 38(1)(j), 9/2010 s. 39(2).
- S. 92B(4) amended by No. 27/2001 s. 4(Sch. 2 item 1.5(b)).
- S. 92B(4)(a)(ii) amended by Nos 102/2004 s. 38(1)(i), 9/2010 s. 39(1).
- S. 92B(4)(b)(i) amended by Nos 102/2004 s. 38(1)(i), 9/2010 s. 39(1).
- S. 92B(4)(b)(ii) amended by Nos 102/2004 s. 38(1)(i), 9/2010 s. 39(1).

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twice the State average weekly earnings $\times \frac{50}{50 + 5N}$

where—

N is the number of dependent children so entitled; or

S. 92B(4)(b)(iii)
amended by
Nos 102/2004
s. 38(1)(j),
9/2010
s. 39(2).

(iii) if the worker leaves more than 5 dependent children who are entitled to a pension under this section and subsection (11) applies, two thirds of twice the State average weekly earnings.

(5) 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—

S. 92B(5)(a)(ii)
amended by
Nos 102/2004
s. 38(1)(i),
9/2010
s. 39(1).

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

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- (ii) twice the State average weekly earnings—

S. 92B(5)(b)(ii)
amended by
Nos 102/2004
s. 38(1)(i),
9/2010
s. 39(1).

whichever is the lesser.

- (6) 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—

S. 92B(6)(a)(ii)
amended by
Nos 102/2004
s. 38(1)(i),
9/2010
s. 39(1).

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—

S. 92B(6)(b)(ii)
amended by
No. 102/2004
s. 38(1)(i),
9/2010
s. 39(1).

whichever is the lesser.

- (7) If the worker leaves not more than 5 dependent children, each such child is entitled, from the end of the first 13 weeks after the death until the child

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ceases to be eligible, to a weekly pension at the rate of—

- (a) unless subsection (11) applies, 5 per cent of the worker's pre-injury average weekly earnings; or
- (b) if subsection (11) applies, an amount calculated in accordance with the formula—

twice the State average weekly earnings $\times \frac{5}{50 + 5N}$

where—

N is the number of dependent children so entitled.

- (8) If a worker leaves more than 5 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—

- (a) unless subsection (11) applies, 25 per cent of the worker's pre-injury average weekly earnings; or
- (b) if subsection (11) applies, one third of twice the State average weekly earnings.

S. 92B(7)(b)
amended by
Nos 102/2004
s. 38(1)(i),
9/2010
s. 39(1).

S. 92B(8)(b)
amended by
Nos 102/2004
s. 38(1)(k),
9/2010
s. 39(3).

- (9) A child ceases to be eligible under this section—

- (a) on attaining the age of 16 years; or
- (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.

S. 92B(9)
substituted by
No. 9/2010
s. 70(1).

(9A) For the purposes of subsection (9)(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.

S. 92B(9A)
inserted by
No. 9/2010
s. 70(1).

* * * * *

S. 92B(10)
repealed by
No. 9/2010
s. 70(2).

(11) This subsection applies if 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 (3)(b) and (7) or (8); or
- (b) subsections (4)(b) and (7) or (8)—

would, but for the application of this subsection, exceed twice the State average weekly earnings.

S. 92B(11)
amended by
Nos 27/2001
s. 4(Sch. 2
item 1.5(c)),
102/2004
s. 38(1)(i),
9/2010
s. 39(1).

92C Payment of weekly pensions

S. 92C
inserted by
No. 107/1997
s. 27(1).

- (1) A weekly pension under section 92B must be paid by fortnightly, monthly, quarterly or annual instalments in accordance with this section, as the Authority, employer or self-insurer determines.

S. 92C(1)
amended by
No. 81/1998
s. 23(a).

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- (2) The first payment of amounts due as weekly pension must be made within 14 days after the amount is determined and 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.
- (3) 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.
- (4) A payment of a weekly pension may be made by post by properly addressing, prepaying and posting to the person entitled to the weekly pension a letter containing a cheque for the amount.
- (5) A payment of a weekly pension in accordance with subsection (4) is deemed to have been made when the letter was posted.
- (6) The liability to the person entitled to a weekly pension is not satisfied until the person receives the amount.

S. 92C(3)
substituted by
No. 27/2001
s. 4(Sch. 2
item 1.6).

- (7) 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.

S. 92C(7)
amended by
No. 81/1998
s. 23(a).

92D Provisional payment

S. 92D
inserted by
No. 9/2010
s. 71.

- (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—
- (a) weekly pension that may be payable under section 92B(3)(a) for a period of up to 12 weeks from the date of death of the worker;
 - (b) medical and other costs that may be payable under section 99(1)(a) up to a maximum of \$7500;
 - (c) family counselling services costs that may be payable under section 99(1)(aa) up to the maximum prescribed in that section;
 - (d) the costs of the deceased worker's burial or cremation that may be payable under section 99(1)(b) up to the maximum amount determined as reasonable costs by the Authority under section 99(2).
- (2) Except as provided by subsection (3), a provisional payment made under a paragraph in subsection (1) may be paid to more than one person however 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).
- (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;
 - (b) contributions under Division 6A of Part IV;
 - (c) the reduction of common law damages under section 135C(7)(a);
 - (d) seeking indemnity from a third party under section 138;
 - (e) seeking a refund of payments under section 249A.
- (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 92B(3)(a) or 92B(4)(a) is discharged to the extent of that payment;
 - (b) under subsection (1)(b), any liability the Authority or self-insurer has under section 99(1)(a) is discharged to the extent of that payment;

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- (c) under subsection (1)(c), any liability the Authority or self-insurer has under section 99(1)(aa) is discharged to the extent of that payment;
 - (d) under subsection (1)(d), any liability the Authority or self-insurer has under section 99(1)(b) 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 in the following circumstances—
- (a) 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 a stroke injury unless at the time of the worker's death—
 - (i) the Authority or the self-insurer had already accepted a claim for compensation made by the worker before his or her death in respect of that injury; and
 - (ii) the worker was receiving compensation payments in respect of that injury before the worker's death;
 - (b) the worker committed suicide;
 - (c) if the provisional payment would have to be made to a court-appointed guardian because the person is a minor or person under a disability.
- (8) The Authority may issue 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.
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- (9) 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.
- (10) In subsection (9), *proceedings* includes—
 - (a) the inquiry into, hearing and determination of any question or matter under this Act;
 - (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;
 - (c) seeking any order under the **Administrative Law Act 1978**;
 - (d) any other action or proceeding.

S. 93
substituted by
No. 64/1989
s. 10.

93 Compensation in weekly payments

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 shall be in the form of weekly payments subject to and in accordance with this Part.

S. 93A
inserted by
No. 64/1989
s. 10,
substituted by
No. 67/1992
s. 15,
amended by
Nos 50/1993
ss 78(1)(d),
91(a)(b),
50/1994
s. 38(1),
7/1996
s. 49(a),
81/1998
s. 23(b),
102/2004
s. 38(1)(f),
substituted by
No. 9/2010
s. 31.

93A Weekly payments in first entitlement period

- (1) In relation to a claim for compensation in the form of weekly payments made by a pre-12 November 1997 claimant, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work during the first entitlement period, to weekly payments—
 - (a) if the worker has no current work capacity, at the rate of—
 - (i) 95 per cent of the worker's pre-injury average weekly earnings; or
 - (ii) \$1040—
- whichever is the lesser;

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- (b) if the worker has a current work capacity, at the rate of—
- (i) the difference between 95 per cent of the worker's pre-injury average weekly earnings and the worker's current weekly earnings; or
 - (ii) the difference between \$1040 and the worker's current weekly earnings—
- whichever is the lesser.
- (2) In relation to a claim by a worker for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 12 November 1997 and before 5 April 2010, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work during the first entitlement period, to weekly payments—
- (a) if the worker has no current work capacity, at the rate of—
- (i) 95 per cent of the worker's pre-injury average weekly earnings; or
 - (ii) \$1300—
- whichever is the lesser;
- (b) if the worker has a current work capacity, at the rate of—
- (i) the difference between 95 per cent of the worker's pre-injury average weekly earnings and the worker's current weekly earnings; or
 - (ii) the difference between \$1300 and the worker's current weekly earnings—
- whichever is the lesser.
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- (3) In relation to a claim by a worker for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 5 April 2010, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work during the first entitlement period, to weekly payments—
- (a) if the worker has no current work capacity, at the rate of—
 - (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;
 - (b) if the worker has a current work capacity, at the rate of—
 - (i) the difference between 95 per cent of the worker's pre-injury average weekly earnings 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.

93B Weekly payments in second entitlement period

- (1) In relation to a claim made by a pre-12 November 1997 claimant for compensation in the form of weekly payments, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work during the second entitlement period, to weekly payments—

- (a) if the worker has a serious injury, at the rate of—
- (i) the difference between 90 per cent of the worker's pre-injury average weekly earnings and 90 per cent of the worker's current weekly earnings; or
 - (ii) the difference between \$1040 and 90 per cent of the worker's current weekly earnings—

whichever is the lesser;

- (b) if the worker does not have a serious injury but has no current work capacity, at the rate of—
- (i) 80 per cent of the worker's pre-injury average weekly earnings; or
 - (ii) \$1040—

whichever is the lesser;

- (c) if the worker does not have a serious injury but has a current work capacity, at the rate of—
- (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings and 80 per cent of the worker's current weekly earnings; or

S. 93B
inserted by
No. 64/1989
s. 10,
substituted by
No. 67/1992
s. 15,
amended by
Nos 50/1993
ss 78(1)(c)(d),
91(c)(d),
50/1994
s. 38(2)(3),
7/1996
ss 16(1),
49(a)(d),
60/1996 ss 10,
11(1), 81/1998
s. 23(a)(b),
102/2004
s. 38(1)(l)-(n),
41/2006
s. 13(1),
substituted by
No. 9/2010
s. 31.²¹

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- (ii) the difference between \$1040 and 80 per cent of the worker's current weekly earnings—
whichever is the lesser.
- (2) In relation to a claim by a worker for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 12 November 1997 and before 5 April 2010, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work during the second entitlement period, to weekly payments—
- (a) if the worker has no current work capacity, at the rate of—
- (i) 80 per cent of the worker's pre-injury average weekly earnings; or
- (ii) \$1300—
whichever is the lesser;
- (b) if the worker has a current work capacity, at the rate of—
- (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings and 80 per cent of the worker's current weekly earnings, or
- (ii) the difference between \$1300 and 80 per cent of the worker's current weekly earnings—
whichever is the lesser.
- (3) In relation to a claim by a worker for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 5 April 2010, the worker is entitled, subject to and in accordance with this Part and Part VIIB, while incapacitated for work
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during the second entitlement period, to weekly payments—

- (a) if the worker has no current work capacity, at the rate of—
 - (i) 80 per cent of the worker's pre-injury average weekly earnings; or
 - (ii) twice the State average weekly earnings—

whichever is the lesser;

- (b) if the worker has a current work capacity, at the rate of—
 - (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings 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.

s. 93C

s. 93C
inserted by
No. 64/1989
s. 10,
substituted by
No. 67/1992
s. 15,
amended by
Nos 50/1993
s. 78(1)(c),
7/1996
s. 49(a)(d),
substituted by
No. 107/1997
s. 28,
amended by
Nos 81/1998
ss 23(a), 28,
102/2004 s. 20,
41/2006
s. 5(3),
substituted by
No. 9/2010
s. 31.

93C Weekly payments after the second entitlement period

- (1) Subject to section 93CD, 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 worker—
 - (a) is assessed by the Authority or self-insurer as having no current work capacity and likely to continue indefinitely to have no current work capacity; or
 - (b) is a pre-12 November 1997 claimant who has a serious injury.
- (2) A worker to whom subsection (1)(a) or (b) applies is entitled, subject to and in accordance with this Part and Part VIIB, to compensation in the form of weekly payments—
 - (a) if the worker is a pre-12 November 1997 claimant who has a serious injury, at the rate of—
 - (i) the difference between 90 per cent of the worker's pre-injury average weekly earnings and 90 per cent of the worker's current weekly earnings; or
 - (ii) the difference between \$1040 and 90 per cent of the worker's current weekly earnings—whichever is the lesser;
 - (b) if the worker is a pre-12 November 1997 claimant who does not have a serious injury, at the rate of—
 - (i) 80 per cent of the worker's pre-injury average weekly earnings; or
 - (ii) \$1040—whichever is the lesser; and

- (c) in the case of a claim for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 12 November 1997 and before 5 April 2010 at the rate of—
 - (i) 80 per cent of the worker's pre-injury average weekly earnings; or
 - (ii) \$1300—whichever is the lesser;
- (d) in the case of a claim for compensation in the form of weekly payments first made in respect of the injury to which the claim relates on or after 5 April 2010, at the rate of—
 - (i) 80 per cent of the worker's pre-injury average weekly earnings; or
 - (ii) twice the State average weekly earnings—whichever is the lesser.
- (3) A review of the assessment of a worker to whom subsection (1)(a) or (b) applies may be conducted by the Authority or self-insurer at any time and must be conducted as often as may reasonably be necessary and in any event at least once every 2 years.

93CA Compensation for incapacity arising from surgery after second entitlement period

- (1) Subject to subsection (2), this section applies to a worker who, on or after 5 April 2010—
 - (a) suffers an injury arising out of or in the course of employment; and

S. 93CA
inserted by
No. 107/1997
s. 29,
amended by
Nos 81/1998
s. 23(b),
102/2004
s. 38(1)(i),
substituted by
No. 9/2010
s. 31.

-
- (b) makes a claim for compensation in respect of that injury under section 103 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 of at least \$151 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 93C; or
 - (ii) is entitled under section 93CD 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 93CD; and
 - (f) for that injury requires surgery (*the subsequent surgery*) for which the Authority or self-insurer has accepted liability under section 99(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 been ceased or terminated in accordance with this Act.
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- (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 93CD—
- (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 93B 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
-

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- (b) give the worker written notice of its decision including, in the case of rejection, a statement of the reasons for the decision.

S. 93CB
inserted by
No. 107/1997
s. 29,
amended by
Nos 81/1998
s. 23(b),
102/2004
ss 21,
38(1)(i)(o),
41/2006
ss 5(4), 13(2),
repealed by
No. 9/2010
s. 31.

* * * *

S. 93CC
inserted by
No. 107/1997
s. 29,
amended by
Nos 81/1998
s. 23(a)(b),
102/2004
s. 38(1)(i),
repealed by
No. 9/2010
s. 31.

* * * *

S. 93CD
inserted by
No. 107/1997
s. 29,
amended by
Nos 81/1998
s. 23(c),
102/2004
s. 38(1)(o)(p),
41/2006
s. 13(3),
substituted by
No. 9/2010
s. 34.

93CD 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.

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- (2) An application must be made—
- (a) if liability to pay the weekly payments lies with the employer (not being a self-insurer or a subsidiary of a self-insurer) or the Authority—to the Authority;
 - (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 of at least \$151 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.
- (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
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and, subject to and in accordance with this Part and Part VIIB, the worker is entitled to weekly payments at the rate of—

- (a) in the case of a pre-12 November 1997 claimant—
 - (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings and 80 per cent of the worker's current weekly earnings; or
 - (ii) the difference between \$1040 and 80 per cent of the worker's current weekly earnings—whichever is the lesser;
- (b) in the case of a worker whose claim was first given, served or lodged on or after 12 November 1997 and before 5 April 2010—
 - (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings and 80 per cent of the worker's current weekly earnings; or
 - (ii) the difference between \$1300 and 80 per cent of the worker's current weekly earnings—whichever is the lesser;
- (c) in the case of a claim first given, served or lodged on or after 5 April 2010—
 - (i) the difference between 80 per cent of the worker's pre-injury average weekly earnings 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.

- (6) A worker continues to be entitled to compensation in the form of weekly payments under subsection (5) until—
 - (a) subject to section 93CDA, 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.

93CDA Entitlement under section 93CD not affected by certain circumstances

**S. 93CDA
inserted by
No. 9/2010
s. 35.**

- (1) A worker who receives weekly payments under section 93CD 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

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(d) has received lower current weekly earnings
(even if the earnings are less than \$151 per
week)—

than the hours worked, or the current weekly
earnings received, at the time of making the
application for payments under section 93CD.

(2) A reference in subsection (1) to hours of work
does not include hours of leave approved by the
employer.

S. 93D
inserted by
No. 64/1989
s. 10,
amended by
No. 18/1991
s. 12(1)(g),
substituted by
No. 67/1992
s. 15,
amended by
Nos 50/1993
s. 92, 50/1994
s. 38(4),
107/1997
s. 30(6),
repealed by
No. 9/2010
s. 128.

* * * * *

S. 93DA
inserted by
No. 50/1994
s. 39,
amended by
Nos 7/1996
s. 16(2),
60/1996
s. 12, 107/1997
s. 30(6)(7),
102/2004 s. 22,
repealed by
No. 9/2010
s. 36.

* * * * *

93CE Compensation in the form of superannuation contributions

S. 93CE
inserted by
No. 9/2010
s. 37.

(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 the age of 65 years—

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

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- (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 93CA, unless the worker is receiving compensation under section 93CD; and
 - (b) compensation under section 93EA.
- (4) 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—
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- (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.
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- (5) 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 125A(2), 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.

93E 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 Part for not more than the first 130 weeks (whether consecutive or not) of incapacity for work.

S. 93E
inserted by
No. 64/1989
s. 10,
substituted by
No. 67/1992
s. 15,
amended by
Nos 107/1997
s. 31, 102/2004
s. 23, 41/2006
s. 5(5).

93EA Compensation for incapacity arising after retirement age

S. 93EA
inserted by
No. 41/2006
s. 14.

- (1) This section applies to a worker, not being a worker to whom section 93E 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 103; 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 93F applies.

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s. 93EA

S. 93EA(2)
amended by
No. 9/2010
s. 32(b).

- (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 93B(2)(a) or (b) or 93B(3)(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 VIIB or section 119J(1) or (3), 134AB(36) or 135A(18)
 - (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.

S. 93EA(4)(c)
substituted by
No. 9/2010
s. 32(c).

93F Compensation after retirement

Subject to sections 93E and 93EA, a worker is not entitled to weekly payments under this Part after attaining retirement age.

S. 93F
inserted by
No. 64/1989
s. 10,
amended by
No. 41/2006
s. 15(2).

* * * * *

Ss 94, 95
substituted by
No. 64/1989
s. 10,
repealed by
No. 67/1992
s. 16(1).

96 Effect of disability or other pensions and lump sums on weekly payments

S. 96
(Heading)
inserted by
No. 9/2010
s. 40(1).
S. 96
substituted by
Nos 64/1989
s. 10, 67/1992
s. 17(1).

(1) The amount of any weekly payment payable to a worker under this Part must be reduced by the weekly amount of—

S. 96(1)
substituted by
Nos 7/1996
s. 17(1),
60/1996
s. 13(1).

(a) any retirement or superannuation pension received by the worker; and

S. 96(1)(a)
amended by
No. 9/2010
s. 40(2)(a).

* * * * *

S. 96(1)(b)
repealed by
No. 9/2010
s. 40(2)(b).

which 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.

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S. 96(2)
substituted by
No. 7/1996
s. 18,
amended by
No. 7/1996
s. 19(1).

- (2) Except as otherwise provided in subsection (4), if a worker—

S. 96(2)(a)
substituted by
No. 60/1996
s. 13(2),
repealed by
No. 9/2010
s. 40(2)(c).

* * * * *

S. 96(2)(b)
substituted by
No. 60/1996
s. 13(2).

- (b) receives a superannuation or retirement benefit lump sum amount—
- (i) 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; and
 - (ii) that is an eligible termination payment for the purposes of the Income Tax Assessment Act 1936 of the Commonwealth—

which has not been deposited with a complying superannuation fund or a complying approved deposit fund or used to purchase an eligible annuity within the meaning of section 27A(1) of that Act; or

- (c) withdraws or redeems any part of the amount or the interest on the amount deposited with a complying superannuation fund or a complying approved deposit fund or used to purchase an eligible annuity within the meaning of section 27A(1) of that Act—

the worker is not entitled to weekly payments under this Part during the specified period after the date on which he or she received, withdrew or

redeemed the relevant amount or became eligible to receive weekly payments, whichever is the later.

- (3) The specified period for the purposes of subsection (2) is a 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 section 100. **S. 96(3) substituted by No. 7/1996 s. 18.**
- (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. **S. 96(4) inserted by No. 7/1996 s. 19(2).**
- (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 issued by the Authority. **S. 96(5) inserted by No. 7/1996 s. 19(2), amended by No. 81/1998 s. 23(d).**
- (6) 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. **S. 96(6) inserted by No. 9/2010 s. 40(3).**

s. 96A

S. 96(7)
inserted by
No. 9/2010
s. 40(3).

(7) In this section—

disability pension, in relation to a worker, means an amount payable under an insurance policy or by a trustee acting in the capacity of 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 as calculated under section 5A as indexed in accordance with section 100(2) but disregarding section 100(3) and calculated as if the period of 52 weeks referred to in section 5A(1A) (where secondly occurring) or (1B) had not expired.

S. 96A
inserted by
No. 64/1989
s. 10,
repealed by
No. 67/1992
s. 17(1),
new s. 96A
inserted by
No. 7/1996
s. 20.

96A Notification of entitlement to certain payments

S. 96A(1)
amended by
No. 9/2010
s. 41(a)(b).

- (1) If a worker who is claiming weekly payments under this Part receives a pension specified in section 96(1) or a lump sum amount specified in section 96(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 has received or is receiving a pension specified in section 96(1) or a lump sum amount specified in section 96(2) or has withdrawn or redeemed any part of the amount deposited or used under section 96(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. **S. 96A(2) amended by No. 9/2010 s. 41(a)(b).**
- (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 there is any change in the amount of the pension or lump sum amount or if he or she withdraws or redeems any part of the amount deposited or used under section 96(2). **S. 96A(3) amended by No. 9/2010 s. 41(b).**
- (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 pension specified in section 96(1) or a lump sum amount specified in section 96(2), the employer must within 28 days of becoming so aware give notice in writing to the Authority, of the entitlement. **S. 96A(4) amended by Nos 81/1998 s. 23(e), 9/2010 s. 41(a).**
- (5) If an employer (not being a self-insurer or a 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 pension specified in **S. 96A(5) amended by Nos 81/1998 s. 23(e), 9/2010 s. 41(a).**

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section 96(1) or a lump sum amount specified in section 96(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 making a claim, or claiming to be entitled to weekly payments, or receiving weekly payments.
- (7) A person who fails to comply with this section is guilty of an offence.

Penalty: 40 penalty units.

S. 96A(7)
amended by
No. 9/2010
s. 41(c).

S. 97
substituted by
No. 64/1989
s. 10,
amended by
No. 67/1992
s. 17(2).

97 Provisions relating to the payment of compensation

- (1) Except as provided in section 96, regard shall 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 the 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.

S. 97(1)(b)
amended by
No. 50/1994
s. 40(1).

S. 97(1)(c)
substituted by
No. 9/2010
s. 42.

S. 97(1)(d)
inserted by
No. 9/2010
s. 42.

- (2) 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 has no current work capacity and is likely to continue indefinitely to have no current work capacity.
- S. 97(2) amended by Nos 67/1992 s. 64(7)(a), 50/1993 s. 78(1)(c), substituted by No. 50/1994 s. 40(2), amended by Nos 107/1997 s. 30(8), 81/1998 s. 23(a).
- (2AA) 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. 97(2AA) inserted by No. 7/1996 s. 21(1), amended by Nos 107/1997 s. 30(8), 81/1998 s. 23(a).
- (2A) 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. 97(2A) inserted by No. 50/1994 s. 40(2), amended by No. 81/1998 s. 23(a).
- (3) If the Authority or self-insurer is satisfied that the worker has no current work capacity and is likely to continue indefinitely to have no current work capacity, a worker to whom subsection (2) or (2AA) applies is entitled to receive at quarterly intervals the amount of weekly payments accruing due during the preceding quarter if the worker proves in the prescribed manner and at the prescribed intervals—
- S. 97(3) amended by Nos 67/1992 s. 64(7)(a), 50/1993 s. 78(1)(c), 50/1994 s. 40(3), 7/1996 s. 21(2), 107/1997 s. 30(8), 81/1998 s. 23(a).
- (a) his or her identity; and

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(b) the continuance of the incapacity in respect of which the weekly payment is made.

(4) Compensation under this Act is absolutely inalienable whether by way 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.

S. 97(4A)
inserted by
No. 7/1996
s. 21(3),
amended by
No. 81/1998
s. 23(a).

(4A) Despite subsection (4), 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 was not entitled to receive that amount of compensation by virtue of section 96(1) or 96(2) and the worker has failed to give any notice in writing required under section 96A.

S. 97(4B)
inserted by
No. 107/1997
s. 32,
amended by
No. 81/1998
s. 23(a).

(4B) Despite subsection (4), 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 of an offence under the **Crimes Act 1958** in connection with a claim for compensation under this Act.

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

S. 97(6)
substituted by
No. 7/1996
s. 22.

(6) If a worker is entitled to receive weekly payments under the **Workers Compensation Act 1958** and under this Act at the same time, the sum of the rate of the weekly payments received under 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 Part and the amount of weekly payments payable under this Act is reduced accordingly.

- (7) 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.

S. 97(7)
substituted by
No. 18/1991
s. 5.

98 Compensation for maims

S. 98
substituted by
No. 64/1989
s. 10.

- (1) A worker who suffers an injury which entitled the worker to compensation is, in respect of an injury mentioned in the Table to this subsection, entitled to compensation equal to—

S. 98(1)
amended by
Nos 67/1992
s. 18(1)(2)(a)–
(d), 50/1994
s. 41(1)(a)–(e).

- (a) the percentage of \$100 300 set out opposite to that injury in the Table; or

S. 98(1)(a)
amended by
No. 7/1996
s. 49(e).

- (b) the assessed percentage of \$100 300 within the range set out opposite that injury in the Table—

S. 98(1)(b)
amended by
No. 7/1996
s. 49(e).

calculated, subject to subsection (2), as at the date of the injury.

THE TABLE²²

<i>Injury</i>	<i>Percentage</i>
Total loss of the sight of both eyes	100
Total loss of the sight of an only eye	100
Loss of both hands	100
Loss of both feet	100

S. 98(1) Table
amended by
No. 60/1996
s. 11(2).

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<i>Injury</i>	<i>Percentage</i>
Loss of a hand and a foot	100
Permanent brain damage (being an injury which is not or is not wholly an injury otherwise compensable under this Table)	0–100
Total loss of the right arm or of the greater part of the right arm	80
Total loss of the left arm or of the greater part of the left arm	75
Total loss of the right hand or of five fingers of the right hand, or of the lower part of the right arm	70
Total loss of the same for the left hand and arm	65
Total loss of a leg	75
Total loss of a foot	65
Total loss of the lower part of the leg	70
Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	75
Total loss of hearing	65
Total loss of the sight of one eye	40
Loss of binocular vision	40
Loss of eyeball (in addition to compensation for loss of sight of an eye)	22
Total loss of power of speech	60
Total loss of sense of taste or smell	17
Total loss of senses of both taste and smell	34
Total loss of sexual organs	47
Total loss of both breasts	47
Total loss of one breast	30
Total loss of the thumb of the right hand	30
Total loss of the thumb of the left hand	26
Total loss of the forefinger of the right hand	21

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<i>Injury</i>	<i>Percentage</i>
Total loss of the forefinger of the left hand	18
Total loss of two joints of the forefinger of the right hand	16
Total loss of two joints of the forefinger of the left hand	12
Total loss of a joint of the thumb	16
Total loss of the first joint of the forefinger of the right hand	10
Total loss of the first joint of the forefinger of the left hand	9
Total loss of the first joint of the middle or little or ring finger of either hand	6
Total loss of the middle finger of either hand	12
Total loss of the little or ring finger of either hand	11
Total loss of two joints of the middle finger of either hand	10
Total loss of two joints of the little or ring finger of either hand	9
Total loss of the great toe of either foot	22
Total loss of a joint of the great toe of either foot	10
Total loss of any other toe	6
Total loss of a joint of any other toe	2
Partial loss of the sight of both eyes or of an only eye	Such percentage of the maximum amount payable for total loss as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.

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<i>Injury</i>	<i>Percentage</i>
Partial loss of the sight of one eye	Such percentage of the maximum amount payable for total loss as is equal to the percentage of the diminution of sight measured without the aid of a correcting lens.
Partial loss of hearing	Such percentage of the maximum amount payable for total loss as is equal to the percentage (being not less than 7) of the diminution of hearing.
Quadraplegia, paraplegia or total impairment of the spine	100
Impairment of the back	0–60
Impairment of the neck	0–40
Impairment of the pelvis	0–15
Severe facial disfigurement (being an injury which is not or is not wholly an injury otherwise compensable under this Table)	0–26
Severe bodily disfigurement (being an injury which is not or is not wholly an injury otherwise compensable under this Table)	0–22

For the purposes of this Table—

- (a) the total loss of a limb, hand, foot, finger, thumb, toe or joint or any part thereof shall be 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 shall be 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 shall be 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; and
 - (c) where, under the heading "Percentage", a range is provided, the highest and lowest percentages shall be reserved for injuries resulting in maximum or minimal impairment;
 - (d) in the case of loss of sexual organs (subject to the maximum percentage of 47 per cent and without limiting compensation for other losses of sexual organs)—
 - (i) the percentage payable for loss of the penis is 47 per cent;
-

- (ii) the percentage payable for loss of 1 testicle is 10 per cent; and
 - (iii) the percentage payable for loss of 2 testicles or an only testicle is 47 per cent;
 - (e) the degree of impairment in the case of injuries to the back, neck or pelvis is to be assessed in accordance with section 91.
- (2) If the compensation payable under this section is for industrial deafness, the amount of compensation shall be calculated—
- (a) if the date of injury is deemed under section 88 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 88 to be the date of the claim—as at the day on which the compensation is determined.

S. 98(2AA)
inserted by
No. 50/1994
s. 41(2),
substituted by
No. 50/1994
s. 41(3).

- (2AA) Compensation is not payable under this section for a loss of hearing unless the percentage of the diminution of hearing determined in accordance with subsection (2AB) is at least 7^{23, 24}.

S. 98(2A)
inserted by
No. 67/1992
s. 18(3),
substituted by
No. 50/1994
s. 41(3).

- (2A) If compensation is payable under this section for a loss of hearing, the percentage of the maximum amount payable for total loss is the percentage of the diminution of hearing determined in accordance with subsection (2AB)^{25, 26}.

(2AB) For the purposes of this section, the percentage of diminution of hearing²⁷—

S. 98(2AB)
inserted by
No. 50/1994
s. 41(3).

(a) shall be determined—

S. 98(2AB)(a)
amended by
No. 7/1996
s. 23(1).

(i) by a person or class of persons
approved; and

(ii) in the manner approved—
by the Minister²⁸; and

(b) shall 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.

(2AC) An approval by the Minister for the purposes of
subsection (2AB)(a)(i) continues in force for the
period not exceeding 3 years as is specified by the
Minister in the approval unless revoked by the
Minister²⁹.

S. 98(2AC)
inserted by
No. 7/1996
s. 23(2),
amended by
No. 82/2001
s. 14.

(2B) A determination in accordance with subsection
(2A) is conclusive evidence of the loss of
hearing³⁰.

S. 98(2B)
inserted by
No. 67/1992
s. 18(3).

(3) If a worker suffers on the same occasion more
than one of the injuries mentioned in the Table the
worker is not in any case entitled to receive as
compensation under subsection (1) more than
\$100 300.

S. 98(3)
amended by
Nos 50/1993
s. 94(2),
7/1996
s. 49(e).

(4) If a worker suffers any injury—

(a) which as to the major part consists of an
injury for which compensation is payable
under subsection (1); or

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- (b) which consists of a lesser but substantial degree of any injury for which compensation is payable under subsection (1)—

the injury shall be regarded as an injury for which compensation based on the Table shall be payable, and the worker may be awarded as compensation such amount as, having regard to subsection (1), appears to be just and proportionate to the degree of injury suffered.

S. 98(5)
repealed by
No. 67/1992
s. 18(4),
new s. 98(5)
inserted by
No. 50/1993
s. 94(1).

- (5) Compensation under this section is not payable after the death of the worker concerned.

S. 98(6)
inserted by
No. 107/1997
s. 33.

- (6) Compensation under this section is payable only in respect of an injury that arose before 12 November 1997.

S. 98A
inserted by
No. 67/1992
s. 19.

98A Compensation for pain and suffering

S. 98A(1)
amended by
Nos 50/1994
s. 42(a)(i)–(iii),
7/1996 s. 49(f).

- (1) A worker who has suffered an injury mentioned in the Table in section 98 (or 2 or more of any such injuries on the same occasion) is entitled to receive by way of compensation for pain and suffering resulting from the injury or all those injuries, in addition to any other compensation under this Act, an amount not exceeding \$53 880.

S. 98A(2)
amended by
Nos 50/1994
s. 42(b),
7/1996
s. 49(g).

- (2) This section does not apply if the compensation paid or payable under section 98 for the injury or all those injuries is less than \$10 770.

- (3) The maximum amount of compensation under this section is payable only in a most extreme case and the amount payable in any other case shall be reasonably proportionate to that maximum amount having regard to the degree and duration of pain and suffering and the severity of the injury or injuries.

S. 98A(3)
amended by
No. 50/1994
s. 42(c).

- (4) Compensation under this section is not payable after the death of the worker concerned.

- (5) In this section—

S. 98A(5)
amended by
No. 50/1994
s. 42(d).

pain and suffering means—

- (a) actual pain; or
(b) distress or anxiety—

suffered or likely to be suffered by the injured worker, whether resulting from the injury concerned or from any necessary treatment.

- (6) Compensation under this section is payable only in respect of an injury that arose before 12 November 1997.

S. 98A(6)
inserted by
No. 107/1997
s. 34.

* * * * *

S. 98B
inserted by
No. 50/1994
s. 43,
repealed by
No. 7/1996
s. 24(3).

98C Compensation for non-economic loss

S. 98C
inserted by
No. 107/1997
s. 36.

- (1A) In this section—

S. 98C(1A)
inserted by
No. 9/2010
s. 54(1).

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.

S. 98C(2)
amended by
No. 26/2000
s. 15(1),
substituted by
No. 95/2003
s. 8(1),
amended by
No. 102/2004
ss 18(1),
38(1)(q)–(y),
substituted by
No. 9/2010
s. 54(2).

- (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 section 91, entitled to compensation for non-economic loss calculated in accordance with this section.
- (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 injury) is to be calculated as at the date of the relevant injury as follows—
 - (a) if the worker's impairment benefit rating is less than 10%—the amount of the non-economic loss is zero;
 - (b) subject to section 265, if the worker's impairment benefit rating—
 - (i) is a modified whole person impairment (within the meaning of subsection (2A)(a)(i)) and is not less than 10% and less than 11%—the amount of the non-economic loss is to be determined in accordance with the formula—
$$\$10\,570 + [(D - 10) \times \$9\,010];$$
 - (ii) is a modified spinal impairment (within the meaning of subsection (2A)(a)(ii)) and is not less than 10% and less than 11%—the amount of the non-economic loss is to be determined in accordance with the formula—
$$\{\$10\,570 + [(D - 10) \times \$9010]\} \times 1.1;$$

-
- (c) if the worker's impairment benefit rating—
- (i) is not less than 10% and not more than 30% 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—
$$\$17\,040 + [(D - 10) \times \$2560];$$
 - (ii) is a spinal impairment (within the meaning of subsection (2A)(a)(ii) or (iii)) and is not less than 10% and less than 30% 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—
$$\{ \$17\,040 + [(D - 10) \times \$2560] \} \times 1.1; \text{ or}$$
 - (B) \$68 240—whichever is the lesser;
- (d) if the worker's impairment benefit rating is more than 30% and not more than 70%—the amount of the non-economic loss is to be determined in accordance with the formula—
$$\$68\,160 + [(D - 30) \times \$4250];$$
- (e) if the worker's impairment benefit rating is more than 70% and not more than 80%—the amount of the non-economic loss is—
- (i) the amount determined in accordance with the formula—
$$\$237\,370 + [(D - 70) \times \$26\,570]; \text{ or}$$
 - (ii) \$503 000—
- whichever is the lesser;
-

- (f) if the worker's impairment benefit rating is more than 80%—the amount of the non-economic loss is \$503 000—

where D is the worker's impairment benefit rating expressed as a number.

S. 98C(2A)
inserted by
No. 95/2003
s. 8(1),
substituted by
No. 9/2010
s. 54(2).

- (2A) For the purposes of subsection (2), 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% and not more than 29%—
- (i) subject to section 265, the modified whole person impairment set out in column 2 of Schedule 2 opposite the relevant whole person impairment as assessed in accordance with Chapter 3;
 - (ii) subject to section 265, the modified whole person impairment set out in column 2 of Schedule 2 opposite the relevant whole person impairment as assessed in accordance with Chapter 3 for a spinal impairment;
 - (iii) if subparagraph (ii) does not apply, the worker's degree of impairment as assessed in accordance with Chapter 3 for a spinal impairment;
 - (iv) the worker's degree of impairment—
- whichever provides the worker with the higher amount for non-economic loss under subsection (2);

- (b) in any other case, the worker's degree of impairment.

Note

Subsections (2)(b) and (2A)(a)(i) and (ii) do not apply with respect to injuries that occurred before the date of commencement of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 265.

- (3) The amount of the non-economic loss in respect of permanent psychiatric impairment is to be calculated as at the date of the relevant injury as follows—
- (a) if the worker's degree of impairment is less than 30%—the amount of the non-economic loss is zero;
- (b) if the worker's degree of impairment is 30%—the amount of the non-economic loss is to be determined, subject to subsection (3AA), in accordance with the formula—
$$\$17\,040 + [(D - 10) \times \$2560];$$
- (c) if the worker's degree of impairment is more than 30% and not more than 70%—the amount of non-economic loss is the amount determined, subject to subsection (3AA), in accordance with the formula—
$$\$68\,160 + [(D - 30) \times \$4250];$$
- (d) if the worker's degree of impairment is more than 70% and not more than 80%—the amount of the non-economic loss is—
- (i) the amount determined in accordance with the formula—
$$\$237\,370 + [(D - 70) \times \$26\,570];$$
 or
- (ii) \$503 000—
whichever is the lesser;

S. 98C(3)
amended by
No. 26/2000
s. 15(2),
substituted by
No. 95/2003
s. 8(1).

S. 98C(3)(b)
amended by
No. 102/2004
s. 38(2)(a)(b),
substituted by
No. 9/2010
s. 54(3).

S. 98C(3)(c)
amended by
No. 102/2004
s. 38(2)(c)(d),
substituted by
No. 9/2010
s. 54(3).

S. 98C(3)(d)
amended by
No. 102/2004
s. 38(2)(e)(f),
substituted by
No. 9/2010
s. 54(3).

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s. 98C

S. 98C(3)(e)
amended by
Nos 102/2004
s. 38(2)(g),
9/2010
s. 54(4).

- (e) if the worker's degree of impairment is more than 80%—the amount of the non-economic loss is \$503 000—

where D is the worker's degree of impairment expressed as a number.

S. 98C(3AA)
inserted by
No. 9/2010
s. 54(5).

- (3AA) In relation to a relevant injury sustained on or after 3 December 2003 and before 1 July 2010—
- (a) a reference to an amount in dollars referred to in subsection (3)(b) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(c) as then in force in respect of permanent impairment;
 - (b) a reference to an amount in dollars referred to subsection (3)(c) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(d) as then in force in respect of permanent impairment.

S. 98C(3AB)
inserted by
No. 9/2010
s. 54(5).

- (3AB) In relation to a relevant injury sustained on or after 3 December 2003 and before 1 July 2010, a reference to an amount in dollars referred to in paragraph (b), (c) or (d) of section 98C(2) is a reference to the corresponding amount in dollars applying at the time of the injury under that paragraph as then in force.

S. 98C(3AC)
inserted by
No. 9/2010
s. 54(5).

- (3AC) In relation to a relevant injury sustained before 3 December 2003—
- (a) a reference to an amount in dollars referred to in subsection (3)(b) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(b) as then in force in respect of permanent impairment;

(b) a reference to an amount in dollars referred to in subsection (3)(c) is a reference to the corresponding amount in dollars applying at the time of the injury under section 98C(2)(c) as then in force in respect of permanent impairment.

(3AD) In relation to a relevant injury sustained before 3 December 2003, a reference to an amount in dollars referred to in paragraph (b) or (c) of section 98C(2) is a reference to the corresponding amount in dollars applying at the time of the injury under that paragraph as then in force.

S. 98C(3AD)
inserted by
No. 9/2010
s. 54(5).

(3A) Despite subsection (1), the amount of non-economic loss in respect of industrial deafness in respect of a further injury is to be calculated as at the date of the relevant injury as follows—

S. 98C(3A)
inserted by
No. 102/2004
s. 18(2),
substituted by
No. 28/2005
s. 19.

(a) if **T** is not less than 10% and not more than 30% and **P** is less than 10%—the amount of the non-economic loss is to be determined in accordance with the formula—

$$[(\mathbf{T} - 10) \times \$2220] + [(10 - \mathbf{P}) \times \$1481];$$

(b) if **T** is not less than 10% and not more than 30% and **P** is not less than 10%—the amount of the non-economic loss is to be determined in accordance with the formula—

$$[(\mathbf{T} - \mathbf{P}) \times \$2220];$$

(c) if **T** is more than 30% and **P** is less than 10%—the amount of the non-economic loss is to be determined in accordance with the formula—

$$[(\mathbf{T} - 30) \times \$3700] + [(30 - 10) \times \$2220] + [(10 - \mathbf{P}) \times \$1481];$$

- (d) if **T** is more than 30% and **P** is not less than 10% and is less than 30%—the amount of the non-economic loss is to be determined in accordance with the formula—

$$[(\mathbf{T} - 30) \times \$3700] + [(30 - \mathbf{P}) \times \$2220];$$

- (e) if **T** is more than 30% and **P** is not less than 30%—the amount of the non-economic loss is to be determined in accordance with the formula—

$$[(\mathbf{T} - \mathbf{P}) \times \$3700]—$$

where—

"T" is the percentage referred to in section 89(3)(a) rounded up to the next whole number, after that percentage has been converted in accordance with section 91(3);

"P" is the total percentage referred to in section 89(3)(b) rounded up to the next whole number, after that percentage has been converted in accordance with section 91(3A).

S. 98C(4)
amended by
Nos 26/2000
s. 15(3),
95/2003
s. 8(2)(a),
102/2004
s. 38(2)(h).

- (4) 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 \$53 270.
- (5) For the purposes of subsection (4), *foetus* means the conceptus beyond the sixteenth week of development.
- (6) If the compensation payable under this section is for industrial deafness, the amount of compensation is to be calculated—

- (a) if the date of injury is deemed under section 88 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 88 to be the date of the claim—as at the day on which the compensation is determined.

(6A) Subject to subsections (6B) and (6C), 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—

**S. 98C(6A)
inserted by
No. 9/2010
s. 54(6).**

- (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.

(6B) Subject to subsection (6C), if a worker sustains an injury 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—

**S. 98C(6B)
inserted by
No. 9/2010
s. 54(6).**

- (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.

(6C) For the purposes of subsections (6A) and (6B), the Minister may make guidelines specifying considerations and circumstances to be considered in determining whether subsection (6A) or (6B) applies in respect of an injury that occurs by way of gradual process over time.

**S. 98C(6C)
inserted by
No. 9/2010
s. 54(6).**

Accident Compensation Act 1985
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s. 98C

S. 98C(6D)
inserted by
No. 9/2010
s. 54(6).

(6D) Guidelines made under subsection (6C) must be published—

- (a) in the Government Gazette; and
- (b) on a Government Internet website.

S. 98C(7)
amended by
Nos 26/2000
s. 15(4),
95/2003
s. 8(2)(b),
102/2004
s. 38(2)(g),
9/2010
s. 54(7).

(7) If a worker suffers on the same occasion more than one injury which entitles the worker to compensation under subsection (1), the worker is not entitled to receive as compensation for non-economic loss more than \$503 000.

S. 98C(8)
amended by
Nos 26/2000
s. 15(4),
95/2003
s. 8(2)(b),
102/2004
s. 38(2)(g),
9/2010
s. 54(7).

(8) If a worker suffers an injury which entitles the worker to compensation for non-economic loss of more than one kind as specified in subsection (2), (3) or (4), the total amount of compensation for non-economic loss under this section that the worker is entitled to receive cannot exceed \$503 000.

(9) Where compensation has been paid under this section for an impairment resulting from an injury or under section 98 or 98A in respect of an injury, that compensation must be deducted from any compensation payable under this section in respect of any impairment resulting from an injury consisting of any recurrence, aggravation, acceleration, exacerbation or deterioration of the injury in respect of which compensation has previously been paid under this section or section 98 or 98A.

S. 98C(9A)
inserted by
No. 102/2004
s. 18(3).

(9A) If compensation has been paid for non-economic loss in respect of a prior injury or prior hearing loss, that prior injury or prior hearing loss must be taken into account in accordance with sections 88, 89, 91 and this section in determining the amount of compensation payable under this section.

- (10) Compensation under this section is not payable after the death of the worker concerned.
- (11) Despite anything to the contrary in this section or section 98E, a worker is not entitled to an amount of compensation for non-economic loss under this section or section 98E or both that exceeds the maximum amount payable under this section as in force at the date of the relevant injury.

S. 98C(11)
inserted by
No. 9/2010
s. 54(8).

98D Payment of Compensation

Compensation for non-economic loss calculated under section 98C or 98E is to be paid as a lump sum.

S. 98D
inserted by
No. 107/1997
s. 36.

98E No Disadvantage—Compensation Table

- (1) If a worker suffers an injury which entitled the worker to compensation and the injury is a total loss mentioned in the Table to this subsection and the amount of compensation calculated under section 98C 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 section 98C.

S. 98E
inserted by
No. 107/1997
s. 36.

TABLE

Injury	Total Losses— Minimum Compensation Payable for Total Loss \$
Total loss of the sight of both eyes	214 390
Total loss of the sight of an only eye	214 390
Loss of both hands	214 390
Loss of both feet	214 390
Loss of a hand and a foot	214 390
Total loss of the right arm or of the greater part of the right arm	171 500

S. 98E(1)
Table
substituted by
No. 102/2004
s. 39.

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Injury	Total Losses— Minimum Compensation Payable for Total Loss \$
<hr/>	
Total loss of the left arm or of the greater part of the left arm	160 780
Total loss of the right hand or of five fingers of the right hand, or of the lower part of the right arm	150 050
Total loss of the left hand or of five fingers of the left hand, or of the lower part of the left arm	139 360
Total loss of a leg	160 780
Total loss of a foot	139 360
Total loss of the lower part of the leg	150 050
Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	160 780
Total loss of hearing	139 360
Total loss of the sight of one eye	85 750
Loss of binocular vision	85 750
Loss of eyeball (in addition to compensation for loss of sight of an eye)	47 170
Total loss of power of speech	128 630
Total loss of sense of taste or smell	36 450
Total loss of senses of both taste and smell	72 890
Total loss of male sexual organs	100 770
Total loss of penis	100 770
Total loss of one testicle	21 420
Total loss of two testicles or an only testicle	100 770
Total loss of female sexual organs	100 770
Total loss of both breasts	100 770
Total loss of one breast	64 300

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Injury	Total Losses— Minimum Compensation Payable for Total Loss \$
<hr/>	
Total loss of the thumb of the right hand	64 300
Total loss of the thumb of the left hand	55 740
Total loss of the forefinger of the right hand	45 030
Total loss of the forefinger of the left hand	38 580
Total loss of two joints of the forefinger of the right hand	34 290
Total loss of two joints of the forefinger of the left hand	25 710
Total loss of a joint of the thumb	34 290
Total loss of the first joint of the forefinger of the right hand	21 420
Total loss of the first joint of the forefinger of the left hand	19 300
Total loss of the first joint of the middle or little or ring finger of either hand	12 860
Total loss of the middle finger of either hand	25 710
Total loss of the little or ring finger of either hand	23 590
Total loss of two joints of the middle finger of either hand	21 420
Total loss of two joints of the little or ring finger of either hand	19 300
Total loss of the great toe of either foot	47 170
Total loss of a joint of the great toe of either foot	21 420
Total loss of any other toe	12 860
Total loss of a joint of any other toe	4 290
Quadriplegia	214 390

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Injury	Total Losses— Minimum Compensation Payable for Total Loss \$
Paraplegia	214 390
Total impairment of the spine	214 390

(2) For the purposes of this Table—

- (a) the total loss of a limb, hand, foot, finger, thumb, toe or joint or any part thereof shall be 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 the 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 shall be 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 shall be 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.

- (3) For the purposes of this section, total loss of hearing—
- (a) shall be determined—
- (i) by a person or class of persons approved; and
- (ii) in the manner approved—
by the Minister; and
- (b) shall 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.
- (4) An approval by the Minister for the purposes of subsection (3)(a)(i) continues in force for the period not exceeding 3 years as is specified by the Minister in the approval unless revoked by the Minister.
- (5) If a worker suffers on the same occasion more than one of the injuries mentioned in the Table the worker is not in any case entitled to receive as compensation under subsection (1) more than \$214 390.
- (6) Compensation under this section is not payable after the death of the worker concerned.

S. 98E(4)
amended by
No. 82/2001
s. 14.

S. 98E(5)
amended by
No. 102/2004
s. 40(a).

99 Compensation for medical and like services

S. 99
substituted by
No. 64/1989
s. 10.

- (1AA) The Authority may issue guidelines identifying services, or services of a class of services, referred to in subsection (1)(a) or (aa) for which approval should be sought from the Authority or self-insurer before the services are provided.

S. 99(1AA)
inserted by
No. 9/2010
s. 48(1).

Accident Compensation Act 1985
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s. 99

S. 99(1)
amended by
Nos 67/1992
ss 20(a),
64(7)(a),
50/1993
s. 78(1)(c)
(2)(b), 81/1998
s. 23(a),
9/2010
s. 144(1).

S. 99(1)(a)
amended by
Nos 50/1989
s. 52(2)(a) (as
amended by
No. 91/1989
s. 7(h)),
50/1993
s. 81(e).

S. 99(1)(aa)
inserted by
No. 7/1996
s. 25(1),
amended by
No. 102/2004
s. 40(b),
substituted by
No. 41/2006
s. 16(1),
amended by
No. 60/2007
s. 26.

(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 liability under section 125(1)(a)(iii) or 125A(3)(c) shall be liable, unless a determination or order referred to in section 249AA or a determination under section 249AB, 249B or 249BA applies, to pay as compensation—

(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

(aa) if the injury is a severe injury for which immediate in-patient treatment in a hospital is received or where death results from the injury, the reasonable costs incurred in Australia of family counselling services provided to family members by—

(i) a medical practitioner; or

(ii) a registered psychologist; or

(iii) a social worker approved by the Authority to provide counselling services for the purposes of this section—

not exceeding \$5000 in respect of that severe injury or death; and

(b) the reasonable costs of burial or cremation where death results from the injury—

which shall be in addition to any other compensation payable under this Act.

(1A) In subsection (1)(aa)—

family member means a partner, parent, sibling or child of the worker or of the worker's partner;

S. 99(1A)
inserted by
No. 7/1996
s. 25(2),
substituted by
No. 27/2001
s. 4(Sch. 2
item 1.7).

parent of a worker includes a person who has day to day care and control of the worker;

S. 99(1A)
def. of
parent
amended by
No. 41/2006
s. 16(2)(a).

severe injury means—

- (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. 99(1A)
def. of
severe injury
inserted by
No. 41/2006
s. 16(2)(b).

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S. 99(1B)
inserted by
No. 7/1996
s. 25(2),
repealed by
No. 41/2006
s. 16(3), new
s. 99(1B)
inserted by
No. 9/2010
s. 48(2).

S. 99(2)
amended by
Nos 50/1989
s. 52(2)(b) (as
amended by
No. 91/1989
s. 7(h)),
67/1992
s. 64(7)(a),
50/1993
ss 78(1)(c),
81(e), 7/1996
s. 26(1),
substituted by
No. 60/1996
s. 15(1),
amended by
No. 68/2007
s. 22(1).

S. 99(2)(a)
amended by
No. 81/1998
s. 23(a).

- (1B) Unless the Authority or self-insurer otherwise determines, the Authority or a self-insurer is not liable to pay the reasonable costs, or contribute a reasonable amount, referred to in subsection (5A), (5B) or (5D) unless the Authority or self-insurer, approved the worker's requirement, and its costs, under the relevant subsection before the costs were incurred.
- (2) In subsections (1), (5A), (5D) and (5E), *reasonable costs*, in relation to a service (including modification of a car or home), burial or cremation means an amount—
- (a) that is determined by the Authority, employer or self-insurer as a reasonable amount in relation to that service, burial or cremation; 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 made on the recommendation of the Authority and published in the Government Gazette, as the maximum amount of costs payable in respect of a service of that kind or a burial or cremation and which maximum amount in the case of a service must not be 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; and

- (c) that is determined by the Authority, employer or self-insurer as a reasonable cost of the service, burial or cremation having regard to—

S. 99(2)(c)
amended by
No. 81/1998
s. 23(a).

- (i) the service or provision actually rendered; and
- (ii) the necessity of the service or provision in the circumstances; and
- (iii) any guidelines issued by the Authority in respect of services or provision of that kind.

- (2A) Guidelines issued by the Authority for the purposes of subsection (2)(c) apply in relation to the cost of a service provided or a burial or cremation carried out after the issue of the Guidelines, irrespective of the date of the injury.

S. 99(2A)
inserted by
No. 7/1996
s. 26(2),
substituted by
No. 60/1996
s. 15(1).

- (2B) Notwithstanding anything to the contrary in this section, unless subsection (2D) or (2E) applies, the Authority, employer or self-insurer is not liable to pay as compensation the costs of any service or of burial or cremation specified in subsection (1) 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 or burial or cremation specified in subsection (1) was provided or carried out.

S. 99(2B)
inserted by
No. 107/1997
s. 39(1),
amended by
No. 81/1998
s. 23(a).

- (2C) In determining whether to approve the provision or carrying out of a service or burial or cremation specified in subsection (1) for the purposes of subsection (2B), the Authority, employer or self-insurer must have regard to the matters specified in subsection (2)(c) and to subsections (12), (13) and (14).

S. 99(2C)
inserted by
No. 107/1997
s. 39(1),
amended by
No. 81/1998
s. 23(a).

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S. 99(2D)
inserted by
No. 107/1997
s. 39(1),
amended by
No. 81/1998
s. 23(a).

(2D) Subsection (2B) 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 or burial or cremation specified in subsection (1); and
- (b) it was not reasonably practicable to first obtain approval.

S. 99(2E)
inserted by
No. 107/1997
s. 39(1),
amended by
No. 81/1998
s. 23(a).

(2E) In the case of a worker who resides outside Australia, the Authority, employer or self-insurer may for the purposes of subsection (2B) give a general approval specifying a class or classes of services, burials or cremations.

S. 99(2F)
inserted by
No. 107/1997
s. 39(1).

(2F) The requirement imposed by subsection (2B) is in addition to any other relevant requirements under this section.

S. 99(3)
amended by
Nos 67/1992
s. 64(7)(a)(8)
(b), 50/1993
ss 78(1)(c),
95(a), 81/1998
s. 23(a).

(3) A worker shall be 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. 99(3A)
inserted by
No. 60/1996
s. 16,
amended by
No. 81/1998
s. 23(a),
substituted by
No. 102/2004
s. 24(1).

(3A) A worker is entitled to receive occupational rehabilitation services referred to in subsection (1) from—

- (a) a provider of occupational rehabilitation services chosen by the worker from a list of approved providers of those services nominated by the Authority, employer or self-insurer in accordance with subsection (3B); or

(b) if the Authority, employer or self-insurer does not nominate a list of approved providers of those services for the purposes of this subsection, from an approved provider of those services of the worker's choice.

(3B) A list of providers of occupational rehabilitation services referred to in subsection (1) must consist of the names of not less than 3 approved providers of those services nominated by the Authority, employer or self-insurer having regard as far as is possible to—

**S. 99(3B)
inserted by
No. 102/2004
s. 24(1).**

- (a) the type of injury the worker has suffered;
- (b) the type of occupational rehabilitation services required;
- (c) where the worker resides;
- (d) where the provider is requested by the Authority, self-insurer or employer to provide the services.

(3C) If 3 approved providers of particular occupational rehabilitation services are not available, it is sufficient compliance with subsection (3B) if the list consists of the names of the available approved provider or providers of those occupational rehabilitation services.

**S. 99(3C)
inserted by
No. 102/2004
s. 24(1).**

(3D) If—

- (a) the Authority, employer or self-insurer offers occupational rehabilitation services from an approved provider of occupational rehabilitation services chosen by the worker from a list of providers of those services nominated by the Authority, employer or self-insurer in accordance with subsection (3B) or (3C); and

**S. 99(3D)
inserted by
No. 102/2004
s. 24(1).**

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(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 of occupational rehabilitation services nominated by the Authority, employer or self-insurer in accordance with subsection (3B).

S. 99(4)
amended by
No. 50/1993
ss 78(2)(b),
81(e).

(4) 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 or personal and household, occupational rehabilitation services, the employer shall to the extent of the value of the services be deemed to have discharged any liability of the employer under section 125(1)(a)(iii) or 125A(3)(c).

S. 99(5)
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 78(1)(d),
7/1996
s. 49(h),
81/1998
s. 23(b),
102/2004
s. 40(c).

(5) If the employer is not a self-insurer and the value of the services provided under subsection (4) exceeds \$506 the employer may claim the amount by which the value of the services exceeds \$506 from the Authority.

S. 99(5A)
inserted by
No. 68/2007
s. 22(2),
amended by
No. 9/2010
s. 49(1).

(5A) 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

S. 99(5A)(b)
amended by
No. 9/2010
s. 49(1).

(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.

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- (5B) 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. **S. 99(5B) inserted by No. 68/2007 s. 22(2), amended by No. 9/2010 s. 49(1).**
- (5C) Without limiting the factors the Authority or self-insurer may consider in determining what is a reasonable amount for the purposes of subsections (5A)(b) and (5B), the Authority or self-insurer must have regard to any of the following factors that are applicable— **S. 99(5C) inserted by No. 68/2007 s. 22(2), amended by No. 9/2010 s. 49(1).**
- (a) the market value now 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.
- (5D) 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— **S. 99(5D) inserted by No. 68/2007 s. 22(2), amended by No. 9/2010 s. 49(1).**
- (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 costs of a semi-detachable portable unit; or
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- (ii) to the costs of relocating the worker to another home that is suitable for the worker or that is capable of being reasonably modified.

S. 99(5E)
inserted by
No. 68/2007
s. 22(2),
amended by
No. 9/2010
s. 49(1).

- (5E) Without limiting the factors the Authority or self-insurer may consider in determining the reasonable costs or amount for the purposes of subsection (5D), 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.

S. 99(5F)
inserted by
No. 68/2007
s. 22(2),
amended by
No. 9/2010
s. 49(1).

- (5F) 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.

- (5G) The Authority or self-insurer must not make a payment or contribution under subsection (5A), (5B) or (5D) 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. **S. 99(5G) inserted by No. 68/2007 s. 22(2), amended by No. 9/2010 s. 49(1).**
- (5H) Without limiting what may be included in an agreement under subsection (5G), the agreement must include provisions in respect of— **S. 99(5H) inserted by No. 68/2007 s. 22(2).**
- (a) subsequent modifications;
 - (b) changes of ownership;
 - (c) the frequency of modifications and changes of ownership.
- (6) A payment of compensation under this section shall be made to the person lawfully entitled to payment. **S. 99(6) amended by No. 9/2010 s. 49(2)(a).**
- (7) If the liability to the person lawfully entitled to payment of the costs specified in this section 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 shall be paid to the worker or other person who made the payment. **S. 99(7) amended by No. 9/2010 s. 49(2)(b).**
- (8) If a worker or a worker's dependants is or are entitled to any of the services (including burial or cremation) specified in this section free of charge or at a reduced rate or charge because the worker entered into any prior contract, agreement or arrangement or was a contributor or subscriber to any institution, fund or scheme, the payment in respect of those services shall not be reduced but **S. 99(8) amended by No. 9/2010 s. 49(2)(c).**

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after payment of the amount, if any, actually owing to the person lawfully entitled to payment the balance of the reasonable cost shall be paid to the worker or the worker's dependants.

S. 99(9)
amended by
No. 9/2010
s. 49(2)(d).

- (9) The payment of the whole of the reasonable costs of any service or of burial or cremation specified in this section shall wholly and finally discharge the worker or the worker's dependants and any other person from all liability whatsoever in respect of those costs.

S. 99(10)
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 78(1)(f),
81/1998
s. 23(a),
9/2010
s. 144(2).

- (10) No 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 section or to which a notice, determination or order referred to in section 249AA, 249AB, 249B or 249BA applies shall be entertained by any court.

S. 99(10A)
inserted by
No. 9/2010
s. 144(3).

- (10A) Subsection (10) does not apply in relation to a worker or a worker's legal personal representative or a dependant in respect of the payment or recovery of costs of professional services within the meaning of section 249AA 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 section 249AA, 249AB, 249B or 249BA.

S. 99(11)
inserted by
No. 67/1992
s. 20(b),
amended by
Nos 50/1993
ss 78(1)(d),
95(b), 50/1994
s. 44(1).

- (11) Subject to subsection (13), if weekly payments are payable, compensation under this section ceases after 52 weeks after the entitlement to weekly payments ceases, unless subsection (14) applies.

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- (12) Subject to subsection (13), if compensation is payable only under this section, compensation under this section ceases after 52 weeks after the entitlement arises, unless subsection (14) applies.
- S. 99(12) inserted by No. 67/1992 s. 20(b), amended by Nos 50/1993 ss 78(1)(d), 95(b), 50/1994 s. 44(1).
- (12A) Before compensation under subsection (11) or (12) ceases, the Authority or self-insurer—
- S. 99(12A) inserted by No. 9/2010 s. 50.
- (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.
- (13) If a worker receives a settlement or award of pecuniary loss damages within the meaning of section 134AB or 135A of this Act or section 93 of the **Transport Accident Act 1986** or accepts a voluntary settlement of weekly payments under Division 3A of Part IV of this Act in respect of an injury, the worker is entitled, subject to this Act, to continue to receive compensation under this section.
- S. 99(13) inserted by No. 67/1992 s. 20(b), amended by Nos 50/1993 s. 95(c), 50/1994 s. 44(3), 41/2006 s. 17(1)(2).
- (14) Compensation under this section does not cease if—
- S. 99(14) inserted by No. 50/1994 s. 44(2).
- (a) the worker has returned to work but—
- (i) could not remain at work if a service under subsection (1) was not provided; or
- (ii) surgery is required for the worker; or
- (iii) the worker has a serious injury within the meaning of section 91E; or
- S. 99(14)(a)(iii) amended by No. 9/2010 s. 32(d).
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S. 99(14)(c)
amended by
No. 107/1997
s. 39(2).

- (b) the worker requires modification of a prosthesis; or
- (c) the service provided under subsection (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. 99(15)
inserted by
No. 95/2003
s. 4(2).

- (15) Nothing in this section 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—

S. 99(15)(a)
amended by
No. 68/2007
s. 22(3).

- (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 is liable under subsection (5D));
- (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.

S. 99(16)
inserted by
No. 95/2003
s. 4(2).

- (16) Subsection (15) does not apply in the case of a person who is under 18 years of age and who, as a result of his or her injury, is unable to reside at the place that he or she resided at before he or she was injured.

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- (16A) Subsection (15) also does not apply to a person while the person is receiving respite care as a result of the injury. S. 99(16A) inserted by No. 94/2004 s. 38.
- (16B) Despite subsection (15), the Governor in Council may, by Order published in the Government Gazette, fix limits in respect of contributions to be made by a worker towards the cost of supported accommodation. S. 99(16B) inserted by No. 9/2010 s. 52(1).
- (16C) An Order made under subsection (16B)—
- (a) may fix limits that vary according to the type of supported accommodation in which the worker is residing;
 - (b) takes effect on the date on which the Order is published in the Government Gazette or, if a later date is specified in the Order, on that later date.
- (17) Subsection (15) also does not apply to a person—
- (a) who receives a hospital service as a result of an injury; and
 - (b) who is then discharged from hospital; and
 - (c) who then resides in supported accommodation— S. 99(17) inserted by No. 95/2003 s. 4(2).
- S. 99(17)(c) substituted by No. 9/2010 s. 52(2).
- during the first 18 months after the person is first discharged from hospital.
- (18) For the purposes of subsection (17)—
- (a) a person can only be "first" discharged once from hospital in relation to a particular injury; and
 - (b) it does not matter if, during the relevant period, the person changes accommodation, or does not live continuously in accommodation of the sort listed in
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subsection (17)(c) (although in this latter case subsection (17) only applies to the person while he or she is living in accommodation of that sort); and

- (c) the 18 month period referred to in subsection (17) is to be extended by the addition of any period during which a person is in a hospital receiving a hospital service after he or she is first discharged from hospital.

Note

Subsections (15) to (18) only apply to claims for compensation under this section made after the date of commencement of section 4 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**—see section 266(1). Also, those subsections do not apply to workers who had been injured before that date until the expiry of 18 months after that date—see section 266(2).

S. 99(19)
inserted by
No. 9/2010
s. 52(3).

- (19) In this section—

supported accommodation means—

- (a) a residential facility in which residential care is provided under the Aged Care Act 1997 of the Commonwealth;
- (b) a supported residential service within the meaning of section 3(1) of the **Health Services Act 1988**;
- (c) a community residential unit within the meaning of section 3(1) of the **Disability Act 2006**;
- (d) a group home or other residential facility approved by the Authority for the purposes of this section.

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*	*	*	*	*	S. 99AAA inserted by No. 60/1996 s. 17, amended by No. 81/1998 ss 23(a)(c), 29, repealed by No. 9/2010 s. 51(1).
*	*	*	*	*	S. 99AA inserted by No. 67/1992 s. 21, amended by Nos 50/1993 s. 78(1)(h), 50/1994 s. 45(1)(2), 7/1996 s. 9(1)(2), 60/1996 s. 18(c), repealed by No. 107/1997 s. 11(4).
*	*	*	*	*	S. 99AB inserted by No. 67/1992 s. 21, amended by No. 50/1993 s. 78(1)(c), repealed by No. 107/1997 s. 11(4).
*	*	*	*	*	S. 99AC inserted by No. 67/1992 s. 21, substituted by No. 50/1994 s. 46, repealed by No. 107/1997 s. 11(4).

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S. 99AD
inserted by
No. 67/1992
s. 21,
amended by
Nos 50/1993
s. 78(1)(c),
50/1994
s. 47,
repealed by
No. 107/1997
s. 11(4).

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S. 99A
inserted by
No. 64/1989
s. 10.

**99A Commission or self-insurer may pay for
rehabilitation service**

S. 99A(1)
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 81(f),
50/1994 s. 48,
81/1998
s. 23(a).

- (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.

S. 99A(2)
amended by
Nos 67/1992
s. 64(7)(a),
50/1993
s. 81(f),
50/1994 s. 48,
81/1998
s. 23(a).

- (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.

S. 99B
inserted by
No. 67/1992
s. 22,
amended by
Nos 50/1993
s. 78(1)(d),
50/1994 s. 49,
repealed by
No. 7/1996
s. 26(3).³¹

* * * *

100 Indexation

S. 100
substituted by
No. 64/1989
s. 10.

- (1) An amount to which this Part applies shall be varied, in respect of the financial year beginning on 1 July 1990 and each subsequent financial year, in accordance with the formula³²—

S. 100(1)
amended by
No. 107/1997
s. 40(1).

$$A \times \frac{B}{C}$$

where—

- A is the amount or rate or that amount or rate as last varied in accordance with this subsection.
- B is the latest average weekly earnings as at 30 May in the preceding financial year of all employees for Victoria published by the Australian Statistician in respect of the December quarter of that financial year or, if that is not available, the latest available quarter.
- C is the average weekly earnings of all employees for Victoria as at 30 May in the year preceding the preceding financial year published by the Australian Statistician in respect of the quarter preceding that 30 May corresponding to the quarter referred to above.
- (2) Subject to subsections (3) and (5), the amount of a weekly payment to a worker in respect of an injury under this Part shall 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—

$$D \times \frac{E}{F}$$

where—

D is the amount of the worker's pre-injury average weekly earnings within the meaning of section 5A or that amount as last varied in accordance with this subsection.

E is the latest average weekly earnings as at the 15th day of the month (*the relevant month*) preceding the month in which the anniversary falls of all employees in Victoria published by the Australian Statistician in respect of the latest available quarter before that anniversary.

F is the average weekly earnings of all employees for Victoria as at the 15th day of the relevant month in the year preceding the year in which that anniversary falls published by the Australian Statistician in respect of the quarter before that relevant month corresponding to the quarter referred to above.

S. 100(2A)
inserted by
No. 107/1997
s. 40(2),
amended by
No. 9/2010
s. 152(1).

(2A) An amount specified in subsection (2B) shall be varied, in respect of the financial year beginning on 1 July 1998 and each subsequent financial year, in accordance with the formula—

$$D \times \frac{E}{F}$$

where—

D is the amount specified in subsection (2B) or that amount as last varied in accordance with this section;

E is the all groups consumer price index for Melbourne as at 15 June in the preceding financial year last published by the Australian Statistician in respect of the December quarter of that financial year;

F is the all groups consumer price index for Melbourne as at 15 June in the year preceding the preceding financial year published by the Australian Statistician in respect of the December quarter preceding that 15 June.

(2B) The specified amounts for the purposes of subsection (2A) are any amount of dollars referred to in the following sections—

S. 100(2B) inserted by No. 107/1997 s. 40(2), amended by No. 41/2006 s. 12(1)(a).

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S. 100(2B)(a) repealed by No. 41/2006 s. 12(1)(b).

* * * *

S. 100(2B)(b) repealed by No. 9/2010 s. 56(1).

* * * *

S. 100(2B)(c) repealed by No. 9/2010 s. 56(1).

(d) section 99, other than subsections (1)(aa) and (5G);

S. 100(2B)(d) substituted by No. 60/2007 s. 27(1), amended by No. 68/2007 s. 23.

(e) section 125(1)(a)(iii);

(f) section 125A(3)(c);

(g) section 135A(7)(b).

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S. 100(2BA)
inserted by
No. 60/2007
s. 27(2),
amended by
No. 9/2010
s. 152(2).

(2BA) The amount of \$5000 referred to in section 99(1)(aa) must be varied, in respect of the financial year beginning on 1 July 2008 and each subsequent financial year, in accordance with the formula—

$$D \times \frac{E}{F}$$

where—

D is the amount of \$5000 referred to in section 99(1)(aa) or that amount as last varied in accordance with this subsection.

E is the all groups consumer price index for Melbourne as at 15 June in the preceding financial year last published by the Australian Statistician in respect of the December quarter of that financial year.

F is the all groups consumer price index for Melbourne as at 15 June in the year preceding the preceding financial year published by the Australian Statistician in respect of the December quarter preceding that 15 June.

S. 100(2C)
inserted by
No. 41/2006
s. 12(2),
amended by
No. 9/2010
s. 152(3).

(2C) An amount specified in subsection (2D) shall be varied, in respect of the financial year beginning on 1 July 2007 and each subsequent financial year, in accordance with the formula—

$$D \times \frac{E}{F}$$

where—

D is the amount specified in subsection (2D) or that amount as last varied in accordance with this subsection;

E is the all groups consumer price index for Melbourne as at 15 June in the preceding financial year last published by the Australian Statistician in respect of the December quarter of that financial year;

F is the all groups consumer price index for Melbourne as at 15 June in the year preceding the preceding financial year published by the Australian Statistician in respect of the December quarter preceding that 15 June.

(2D) The specified amounts for the purposes of subsection (2C) are any amounts of dollars referred to in section 92A.

S. 100(2D)
inserted by
No. 41/2006
s. 12(2).

(2E) An amount specified in subsection (2F) shall be varied, in respect of the financial year beginning on 1 July 2010 and each subsequent financial year, in accordance with the formula—

S. 100(2E)
inserted by
No. 9/2010
s. 56(2).

$$D \times \frac{E}{F}$$

where—

D is the amount specified in subsection (2F) or that amount as last varied in accordance with this subsection;

E is the all groups consumer price index for Melbourne as at 15 June in the preceding financial year last published by the Australian Statistician in respect of the December quarter of that financial year;

F is the all groups consumer price index for Melbourne as at 15 June in the year preceding the preceding financial year published by the Australian Statistician in respect of the December quarter preceding that 15 June.

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S. 100(2F)
inserted by
No. 9/2010
s. 56(2).

(2F) The specified amounts for the purpose of subsection (2E) are any amounts of dollars referred to in the following sections—

- (a) section 98C;
- (b) section 134AB(22).

S. 100(2G)
inserted by
No. 9/2010
s. 72(1).

(2G) An amount specified in subsection (2H) shall be varied, in respect of the financial year beginning on 1 July 2010 and each subsequent financial year, in accordance with the formula—

$$D \times \frac{E}{F}$$

where—

D is the amount specified in subsection (2H) or that amount as last varied in accordance with this subsection;

E is the all groups consumer price index for Melbourne as at 15 June in the preceding financial year last published by the Australian Statistician in respect of the December quarter of that financial year;

F is the all groups consumer price index for Melbourne as at 15 June in the year preceding the preceding financial year published by the Australian Statistician in respect of the December quarter preceding that 15 June.

S. 100(2H)
inserted by
No. 9/2010
s. 72(1).

(2H) The specified amounts for the purposes of subsection (2G) are any amount of dollars referred to in the following sections—

- (a) section 62;
- (b) section 92AA;
- (c) section 92D(1)(b).

(2I) Subject to subsection (2J), the amount of any compensation in the form of weekly payments of pension payable under section 92B to a deceased worker's dependants shall be varied—

S. 100(2I)
inserted by
No. 9/2010
s. 72(1).

- (a) on 1 July 2010 in respect of the financial year commencing on that date; and
- (b) on 1 July of 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—

$$D \times \frac{E}{F}$$

where—

D is the amount of the worker's pre-injury average weekly earnings or that amount as last varied in accordance with this subsection or otherwise;

E is the latest average weekly earnings as for all employees in Victoria published by the Australian Statistician in respect of the December quarter in the year before that 1 July;

F is the average weekly earnings of all employees in Victoria published by the Australian Statistician in respect of the December quarter of the year that is 2 years before that 1 July.

(2J) 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 injury occurred on a date after 5 March 1990 and the deceased worker died more than one year after the date of

S. 100(2J)
inserted by
No. 9/2010
s. 72(1).

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 92B shall 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 or that amount as last varied in accordance with this subsection or otherwise.

E is the latest average weekly earnings as at the 15th day of the month (*the relevant month*) preceding the month in which the anniversary falls of all employees in Victoria published by the Australian Statistician in respect of the latest available quarter before that anniversary.

F is the average weekly earnings of all employees for Victoria as at the 15th day of the relevant month in the year preceding the year in which that anniversary falls published by the Australian Statistician in respect of the quarter before that relevant month corresponding to the quarter referred to above.

- (3) 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 weekly earnings (calculated at the worker's ordinary time rate of pay for the worker's normal number of hours before the injury within the meaning of section 5A) 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 within the meaning of section 5A is made).

- (3A) If the variation of an amount to which this Part applies or which is specified in subsection (2B) or (2D) by operation of this 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.
- (4) Where it is necessary for the purposes of this section to calculate an amount that consists of or includes a fraction of a whole number, the amount shall be 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

S. 100(3A)
inserted by
No. 50/1993
s. 93,
amended by
Nos 107/1997
s. 40(3).
41/2006
s. 12(3).

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(b) if the amount is \$1000 or more, to the nearest whole \$10.

(5) In the case of a worker who became entitled to weekly payments before the commencement of section 10 of the **Accident Compensation (General Amendment) Act 1989**, the anniversary of the day on which the worker became so entitled is deemed, for the purposes of this section, to be 1 July.

(6) In this section, *amount to which this Part applies* means an amount in dollars (including the amount referred to in section 135(3A) as in force before the commencement of section 46 of the **Accident Compensation (WorkCover) Act 1992** or an amount referred to in section 135A(7) or 135C(2)) or a rate referred to in this Part or in section 5A but does not include—

(a) a percentage; or

(b) an amount referred to in subsection (2), (2A), (2B), (2C), (2D) or (4); or

(ba) an amount referred to in section 62, 92AA, 92B or 92D(1)(b); or

(c) an amount calculated for the purposes of section 94(6); or

(ca) an amount referred to in section 98C or 134AB(22); or

S. 100(6)
amended by
Nos 18/1991
s. 10(1),
67/1992
s. 46(4),
107/1997
s. 41(a).

S. 100(6)(b)
amended by
Nos 107/1997
ss 40(4), 41(b),
74/2000
s. 3(Sch. 1
item 1.2),
41/2006
s. 12(4)(a).

S. 100(6)(ba)
inserted by
No. 107/1997
s. 41(b),
repealed by
No. 41/2006
s. 12(4)(b),
new
s. 100(6)(ba)
inserted by
No. 9/2010
s. 72(2).

S. 100(6)(ca)
inserted by
No. 9/2010
s. 56(3).

(d) the amount referred to in section 137(2)(c).

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S. 100A
inserted by
No. 64/1989
s. 10,
repealed by
No. 67/1992
s. 23.

Division 3—Claims management and procedures

Pt 4 Div. 3
(Heading and
ss 101–123)
amended by
Nos 48/1986
ss 12(f)(g),
17(1), 18, 19,
111/1986
s. 180(3)(Sch.
2 item 3(a)),
83/1987
ss 44–66,
substituted as
Pt 4 Div. 3
(Heading and
ss 101–117)
by No.
64/1989 s. 10,
amended by
Nos 18/1991
s. 6, 67/1992
ss 24–34,
64(7)(a),
50/1993
ss 78(1)(a)(c)
(d)(g), 96–100,
110(1)(d),
substituted as
Pt 4 Div. 3
(Heading and
ss 101–114F)
by No.
50/1994 s. 50.

101 Employer to keep register of injuries etc.

S. 101
substituted by
No. 50/1994
s. 50.

- (1) The employer must cause to be kept at each workplace of a kind specified by the Authority at a place readily accessible at all reasonable times to a worker employed in the workplace a

S. 101(1)
amended by
No. 9/2010
s. 158(1).

s. 101

summary in a form approved by the Authority
of—

- (a) the requirements relating to the giving of notice of an injury and the making of a claim under this Act; and
- (b) if an authorised agent is responsible for managing claims under the Act against the employer, the name of the authorised agent; and
- (c) the benefits available to workers under this Act.

S. 101(1)(b)
substituted by
No. 81/1998
s. 23(f).

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

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

S. 101(2)
amended by
No. 9/2010
s. 158(1).

- (2) The employer must cause to be kept a register of injuries in a form approved by the Authority at each workplace of a kind specified by the Authority at a place readily accessible at all reasonable times to a worker employed in the work place or any person acting on 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.

S. 101(3)
substituted by
No. 9/2010
s. 158(2).

- (3) On receiving notice of an injury (otherwise than as specified in section 102(3)) an employer must cause the specified particulars of the injury to be entered in the register.

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

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

- (4) A worker or any person acting on the worker's behalf may enter such particulars of injury as are specified by the Authority in the register of injuries.

S. 101(4)
substituted by
No. 9/2010
s. 158(2).

102 Notice of injury

S. 102
substituted by
Nos 50/1994
s. 50, 107/1997
s. 42.

- (1) Notice of an injury that may entitle a person to compensation under this Act 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 such particulars as are required by the Authority.
- (3) Notice of an injury is deemed to have been given to an employer if the particulars of the injury as required under section 101(3) 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 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

S. 102(6)
amended by
No. 81/1998
s. 23(a).

s. 103

(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.

S. 102(7)
inserted by
No. 102/2004
s. 25.

(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—

(i) ignorance or a mistake; or

(ii) undue influence or duress; or

(iii) being absent from Victoria.

S. 103
substituted by
No. 50/1994
s. 50.

103 Claim for compensation

(1) A claim for compensation must be in a form approved by the Authority in respect of that type or class of claim.

S. 103(1)
amended by
Nos 107/1997
ss 27(2)(a),
43(1), 81/1998
s. 23(a),
substituted by
No. 9/2010
s. 19(1).

S. 103(1A)
inserted by
No. 102/2004
s. 26(1),
repealed by
No. 9/2010
s. 19(1).

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S. 103(1B)
inserted by
No. 102/2004
s. 26(1),
repealed by
No. 9/2010
s. 19(1).

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s. 103

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| (2) A claim for compensation in the form of weekly payments must— <ul style="list-style-type: none">(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 105; or(c) be supplemented at a later date by a medical certificate in accordance with section 105. | S. 103(2)
substituted by
No. 9/2010
s. 19(1). |
| (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. | S. 103(3)
substituted by
No. 9/2010
s. 19(1). |
| (4) Where 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 by a medical certificate, compensation in the form of weekly payments is not payable unless and until a medical certificate in accordance with section 105 has been given to or served on the employer or self-insurer or lodged with the Authority. | S. 103(4)
substituted by
No. 9/2010
s. 19(1). |
| (4A) A claim for compensation— <ul style="list-style-type: none">(a) must be given to or served on the employer or self-insurer; or(b) if section 106 of this Act or Part 5 of the Accident Compensation (WorkCover Insurance) Act 1993 applies, must be lodged with the Authority. | S. 103(4A)
inserted by
No. 9/2010
s. 19(1). |
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S. 103(4B)
inserted by
No. 9/2010
s. 19(1).

(4B) 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.

S. 103(4C)
inserted by
No. 9/2010
s. 19(1).

(4C) The Minister may make guidelines for the purposes of this section specifying the manner and form in which a claim for compensation may be given, served or lodged.

S. 103(4D)
inserted by
No. 9/2010
s. 19(1).

(4D) Guidelines made under subsection (4C) must be published—
(a) in the Government Gazette; and
(b) on a Government Internet website.

S. 103(4E)
inserted by
No. 9/2010
s. 19(1).

(4E) If the employer or self-insurer or the Authority receives from a worker a claim for compensation made in accordance with this section, 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.

S. 103(4F)
inserted by
No. 9/2010
s. 19(1).

(4F) 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 105.

S. 103(4G)
inserted by
No. 9/2010
s. 19(1).

(4G) 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.

(4H) A claim that contains a material defect, omission or irregularity to which subsection (4G) does not apply is deemed not to have been made if, 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—

S. 103(4H)
inserted by
No. 9/2010
s. 19(1).

- (a) specifies in detail each material defect, omission and irregularity identified in the claim; and
- (b) 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.

(5) If—

S. 103(5)
amended by
No. 81/1998
s. 23(a).

- (a) a claim for compensation is made 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.

(6) If a claim for compensation 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 member of the police force, whether under section 61 of the **Road Safety Act 1986** or otherwise.

s. 103

(7) Subject to subsection (8), a claim for compensation must be given, served or lodged under this section or section 106 or Part 5 of the **Accident Compensation (WorkCover Insurance) Act 1993**—

S. 103(7)(a)
amended by
No. 9/2010
s. 19(2)(a).

(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;

S. 103(7)(b)
amended by
No. 107/1997
s. 27(2)(b).

(b) in the case of a claim for compensation under section 92, 92A or 92B within the period of 2 years after the date of the death of the relevant worker;

(c) in the case of a claim for compensation under section 98A, at the same time as the claim for compensation under section 98 in respect of the same injury is given, served or lodged;

(d) in the case of a claim for compensation under section 99, within 6 months after the date of the relevant service.

S. 103(8)
amended by
No. 81/1998
s. 23(a).

(8) 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.

S. 103(9)
inserted by
No. 82/2001
s. 16.

(9) A claim for compensation by a worker under section 98 or 98A must seek compensation for all injuries of the worker that are within the categories of injury listed in the Table to section 98(1) that are compensable under that section and that are manifest and that have stabilised.

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| (10) Subsection (9) only applies in respect of claims for compensation that are given, served or lodged after the commencement of section 16 of the Accident Compensation (Amendment) Act 2001 . | S. 103(10)
inserted by
No. 82/2001
s. 16. |
| (11) Subsection (9) only applies in respect of injuries of the worker arising out of, or in the course of, or due to the nature of, the worker's employment with—

(a) the employer to, or on, whom the claim for compensation was given or served under section 103(4A); or

(b) the employer referred to in section 106 if the claim for compensation was lodged with the Authority; or

(c) the employer referred to in Part 5 of the Accident Compensation (WorkCover Insurance) Act 1993 if the claim for compensation was lodged with the Authority. | S. 103(11)
inserted by
No. 82/2001
s. 16.

S. 103(11)(a)
amended by
No. 9/2010
s. 19(2)(b).

S. 103(11)(b)
amended by
No. 9/2010
s. 19(2)(c).

S. 103(11)(c)
amended by
No. 9/2010
s. 19(2)(d). |
| (12) Subsection (9) does not apply to a worker who, at the time the claim for compensation was given, served or lodged—

(a) was under 18 years of age; or

(b) was not capable of managing his or her affairs in relation to the claim by reason of injury, disease, illness, dementia, intellectual impairment, physical disability or mental disorder. | S. 103(12)
inserted by
No. 82/2001
s. 16. |
| 103A Restriction on certain claims for compensation under sections 98 and 98A | S. 103A
inserted by
No. 82/2001
s. 17. |
| (1) If a worker makes a second or subsequent claim for compensation under section 98 or 98A, the worker is not entitled to compensation under that section in respect of an injury that would | |
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otherwise entitle the worker to compensation under this Act—

- (a) unless the injury was not manifest at the time the most recent previous claim was made; or
 - (b) unless—
 - (i) the injury had not stabilised at the time that the most recent previous claim was made; and
 - (ii) that previous claim was accompanied by—
 - (A) a written statement that identified the injury and that stated that the worker intended to claim compensation for the injury under section 98 or 98A after it had stabilised; and
 - (B) a written medical report, dated not more than 3 months before the date that previous claim was given, served or lodged, that supported the existence of the injury and stated that the injury had not stabilised at the date of the report.
- (2) This section only applies in respect of second or subsequent claims for compensation that are made after the commencement of section 17 of the **Accident Compensation (Amendment) Act 2001**.
- (3) This section does not apply to a worker who, at the time the claim for compensation was given, served or lodged—
- (a) was under 18 years of age; or

- (b) was not capable of managing his or her affairs in relation to the claim by reason of injury, disease, illness, dementia, intellectual impairment, physical disability or mental disorder.

104 Claims for compensation under sections 98 and 98A

S. 104
substituted by
Nos 50/1994
s. 50, 7/1996
s. 24(1).

- (1) In addition to the requirements under section 103, a claim for compensation under section 98 or 98A must be given, served or lodged with a copy of all the medical reports—
 - (a) which the claimant intends to tender in any proceedings relating to the claim; or
 - (b) the substance of which the claimant intends to adduce in evidence in support of the entitlement of the claimant to compensation or as evidence of the extent of any relevant loss, impairment, disfigurement or pain and suffering in any proceedings relating to the claim.
- (2) The Authority or self-insurer must within 90 days of receiving the claim—
 - (a) accept or reject the claim; and
 - (b) advise the claimant of the decision; and
 - (c) if the decision is to accept the claim, advise the claimant of its offer based on its determination of the worker's entitlement to compensation; and
 - (d) give the claimant a copy of all the medical reports—
 - (i) which the Authority or self-insurer intends to tender in any proceedings relating to the claim; or

S. 104(2)
amended by
Nos 107/1997
s. 35(1),
81/1998
s. 23(a).

S. 104(2)(d)(i)
amended by
No. 81/1998
s. 23(a).

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S. 104(2)(d)(ii)
amended by
No. 81/1998
s. 23(a).

(ii) the substance of which the Authority or self-insurer intends to adduce in evidence in any proceedings relating to the claim.

- (3) If the claimant disputes the decision in respect of the claim, the claimant must not commence proceedings unless the claimant first refers the dispute for conciliation by a Conciliation Officer in accordance with Division 2 of Part III and the Conciliation Officer has issued a certificate under subsection (8).
- (4) If the Conciliation Officer considers that it is necessary for the purpose of settling the dispute, the Conciliation Officer may—
- (a) obtain a medical report in relation to the worker from a medical practitioner appointed under section 63(2);
 - (b) request the worker to submit to a medical examination conducted by that medical practitioner.
- (5) The costs of any medical report and medical examination under subsection (4) are to be paid by the Authority or self-insurer.
- (6) The Conciliation Officer must serve a copy of a medical report obtained under subsection (4) with the certificate under subsection (8).
- (7) If the Conciliation Officer is satisfied that all reasonable steps have been taken by the claimant to settle the dispute, the Conciliation Officer must issue a certificate under subsection (8).
- (8) The certificate must—
- (a) certify that all reasonable steps have been taken by the claimant to settle the dispute; and

S. 104(5)
amended by
No. 81/1998
s. 23(a).

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- (b) identify all copies of medical reports provided in accordance with subsections (1) and (2) and any medical report obtained under subsection (4); and
- (c) if any medical question has been referred by the Conciliation Officer under section 56(6) for an opinion by a Medical Panel, specify that opinion; and
- (d) be served by post on all the parties to the dispute.
- (9) The Authority or self-insurer must within 14 days after the certificate has been served on the Authority or self-insurer make a statutory offer in writing in settlement or compromise of the claim. **S. 104(9) amended by Nos 107/1997 s. 35(2), 81/1998 s. 23(a).**
- (10) If any medical question has been referred by the Conciliation Officer under section 56(6) for an opinion by a Medical Panel, the statutory offer must be consistent with that opinion. **S. 104(10) amended by No. 107/1997 s. 35(2).**
- (11) If the Authority or self-insurer fails to comply with subsection (9), the Authority or self-insurer is deemed to have made a statutory offer of nothing. **S. 104(11) amended by Nos 107/1997 s. 35(2), 81/1998 s. 23(a).**
- (11A) The claimant must within 21 days after the making by the Authority or self-insurer of a statutory offer— **S. 104(11A) inserted by No. 107/1997 s. 35(3), amended by No. 81/1998 s. 23(a).**
- (a) accept the statutory offer in writing; or
- (b) make a counter statutory offer in writing which is to remain open for 21 days.
- (11B) If at the expiry of the first period specified in subsection (11A), the claimant— **S. 104(11B) inserted by No. 107/1997 s. 35(3).**
- (a) has not accepted the statutory offer; and
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- (b) has not made a counter statutory offer—
the claimant is deemed to have made a counter statutory offer of an amount equal to the total of the maximum amounts that can be claimed for the relevant injury or injuries under section 98 and, where applicable, under section 98A.
- (12) A party to any proceedings relating to a claim for compensation under section 98 or 98A cannot in evidence submit any medical evidence or tender a medical report or adduce evidence dependent on a medical report unless that evidence is disclosed by a medical report a copy of which has been provided to the other party in accordance with subsection (1) or (2) or a copy of which has been provided in accordance with subsection (8).
- (13) Subsection (12) does not affect the admissibility of the opinion of the Medical Panel.
- (14) For the purposes of this section if a medical report was oral, a copy of the medical report is to be taken to have been provided to the other party in accordance with subsection (1) or (2) if notice in writing of the substance of the medical report is provided to the other party in accordance with subsection (1) or (2).
- (15) In this section—
medical report—
- (a) means a statement on medical matters concerning the worker whether in writing or oral made by a medical practitioner; and
 - (b) includes any document which the medical practitioner intends should be read with a statement whether the document was in existence at the time the statement was made or was a document which he or she obtained or

caused to be brought into existence
subsequently.

**104AA Withdrawal of claims for compensation under
sections 98 and 98A**

S. 104AA
inserted by
No. 82/2001
s. 18.

- (1) A worker may withdraw a claim for compensation under section 98 or 98A at any time before the certificate described in section 104(8) is issued in respect of the claim.
- (2) To withdraw a claim, the worker must give the Authority or self-insurer a notice of withdrawal that is in a form approved by the Authority.
- (3) On the Authority or self-insurer receiving a notice of withdrawal of a claim under this section, the claim is deemed, for the purposes of taking further action under this Act, not to have been made.
- (4) Despite subsection (3), if the worker withdraws a claim under this section after—
 - (a) a Conciliation Officer has referred a medical question in relation to the claim to a Medical Panel under section 56(6); and
 - (b) the Medical Panel has given its opinion on the question—

that opinion has effect for the purposes of any subsequent claim for compensation under section 98 or 98A made by the worker in respect of which the opinion is relevant as if the opinion had been obtained for the purposes of that subsequent claim.

- (5) This section applies to a claim regardless of whether or not it was given, served or lodged before, on or after the date of commencement of section 18 of the **Accident Compensation (Amendment) Act 2001**.

s. 104A

104A Directions relating to claim for compensation under sections 98 and 98A

S. 104A
inserted by
No. 7/1996
s. 24(1).

S. 104A(1)
amended by
No. 60/1996
s. 20.

S. 104A(1A)
inserted by
No. 82/2001
s. 19(1).

S. 104A(2)
amended by
No. 82/2001
s. 19(2).

S. 104A(4)
amended by
No. 107/1997
s. 35(4).

S. 104A(5)
amended by
No. 82/2001
s. 19(3).

S. 104A(6)
inserted by
No. 107/1997
s. 35(5),
amended by
No. 82/2001
s. 19(3).

- (1) For the purposes of section 104, the Minister may issue directions for or with respect to procedures for the determination of claims for compensation under sections 98 and 98A.
- (1A) For the purposes of section 104AA, the Minister may issue directions for or with respect to procedures for the withdrawal of claims of compensation under sections 98 and 98A.
- (2) Directions under subsection (1) or (1A) must be published in the Government Gazette.
- (3) The directions apply to claims for compensation under sections 98 and 98A given, served or lodged after the publication of the directions.
- (4) The parties to a claim and their legal practitioners and agents must comply with the directions.
- (5) Directions made under subsection (1) may specify that the failure to comply with a particular provision of the directions has the effect of suspending the claim or any proceeding relating to the claim until the provision is complied with.
- (6) Directions made under subsection (1)—
 - (a) may require that each of the parties to a claim or their legal representatives provide information by affidavit to the other parties or their legal representatives and, if applicable, to a Conciliation Officer; and

- (b) may require that the parties to a claim and their legal representatives must attend at a conference or conferences in respect of the claim.

104B Claims for compensation under section 98C

S. 104B
inserted by
No. 107/1997
s. 43(2).

- (1) In addition to the requirements under section 103, this section applies to a claim for compensation under section 98C.

- (1A) Subject to subsection (1B), a claim for compensation under section 98C or 98E, not being a claim for compensation for industrial deafness, can not be made before the expiry of the period of 12 months after the date of the relevant injury.

S. 104B(1A)
inserted by
No. 26/2000
s. 16(1).

- (1B) Despite subsection (1A), the Authority or a self-insurer may receive a claim for compensation under section 98C or 98E before the expiry of the period of 12 months after the date of the relevant injury if the relevant injury has stabilised.

S. 104B(1B)
inserted by
No. 26/2000
s. 16(1).

- (1BA) If a worker has commenced an application under section 134AB(4)(b), the worker can not make a claim for compensation under section 98C until the proceedings under section 134AB in respect of that application have been finally determined.

S. 104B(1BA)
inserted by
No. 102/2004
s. 4.

- (1C) If liability has been accepted or determined in respect of a prior claim for compensation for an injury, the Authority or a self-insurer may after the expiry of the period of 18 months after the date of the relevant injury and without a claim having been made under section 98C or 98E, request the worker to attend an independent examination under subsection (4).

S. 104B(1C)
inserted by
No. 26/2000
s. 16(1),
amended by
No. 41/2006
s. 19(1).

- (1CA) For the purposes of this section, a request under subsection (1C) has the effect of initiating a claim for compensation under section 98C or 98E in respect of the worker by the Authority or self-insurer.

S. 104B(1CA)
inserted by
No. 41/2006
s. 19(2).

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S. 104B(1D)
inserted by
No. 102/2004
s. 5(1),
amended by
No. 41/2006
s. 19(3)(a)(b).

(1D) The Authority or self-insurer may within 90 days of receiving a claim made by the worker by notice in writing to the worker suspend the claim made by the worker if—

- (a) the Authority or self-insurer has insufficient medical information to determine the matters specified in subsection (2); or
- (b) the Authority or self-insurer can not make a determination under subsection (2) because the condition of the injury of the worker is not stable.

S. 104B(1E)
inserted by
No. 102/2004
s. 5(1).

(1E) The Authority or self-insurer must within 14 days—

- (a) if subsection (1D)(a) applies, of having sufficient medical information to determine the matters specified in subsection (2); or
- (b) if subsection (1D)(b) applies, of being able to make a determination under subsection (2) because the condition of the injury of the worker has stabilised—

by notice in writing to the worker remove the suspension under subsection (1D).

S. 104B(2)
amended by
No. 81/1998
s. 23(a),
substituted by
No. 102/2004
s. 5(2),
amended by
No. 41/2006
s. 19(4)(a).

(2) The Authority or self-insurer must within 120 days of receiving a claim made by the worker or in the case of a claim initiated by the Authority or self-insurer, within 120 days of the relevant date—

S. 104B(2)(a)
amended by
No. 41/2006
s. 19(4)(b).

- (a) if the claim is a claim made by the worker, accept or reject liability for each injury included in the claim;

- (b) obtain an assessment or assessments in accordance with section 91 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;
- (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) section 98C;
 - (ii) section 134AB;
 - (iii) Subdivision 1 of Division 3A;
- (d) determine whether the worker has an injury which is a total loss mentioned in the Table to section 98E(1);
- (e) calculate any entitlement to compensation under section 98C or 98E;
- (f) advise the worker as to—
 - (i) if the claim is a claim made by the worker, the decision to accept or reject liability for each injury included in the claim;
 - (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 to section 98E(1) resulting from the injury or injuries in respect of which liability is accepted;
 - (iii) the calculation of any entitlement to compensation under section 98C or 98E;

S. 104B(2)(f)(i)
amended by
No. 41/2006
s. 19(4)(c).

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 104B

S. 104B
(2)(f)(iv)
repealed by
No. 41/2006
s. 18(1).

* * * *

(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 91(1)(b) conducting an independent examination.

S. 104B(2AA)
inserted by
No. 41/2006
s. 19(5).

(2AA) For the purposes of this section—

claim made by the worker means—

- (a) a claim by a worker for compensation under section 98C or 98E; or
- (b) a claim by a worker for compensation under section 98C or 98E in accordance with subsection (5D)(a);

relevant date means—

- (a) if the worker makes a claim for compensation under section 98C or 98E in accordance with subsection (5D)(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 under subsection (5C), the day on which the dispute is resolved; or
- (c) if the worker does not make a claim or dispute the statement within the period specified under subsection (5D), the day on which that period expires; or

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- (d) if the worker accepts the written statement of the injury or injuries under subsection (5C), 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.
- (2A) The Authority or self-insurer is not bound by the assessment or assessments obtained under subsection (2)(b) in determining the degree of permanent impairment (if any) under subsection (2)(c). **S. 104B(2A) inserted by No. 102/2004 s. 5(2).**
- (3) If the Authority or self-insurer rejects liability in relation to the injuries included in the claim made by the worker and the worker disputes the decision as to liability, the worker must not commence proceedings in relation to the claim made by the worker unless the worker first refers the dispute for conciliation by a Conciliation Officer in accordance with Division 2 of Part III and until the Conciliation Officer has issued a certificate under section 49. **S. 104B(3) amended by Nos 81/1998 s. 23(a), 102/2004 s. 5(3), 41/2006 s. 19(6).**
- (4) 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 91(1)(b) for the purposes this section. **S. 104B(4) amended by Nos 107/1997 s. 25(3), 81/1998 s. 23(a), substituted by No. 102/2004 s. 5(4).**
- (5) The Authority or self-insurer must obtain assessments in accordance with section 91 as to the degree of permanent impairment resulting from any injury for which liability is accepted or established for the purposes of— **S. 104B(5) amended by Nos 26/2000 s. 16(2), 82/2001 s. 6(a), substituted by No. 102/2004 s. 5(5).**
- (a) determining any entitlement of the worker to compensation under section 98C;
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- (b) determining the whole person impairment under sections 134AB(3) and 134AB(15);
- (c) Subdivision 1 of Division 3A.

S. 104B(5A)
inserted by
No. 26/2000
s. 16(3),
substituted by
No. 102/2004
s. 5(6).

- (5A) A worker must include all injuries arising out of the same event or circumstance in a claim for compensation under section 98C.

S. 104B(5AA)
inserted by
No. 102/2004
s. 5(6).

- (5AA) A worker can only make one claim for compensation under section 98C in respect of injuries arising out of the same event or circumstance.

S. 104B(5AB)
inserted by
No. 41/2006
s. 19(7).

- (5AB) Subject to subsection (5D)(a), if a claim for compensation under section 98C or 98E has been initiated in respect of a worker by the Authority or self-insurer, the worker cannot make a claim for compensation under section 98C or 98E in respect of injuries arising out of the same event or circumstance.

S. 104B(5B)
inserted by
No. 26/2000
s. 16(3),
substituted by
No. 102/2004
s. 5(6).

- (5B) 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 section 98C.

S. 104B(5C)
inserted by
No. 26/2000
s. 16(3),
amended by
No. 41/2006
s. 19(8).

- (5C) If the independent examination has been requested by the Authority or a self-insurer under subsection (1C), the Authority or self-insurer must give the worker a written statement of the injury or injuries to be included in the assessments and a statement of rights in a form approved by the Authority for the purposes of this section.

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- (5D) A worker must within 60 days of receiving a written statement under subsection (5C)—
- S. 104B(5D)
inserted by
No. 26/2000
s. 16(3),
amended by
No. 41/2006
s. 19(9)(a).
- (a) make a claim for compensation under section 98C or 98E 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
- S. 104B(5D)(b)
amended by
No. 41/2006
s. 19(9)(b).
- (c) advise the Authority or self-insurer that he or she accepts the written statement of the injury or injuries.
- S. 104B(5D)(c)
inserted by
No. 41/2006
s. 19(9)(c).
- (5DA) If after receiving a written statement under subsection (5C) the worker makes a claim for compensation under section 98C or 98E in respect of any additional injuries that the worker believes have arisen out of the same event or circumstance—
- S. 104B(5DA)
inserted by
No. 41/2006
s. 19(10).
- (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 subsection (2).
- (5DB) If the worker advises the Authority or self-insurer that he or she disputes the written statement under subsection (5C), the worker must not commence proceedings in relation to the claim unless the worker first refers the dispute for conciliation by a Conciliation Officer in accordance with Division 2 of Part III and until the Conciliation Officer has issued a certificate under section 49.
- S. 104B(5DB)
inserted by
No. 41/2006
s. 19(10).
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S. 104B(5E)
inserted by
No. 26/2000
s. 16(3),
amended by
Nos 102/2004
s. 5(7)(a),
41/2006
s. 19(11).

(5E) If the worker does not make a claim or dispute the statement within the period specified under subsection (5D), 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 subsection (2).

S. 104B(5F)
inserted by
No. 26/2000
s. 16(3),
amended by
No. 102/2004
s. 5(7)(b)(i)(ii).

(5F) 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 can not be made until the worker attains the age of 18 years.

S. 104B(6)
amended by
Nos 81/1998
s. 23(a),
26/2000
ss 16(4)(a),
s. 17(1),
82/2001
s. 20(1),
substituted by
No. 102/2004
s. 5(8),
amended by
No. 41/2006
s. 19(12).

(6) The worker must within 60 days of being advised under subsection (2) in respect of a 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.

S. 104B(6A)
inserted by
No. 102/2004
s. 5(8).

(6A) If under subsection (6) 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 subsection (2).

S. 104B(6B)
inserted by
No. 102/2004
s. 5(8),
amended by
No. 41/2006
s. 19(13).

(6B) Subject to subsection (6), the worker must within 60 days of being advised under subsection (2) advise the Authority or self-insurer in writing—

S. 104B(6B)(b)
amended by
No. 41/2006
s. 18(2)(a).

- (a) whether the worker accepts or disputes the determinations of impairment and total loss;
- (b) if the worker accepts the determinations of impairment and total loss, whether the worker accepts or disputes the entitlement to compensation, if any.

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S. 104B(6B)(c)
repealed by
No. 41/2006
s. 18(2)(b).

- (7) If the decision made under subsection (2)(a) to reject liability for an injury is varied as the result of a decision of a court or an agreement between the worker and the Authority or self-insurer, the Authority or self-insurer must within 90 days of the variation—
- (a) obtain an assessment or assessments in accordance with section 91 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;
 - (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) section 98C;
 - (ii) section 134AB;
 - (iii) Subdivision 1 of Division 3A;
 - (c) determine whether the worker has an injury which is a total loss mentioned in the Table to section 98E(1);
 - (d) calculate any entitlement to compensation under section 98C or 98E;
 - (e) advise the worker as to—
 - (i) the decision or determination of liability for each injury included in the claim;

S. 104B(7)
amended by
Nos 81/1998
s. 23(a),
26/2000
ss 16(4)(b),
s. 17(2),
82/2001
s. 20(1),
substituted by
No. 102/2004
s. 5(8).

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- (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 to section 98E(1) resulting from the injury or injuries in respect of which liability is accepted;
- (iii) the calculation of any entitlement to compensation under section 98C or 98E;

**S. 104B
(7)(e)(iv)**
repealed by
No. 41/2006
s. 18(1).

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- (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 91(1)(b) conducting an independent examination.

S. 104B(7A)
inserted by
No. 102/2004
s. 5(8).

- (7A) The Authority or self-insurer is not bound by the assessment or assessments obtained under subsection (7)(a) in determining the degree of permanent impairment (if any) under subsection (7)(b).

S. 104B(7B)
inserted by
No. 102/2004
s. 5(8).

- (7B) The worker must within 60 days of being advised under subsection (7) advise the Authority or self-insurer in writing—
 - (a) whether the worker accepts or disputes the determinations of impairment and total loss;

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- (b) if the worker accepts the determinations of impairment and total loss, whether the worker accepts or disputes the entitlement to compensation, if any.

S. 104B(7B)(b)
amended by
No. 41/2006
s. 18(3)(a).

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S. 104B(7B)(c)
repealed by
No. 41/2006
s. 18(3)(b).

- (8) Subject to section 134AB(36), the Authority or self-insurer must, within 14 days of being advised by the worker either under subsection (6B) or (7B) or at a later date that the worker accepts the determinations of impairment and total loss and the entitlement to compensation—

S. 104B(8)
amended by
Nos 81/1998
s. 23(a),
26/2000
s. 16(4)(c),
substituted by
No. 26/2000
s. 17(3),
amended by
No. 102/2004
s. 5(9)(a)(b),
substituted by
No. 41/2006
s. 18(4).

- (a) if the entitlement is under section 98C, make payments in accordance with section 98D; or
(b) if the entitlement is under section 98E, pay the amount specified for the total loss under section 98E.

- (9) 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—

S. 104B(9)
amended by
Nos 81/1998
s. 23(a),
26/2000
s. 16(4)(d)(i)(ii),
82/2001
s. 6(b),
substituted by
No. 102/2004
s. 5(10).

- (a) the degree of impairment assessed in accordance with section 91 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 to section 98E(1)—

to a Medical Panel for its opinion under section 67.

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S. 104B(9A)
inserted by
No. 102/2004
s. 5(10).

(9A) For the purposes of subsection (9), 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 can not accept only part of the determination of impairment other than psychiatric impairment; and

(b) the Authority or self-insurer must refer under that subsection the medical questions relating to the determination or determinations disputed in accordance with subsection (9).

S. 104B(10)
amended by
No. 81/1998
s. 23(a),
substituted by
No. 26/2000
s. 17(4),
amended by
No. 82/2001
s. 20(1),
substituted by
No. 41/2006
s. 18(5).

(10) The Authority or self-insurer must, within 60 days of obtaining the opinion of the Medical Panel under section 67, advise the worker of the opinion and the entitlement, if any, under section 98C or 98E.

S. 104B(10A)
inserted by
No. 26/2000
s. 17(4),
substituted by
No. 41/2006
s. 18(5).

(10A) 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 (10), advise the Authority or self-insurer whether the worker accepts or disputes the entitlement to compensation.

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(10B) Subject to section 134AB(36), the Authority or self-insurer must, within 14 days of being advised by the worker either under subsection (10A) or at a later date that the worker accepts the entitlement to compensation—

S. 104B(10B)
inserted by
No. 26/2000
s. 17(4),
substituted by
No. 41/2006
s. 18(5).

- (a) if the entitlement is under section 98C, make payments in accordance with section 98D; or
- (b) if the entitlement is under section 98E, pay the amount specified for the total loss under section 98E.

(11) For the purposes of this section, liability in relation to a claim does not include a question as to the degree of permanent impairment of a worker or whether a worker has an injury which is a total loss mentioned in the Table to section 98E(1).

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S. 104B(11A)
inserted by
No. 26/2000
s. 17(5),
repealed by
No. 41/2006
s. 18(6).

(12) No appeal lies to any court or Tribunal from a determination or opinion—

S. 104B(12)
amended by
No. 102/2004
s. 5(11).

- (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 to section 98E(1).

(13) For the purposes of this section, the Minister may issue directions to be published in the Government Gazette for or with respect to procedures for the determination of claims for compensation under section 98C, including directions requiring that information in classes of claims specified in the directions must be provided by affidavit.

s. 104B

S. 104B(14)
inserted by
No. 26/2000
s. 16(5).

- (14) This section as amended by section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000** applies in respect of—
- (a) all claims for compensation under section 98C given, served or lodged on or after the commencement of section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000**;
 - (b) an assessment for the purposes of sections 134AB(3) and 134AB(15) in respect of an injury to a worker on or after 20 October 1999 whose claim for compensation under section 98C was given, served or lodged before the commencement of section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000**;
 - (c) a claim specified in subsection (15).

S. 104B(15)
inserted by
No. 26/2000
s. 16(5).

- (15) If a worker has given, served or lodged a claim for compensation under section 98C before the commencement of section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000** and on or after that commencement claims compensation under section 98C for any other injury which arose from the same event or circumstance in respect of which the injury the subject of the previous claim arose, this section as amended by section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000** applies in respect of the subsequent claim.

S. 104B(16)
inserted by
No. 26/2000
s. 16(5).

- (16) Subject to subsection (14), this section as in force before the commencement of section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000** continues to apply in respect of all claims for compensation under section 98C given, served or lodged before the commencement

of section 16 of the **Accident Compensation (Common Law and Benefits) Act 2000**.

- (17) This section as amended by section 17 of the **Accident Compensation (Common Law and Benefits) Act 2000** applies in respect of—
- (a) all claims for compensation under section 98C given, served or lodged on or after the commencement of section 17 of the **Accident Compensation (Common Law and Benefits) Act 2000**;
 - (b) a request made under subsection (1C) on or after that commencement;
 - (c) an assessment on or after that commencement for the purposes of sections 134AB(3) and 134AB(15) in respect of an injury to a worker on or after 20 October 1999.
- (18) This section as amended by section 20 of the **Accident Compensation (Amendment) Act 2001** only applies—
- (a) in the case of subsection (6), to any case in which the Authority or self-insurer obtained the assessments and determination on or after the date of commencement of section 20 of that Act;
 - (b) in the case of subsection (7), to any case in which the worker was advised under subsection (6) on or after the date of commencement of section 20 of that Act;
 - (c) in the case of subsection (10), to any case in which the Authority or self-insurer obtained the opinion of the Medical Panel under section 67 on or after the date of commencement of section 20 of that Act.

S. 104B(17)
inserted by
No. 26/2000
s. 17(6).

S. 104B(18)
inserted by
No. 82/2001
s. 20(2).

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s. 104B

S. 104B(19)
inserted by
No. 102/2004
s. 5(12).

(19) If as at the commencement of section 5 of the **Accident Compensation Legislation (Amendment) Act 2004** a worker has attended at least 1 impairment examination, the assessment of impairment and the final determination of the claim of the worker must be completed in accordance with this section as in force before that commencement.

S. 104B(20)
inserted by
No. 102/2004
s. 5(12).

(20) If as at the commencement of section 5 of the **Accident Compensation Legislation (Amendment) Act 2004** a worker has lodged an impairment claim but has not attended any impairment examinations, the worker may before attending an impairment examination elect by notice in writing to the Authority or self-insurer—

- (a) to continue to have the claim determined in accordance with this section as in force before that commencement; or
- (b) to withdraw the claim.

S. 104B(21)
inserted by
No. 102/2004
s. 5(12).

(21) If a worker withdraws a claim under subsection (20)(b), the worker may submit a new claim as if it were the first claim of that type that the worker was submitting in respect of that injury.

S. 104B(22)
inserted by
No. 41/2006
s. 18(7).

(22) This section as in force before the commencement of section 5 of the **Accident Compensation Legislation (Amendment) Act 2004** applies to a worker to whom subsection (19) or (20)(a) applies with the following modifications—

- (a) as if in subsection (6) as then in force "and of the consequences as specified in subsection (11A) of confirming in writing that he or she wishes to receive any compensation to which he or she is entitled" were omitted;
- (b) as if in subsection (7) as then in force "and if the worker accepts the entitlement to compensation, whether or not he or she

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- wishes to receive the compensation to which he or she is entitled" were omitted;
- (c) as if in subsection (8) as then in force, for "wishes to receive the compensation to which he or she is entitled" there were substituted "accepts the entitlement";
- (d) as if in subsection (10) as then in force "and of the consequences as specified in subsection (11A) of confirming in writing that he or she wishes to receive any compensation to which he or she is entitled" were omitted;
- (e) as if in subsection (10A) as then in force, for "wishes to receive the compensation to which he or she is entitled" there were substituted "accepts or disputes the entitlement to compensation";
- (f) as if in subsection (10B) as then in force, for "wishes to receive the compensation to which he or she is entitled" there were substituted "accepts the entitlement to compensation";
- (g) as if subsection (11A) as then in force were repealed.
- (23) Subject to subsection (22), this section as amended by section 18 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies to an impairment claim whether lodged before, on or after 18 November 2004 unless the worker has before 1 June 2006—
- (a) made an application under section 134AB(4); or

S. 104B(23)
inserted by
No. 41/2006
s. 18(7).

s. 105

- (b) advised the Authority or self-insurer under subsection (7B) or (10A) that he or she wishes to receive the compensation to which he or she is entitled.

S. 105
substituted by
No. 50/1994
s. 50.

105 Medical certificate

S. 105(1)
amended by
No. 9/2010
s. 20(1).

- (1) A medical certificate referred to in section 103 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.

S. 105(1)(c)
amended by
No. 107/1997
s. 30(9).

- (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.

S. 105(3)
amended by
No. 81/1998
s. 23(a).

- (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.

S. 105(4)
substituted by
No. 9/2010
s. 20(2).

- (4) If a worker is unable to receive compensation in the form of weekly payments because he or she does not have a medical certificate in accordance with this section, the worker may apply to the court for a determination of the entitlement of the worker to compensation under this Act.

106 Lodging of claims with Authority in certain circumstances

**S. 106
substituted by
No. 50/1994
s. 50.**

- (1) If a person making a claim for compensation becomes aware that the employer—
- (a) cannot be identified; or
 - (b) cannot be found; or
 - (c) is dead; or
 - (d) is a corporation that has been wound up; or
 - (e) has not complied or is not likely to comply with section 108; or
 - (f) is refusing to receive the claim—
- that person must lodge the claim with the Authority.
- (2) Subsection (1) does not apply to a claim in respect of an injury arising wholly out of or in the course of or due to the nature of employment on or after 4 p.m. on 30 June 1993.
- (3) 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 on or after 4 p.m. on 30 June 1993, becomes aware that the employer—
- (a) has not complied or is not likely to comply with section 108; or
 - (b) is refusing to receive the claim—
- that person must lodge the claim with the Authority.
- (4) A claim for weekly payments which purports to be lodged in accordance with this section when the conditions specified in this section do not apply is deemed not to have been made if within

**S. 106(1)
amended by
No. 81/1998
s. 23(g).**

**S. 106(3)
amended by
No. 81/1998
s. 23(h).**

**S. 106(4)
inserted by
No. 102/2004
s. 26(2).**

s. 107

14 days of the claim being lodged the claim is returned to the claimant with a notice under subsection (5).

S. 106(5)
inserted by
No. 102/2004
s. 26(2).

- (5) 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.

S. 107
substituted by
No. 50/1994
s. 50,
amended by
Nos 81/1998
s. 23(c),
102/2004 s. 27
(ILA s. 39B(1)).

107 Provision of information to claimant

S. 107(2)
inserted by
No. 102/2004
s. 27.

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

S. 107(3)
inserted by
No. 102/2004
s. 27.

- (3) If the Authority, a self-insurer or an employer believes on reasonable grounds that the information requested under subsection (1) includes information which 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, self-insurer or 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.
- (4) 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 III apply.

S. 107(4)
inserted by
No. 102/2004
s. 27.

107A General right of access to information under this Act

S. 107A
inserted by
No. 102/2004
s. 28.

- (1) Subject to this Act, the Authority or 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) This section is to be construed as being in addition to the right conferred under section 107.
- (3) The Authority or self-insurer 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;
 - (b) if the decision is to provide all or part of the information requested under subsection (1), 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—

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- (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 or self-insurer believes on reasonable grounds that the information requested under subsection (1) 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 or self-insurer must not give access to that health information; and
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- (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 or a self-insurer to comply with this section is to be taken to be a dispute to which Divisions 1 and 2 of Part III 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.

108 Responsibilities of employer

S. 108
substituted by
No. 50/1994
s. 50.

- (1) An employer must forward to the Authority—

S. 108(1)
amended by
Nos 81/1998
s. 23(i), 9/2010
s. 159(1).

- (a) any claim for compensation under section 92, 92A or 92B;

S. 108(1)(a)
amended by
No. 107/1997
s. 27(2)(c).

- (ab) any claim for compensation in the form of weekly payments;

S. 108(1)(ab)
inserted by
No. 102/2004
s. 26(3)(a),
substituted by
No. 9/2010
s. 20(3)(a).

- (aba) any relevant medical certificate in accordance with section 105 relating to a claim for compensation in the form of weekly payments;

S. 108(1)(aba)
inserted by
No. 9/2010
s. 20(3)(a).

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S. 108(1)(b)
amended by
No. 107/1997
s. 43(3).

(b) any claim for compensation under
section 98, 98A or 98C;

S. 108(1)(ba)
inserted by
No. 102/2004
s. 26(3)(b),
amended by
No. 9/2010
s. 20(3)(b).

(ba) any claim for compensation under section 99
which comes within the employer's liability
under the employer's excess under section
125(1)(a) or 125A(3) and has not been paid
by the employer or which the employer will
not pay pending a decision by the Authority;

(c) any claim for compensation under section 99
which does not come within the employer's
liability under the employer's excess under
section 125(1)(a) or 125A(3)—

within 10 days after the employer receives the
claim.

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

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

S. 108(2)
repealed by
No. 9/2010
s. 20(4).

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S. 108(3)
amended by
No. 81/1998
s. 23(j),
substituted by
No. 102/2004
s. 26(4),
amended by
No. 9/2010
s. 159(2).

(3) 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
section 99 which do not exceed the employer's
liability under the employer's excess.

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

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

(4) An employer who 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 105, 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—

S. 108(4)
substituted by
Nos 102/2004
s. 26(4),
9/2010
s. 20(5).

(a) commencing—

- (i) after the employer's liability under the excess under section 125A(3)(a) or (b) is reached; or
- (ii) if the claim was accompanied by a medical certificate in accordance with section 105, 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 105, 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 125A(6) applies, commencing—
- (i) immediately after the employer's liability under section 125A(3)(a) or (b) has been met by the Authority; or

(ii) if the claim was accompanied by a medical certificate in accordance with section 105, 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 105, 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.

S. 108(4A)
inserted by
No. 102/2004
s. 26(4).

(4A) The Authority may impose on an employer to whom subsection (4) 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 (5A).

S. 108(4B)
inserted by
No. 102/2004
s. 26(4).

(4B) Subsections (4) and (4A)—

(a) impose a liability and penalty which is in addition to any other liability or penalty under this Act;

(b) do not apply to an employer who is an uninsured employer to whom Part 5 of the **Accident Compensation (WorkCover Insurance) Act 1993** applies;

(c) do not apply to an employer in relation to the employment of a student worker.

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| (4C) If an employer neglects, refuses or is unable to reimburse the Authority in respect of the liability imposed under subsection (4) or section 109(4), the Authority may recover an amount equal to that liability in a court of competent jurisdiction as a debt due to the Authority. | S. 108(4C)
inserted by
No. 102/2004
s. 26(4). |
| (5) If the employer fails without reasonable cause to forward a claim to the Authority as required by this section, the Authority may— | S. 108(5)
amended by
No. 81/1998
s. 23(k). |
| (a) impose on the employer a penalty calculated in accordance with the method determined under subsection (5A); or | S. 108(5)(a)
substituted by
No. 24/2000
s. 3(1). |
| (b) recover as debt due 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. | S. 108(5)(b)
amended by
No. 81/1998
s. 23(l). |
| (5A) 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. | S. 108(5A)
inserted by
No. 24/2000
s. 3(2). |
| (5B) The Authority may recover a penalty imposed under subsection (5)(a) in a court of competent jurisdiction as a debt due to the Authority. | S. 108(5B)
inserted by
No. 24/2000
s. 3(2). |
| (6) This section does not apply to an employer who is a self-insurer or a subsidiary of a self-insurer except in relation to the employment of a student worker. | S. 108(6)
substituted by
No. 47/1996
s. 16. |
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S. 109
substituted by
No. 50/1994
s. 50,
amended by
Nos 81/1998
s. 23(m)(n),
102/2004
s. 26(5)(6),
substituted by
No. 9/2010
s. 21.

109 Responsibilities of self-insurers and the Authority

- (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 105, within 28 days after receiving the claim; or
- (b) if the claim was not accompanied by a medical certificate in accordance with section 105, 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.

- (2) The Authority or a self-insurer must give written notice of a decision to accept or reject a claim for compensation referred to in section 108(1)(ba) or (c) 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 section 99 must, in the case of a decision to reject the claim, include a statement of the reasons for the decision.
- (4) If—
- (a) a worker notifies the Authority of a claim given to the employer under section 103(4F); and
 - (b) the Authority receives from the employer, within the period referred to in section 108(1), the claim and the relevant medical certificate in accordance with section 105, 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
Part.

(5) If—

- (a) a worker notifies the Authority of a claim
given to the employer under section 103(4F)
that is accompanied by a medical certificate
in accordance with section 105; and
- (b) the Authority does not receive the claim
from the employer within the period referred
to in section 108(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
Part.

- (6) If the Authority receives a claim in accordance
with section 103(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 105 from the employer
more than 28 days after the expiry of the period of
10 days referred to in section 108—

s. 109AA

- (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.
- (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 the employer; or
 - (ii) if the claim was not accompanied by a
medical certificate in accordance with
section 105, 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.

S. 109AA
inserted by
No. 9/2010
s. 43.

**109AA Employer may request reasons for decision on a
claim**

- (1) Where the Authority has given notice to a worker
or claimant of its decision to accept, or to reject—
- (a) a claim for compensation in the form of
weekly payments or for compensation under
section 98, 98A or 98C; or

(b) a claim for compensation 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) In this section—

employer means—

- (a) in relation to a claim for compensation in the form of weekly payments or a claim under section 98, 98A or 98C, the worker's employer;
- (b) in relation to a claim for compensation in respect of the death of a worker, the employer of the deceased worker;

proceedings includes—

- (a) the inquiry into, hearing and determination of any question or matter under this Act;
 - (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;
 - (c) seeking any order under the **Administrative Law Act 1978**;
 - (d) any other action or proceeding.
- (4) No proceedings may be brought against the Authority in respect of any question or other matter arising under this section.

s. 110

S. 110
substituted by
No. 50/1994
s. 50.

110 Application by worker to alter amount of weekly payments

S. 110(1)
amended by
No. 81/1998
s. 23(o).

- (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 and must specify in the application the reasons for so applying and provide with the application any supporting evidence.

S. 110(2)
amended by
No. 81/1998
s. 23(o).

- (2) 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.

S. 111
substituted by
No. 50/1994
s. 50.

111 Worker's capacity for work

S. 111(1)
amended by
Nos 81/1998
s. 23(o),
28/2005
s. 22(1).

- (1) Subject to subsection (1A), a worker must provide to the Authority or self-insurer—
 - (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 in any form of employment or in self-employment or voluntary work 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 105.

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- (1A) 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. **S. 111(1A) inserted by No. 28/2005 s. 22(2).**
- (2) A certificate of capacity must—
- (a) be a certificate—
 - (i) under section 105; or
 - (ii) in a form approved by the Authority given by a medical practitioner, registered physiotherapist, registered chiropractor or registered osteopath; and
 - (b) 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 **S. 111(2)(b) amended by No. 107/1997 s. 30(10).**
 - (c) specify the expected duration of the worker's incapacity.
- (3) Despite subsection (2)(b), 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. **S. 111(3)(b) amended by No. 81/1998 s. 23(o).**
- (4) A certificate of capacity is of no effect to the extent that it relates to a period of time before a period of 90 days of the date that the certificate is provided.
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s. 112

S. 112
substituted by
No. 50/1994
s. 50.

112 Medical examinations

S. 112(1)
substituted by
No. 7/1996
s. 27(1),
amended by
No. 81/1998
s. 23(o).

- (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-insurer³³.
- (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
 - (ii) to apply to the County Court or Magistrates' Court—

S. 112(2)(b)(ii)
amended by
No. 107/1997
s. 11(7)(b).

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, subject to this Act, a period or time for the purposes of this Part.
- (4) Any weekly payments which would otherwise be payable during the period of suspension are forfeited.

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No. 10191 of 1985
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(5) In this section *independent medical examiner* means—

S. 112(5)
inserted by
No. 7/1996
s. 27(2).

(a) a medical practitioner; or

(ab) a registered dentist; or

S. 112(5)(ab)
inserted by
No. 102/2004
s. 30.

(b) a registered physiotherapist; or

(c) a registered chiropractor or a registered osteopath; or

S. 112(5)(c)
amended by
No. 74/2000
s. 3(Sch. 1
item 1.3).

(d) a registered psychologist—

approved by the Authority for the purposes of this section.

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S. 113
substituted by
No. 50/1994
s. 50,
amended by
Nos 63/1996
s. 98(Sch.
item 1.2),
81/1998
s. 23(o),
repealed by
No. 9/2010
s. 130(2).

114 Termination or alteration of weekly payments

S. 114
substituted by
No. 50/1994
s. 50.

(1) The Authority or self-insurer may in accordance with this Act terminate a worker's entitlement to weekly payments or 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.

S. 114(1)
amended by
No. 81/1998
s. 23(o).

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S. 114(1A)
inserted by
No. 28/2005
s. 23(1).

(1A) Subsections (2) to (13) only apply if the worker is currently receiving weekly payments as at the date of the change in the entitlement of the worker to weekly payments.

S. 114(2)
amended by
No. 81/1998
s. 23(o).

(2) 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; and

(b) may terminate weekly payments on the ground that—

(i) the worker is not entitled to compensation under Division 1 or 2; 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

S. 114(2)(c)(ii)
amended by
No. 26/2000
s. 4(3),
substituted by
No. 9/2010
s. 45(1).

(ii) in the case of a worker who has current weekly earnings, the amount of the worker's current weekly earnings alters; or

S. 114(2)(c)(iii)
inserted by
No. 26/2000
s. 4(3).

(iii) payments for regular overtime or shift allowances are no longer included in the worker's pre-injury average weekly earnings.

(2A) 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 93CDA—

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.

(2B) If the Authority or a self-insurer makes a determination under subsection (2A)—

- (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.

S. 114(2A)
inserted by
No. 9/2010
s. 45(2).

S. 114(2B)
inserted by
No. 9/2010
s. 45(2).

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S. 114(2C)
inserted by
No. 9/2010
s. 45(2).

(2C) A determination under subsection (2A) takes effect from the day on which the current weekly earnings were reduced or, if the Authority or self-insurer specifies a later date in the determination, on that later date.

S. 114(2D)
inserted by
No. 9/2010
s. 45(3).

(2D) 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.

S. 114(3)
amended by
No. 81/1998
s. 23(o).

(3) The Authority or a self-insurer may terminate weekly payments if it considers that payments were obtained fraudulently.

(4) A termination or alteration of weekly payments on the grounds specified in subsection (2)(a) or (2)(b) has effect—

(a) only if written notice in accordance with subsection (10) is given; and

(b) after the expiry of the required notice period.

(5) A termination or alteration of weekly payments on the grounds specified in subsection (2)(c) or section 93E, 93F, 96, 97(2) or 97(7) has effect—

(a) without the giving of notice; and

(b) as from the day on which the circumstances establishing the relevant ground first arise.

S. 114(5A)
inserted by
No. 41/2006
s. 15(3).

(5A) A termination of weekly payments under section 93EA 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.

(6) A termination of weekly payments on the ground specified in subsection (3) has effect—

- (a) if written notice in accordance with subsection (10) 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.

S. 114(6)(b)
amended by
No. 81/1998
s. 23(a).

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S. 114(7)
amended by
No. 107/1997
s. 30(11)(a),
repealed by
No. 9/2010
s. 130(3)(b).

(8) A reduction of weekly payments solely on the ground of the expiry of the first entitlement period has effect—

- (a) if written notice in accordance with subsection (10) is given; and
- (b) if section 114A has been complied with.

S. 114(8)
amended by
Nos 107/1997
s. 30(11)(b),
9/2010
s. 33(1)(a).

(9) A termination of weekly payments solely on the ground of the expiry of the second entitlement period³⁴ has effect—

- (a) if written notice in accordance with subsection (10) is given; and
- (b) if section 114B has been complied with.

S. 114(9)
amended by
Nos 7/1996
s. 16(3),
107/1997
s. 30(11)(c),
9/2010
s. 33(1)(b).

(9A) A termination of weekly payments under section 93CA has effect—

- (a) without the giving of notice; and
- (b) as from—

S. 114(9A)
inserted by
No. 9/2010
s. 45(4).

- (i) the day on which the worker ceases to suffer incapacity resulting from, or materially contributed to by, the subsequent surgery, or a recurrence of

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that incapacity, whichever is the later;
or

- (ii) the expiry of the period of 13 weeks commencing on the day on which the relevant surgery is performed—

whichever first occurs.

(10) A notice 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 be stopped; and
 - (ii) in the case of alteration, the new level of weekly payments and when payments at the new level will commence.

S. 114(11)
amended by
No. 81/1998
s. 23(o).

(11) 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 111—

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.

S. 114(12)
amended by
No. 81/1998
s. 23(o).

(12) If weekly payments are terminated or reduced in contravention of subsection (11), the worker may recover from the Authority or self-insurer an amount of compensation that—

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- (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.
- (13) 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 1 year—14 days; or
- (b) if the worker has been receiving weekly payments of compensation for a continuous period of 1 year or more—28 days; or
- (c) if the termination of weekly payments is solely on the ground of the expiry of the second entitlement period—13 weeks; or
- (d) if the worker has been receiving compensation in the form of weekly payments under section 93CD and ceases to be entitled to receive such compensation—28 days; or
- S. 114(13) amended by No. 9/2010 s. 130(3)(a).**
- S. 114(13)(b) amended by No. 41/2006 s. 20(a).**
- S. 114(13)(c) inserted by No. 41/2006 s. 20(b), amended by No. 9/2010 ss 33(1)(b), 45(5)(a).**
- S. 114(13)(d) inserted by No. 9/2010 s. 45(5)(b).**
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S. 114(13)(e)
inserted by
No. 9/2010
s. 45(5)(b).

- (e) if the worker has been receiving compensation in the form of weekly payments under section 93CD 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.

S. 114AA
inserted by
No. 9/2010
s. 46.

114AA Termination of compensation in the form of superannuation contributions

- (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 in accordance with subsection (3) to the worker—
 - (a) stating the reasons for the termination; and
 - (b) stating when the payments will cease.
- (3) A notice in writing under subsection (2) must be given—
 - (a) if compensation in the form of superannuation contributions has been paid in respect of worker for a continuous period

of at least 12 weeks and not more than 1 year—at least 14 days before the termination;

- (b) if compensation in the form of superannuation contributions has been paid in respect of the worker for a continuous period of 1 year or more—at least 28 days before the termination.

114A Reduction of weekly payments after the first entitlement period

- (1) Weekly payments must not be reduced under section 114(8)—

- (a) unless the Authority or self-insurer has made a determination of the worker's entitlement under section 93B; and

- (b) until the Authority or self-insurer has given at least 14 days notice under section 114 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 on the date immediately after the completion of the first entitlement period or, if the date specified in the notice is a later date, the later date.

S. 114A
(Heading)
inserted by
No. 9/2010
s. 33(2).

S. 114A
inserted by
No. 50/1994
s. 50.

S. 114A(1)(a)
amended by
Nos 107/1997
s. 30(11)(e),
81/1998
s. 23(o),
9/2010
s. 33(3)(a)(i).

S. 114A(1)(b)
amended by
No. 81/1998
s. 23(o).

S. 114A(2)
amended by
Nos 107/1997
s. 30(11)(d),
9/2010
s. 33(3)(a)(ii).

Accident Compensation Act 1985
No. 10191 of 1985
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s. 114A

S. 114A(3)
amended by
Nos 107/1997
s. 30(11)(d)(f)–
(h), 82/2001
s. 21, 9/2010
s. 33(3)(a)(ii)–
(iv).

- (3) Despite anything to the contrary in section 93B, 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 93B(2)(a) or (3)(a) provided that the worker is but for the expiry of 13 weeks otherwise entitled to weekly payments.

S. 114A(4)
amended by
No. 107/1997
s. 30(11)(d),
repealed by
No. 107/1997
s. 30(11)(i).

* * * * *

S. 114A(5)
amended by
No. 107/1997
s. 30(11)(j).

- (5) Subsections (1)(b), (2) and (3) do not apply if—

S. 114A(5)(a)
amended by
No. 107/1997
s. 30(11)(d),
repealed by
No. 107/1997
s. 30(11)(k).

* * * * *

S. 114A(5)(b)
amended by
Nos 107/1997
s. 30(11)(d),
9/2010
s. 33(3)(a)(ii).

- (b) the claim for weekly payments is made within the period of 42 days before the expiry of the first entitlement period.

S. 114A(6)
amended by
Nos 107/1997
s. 30(11)
(d)(f)(i), 9/2010
s. 33(3)(a)(ii)(v).

- (6) If subsection (5)(b) 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 93B.

114B Termination of weekly payments after expiry of entitlement period

S. 114B
inserted by
No. 50/1994
s. 50.

(1) Weekly payments must not be terminated under section 114(9)—

S. 114B(1)
amended by
Nos 7/1996
s. 16(4),
107/1997
s. 30(11)(m),
81/1998
s. 23(o),
substituted by
No. 41/2006
s. 21(1).

(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

S. 114B(1)(a)
amended by
No. 9/2010
s. 33(3)(b)(i).

(b) until the Authority or self-insurer has given at least 13 weeks notice under section 114 of the determination following the making of the determination.

(1A) A determination under subsection (1) may be made before or after the expiry of the second entitlement period so as to terminate payments at or after the expiry of that entitlement period.

S. 114B(1A)
inserted by
No. 41/2006
s. 21(1),
amended by
No. 9/2010
s. 33(3)(b)(i).

(2) 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 period³⁵ but has effect on the date immediately after the completion of the second entitlement period or, if the date specified in the notice is a later date, the later date.

S. 114B(2)
amended by
Nos 7/1996
s. 16(5),
107/1997
s. 30(11)(m),
9/2010
s. 33(3)(b)(i).

Accident Compensation Act 1985
No. 10191 of 1985
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S. 114B(3)
substituted by
No. 7/1996
s. 16(6),
amended by
Nos 107/1997
s. 30(11)
(m)–(o),
28/2005
s. 23(2)(a)(b),
9/2010
s. 33(3)(b)(ii)–
(iv).

S. 114B(4)
substituted by
No. 7/1996
s. 16(7),
amended by
Nos 107/1997
s. 30(11)(m),
41/2006
s. 21(2),
9/2010
s. 33(3)(b)(iv).

S. 114B(5)
substituted by
No. 7/1996
s. 16(7),
amended by
Nos 107/1997
s. 30(11)
(m)(p), 9/2010
s. 33(3)(b)
(iv)(v).

- (3) If subsection (1) applies and notwithstanding anything to the contrary in section 93C(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 93B 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 payments³⁶.
- (4) Subsections (1)(b), (2) and (3) do not apply if the claim for weekly payments is made within the period of 119 days before the expiry of the second entitlement period³⁷.
- (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 second entitlement period must be determined in accordance with section 93C(1)³⁸.

S. 114BA
inserted by
No. 9/2010
s. 16.

114BA Notice of reduction of weekly payments

- (1) On becoming aware that section 82A, 82B or 82C 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 114(10) 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 114(13) does not apply to a notice given under subsection (1) of this section.

114C Time for payment

S. 114C
inserted by
No. 50/1994
s. 50.

- (1) If a Conciliation Officer directs, or the Magistrates' Court or the County Court determines, that weekly payments are payable by the Authority or self-insurer and the Authority or self-insurer has not already commenced payment, the Authority or self-insurer must commence payment within 7 days after the direction or determination.
- (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 114E must commence to be paid within 7 days after the claim is accepted.
- (4) If a Conciliation Officer directs or the Magistrates' Court or the County Court determines, that weekly payments be made, section 114E applies and the entitlement of the worker to weekly payments commences on the date specified by the Conciliation Officer or by the Magistrates' Court or the County Court.

S. 114C(1)
amended by
No. 81/1998
s. 23(o).

S. 114C(2)
amended by
No. 81/1998
s. 23(o).

S. 114C(3)
amended by
No. 81/1998
s. 23(o).

s. 114D

114D Payment of weekly payments

S. 114D
inserted by
No. 50/1994
s. 50.

S. 114D(1)
amended by
Nos 47/1996
s. 17(a),
81/1998
s. 23(p).

- (1) If a worker is entitled to weekly payments, the Authority unless the Authority determines otherwise, must make the payments to the worker's employer.

S. 114D(2)
amended by
Nos 47/1996
s. 17(b),
81/1998
s. 23(q),
9/2010 s. 160.

- (2) If an employer is notified by the Authority that a worker is entitled to weekly payments, the employer must make weekly payments to the worker in accordance with subsection (6).

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

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

S. 114D(3)
amended by
Nos 47/1996
s. 17(b),
81/1998
s. 23(q).

- (3) 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.

S. 114D(4)
amended by
Nos 7/1996
s. 28, 81/1998
s. 23(q).

- (4) If an employer to whom subsection (3) 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.

S. 114D(5)
amended by
No. 81/1998
s. 23(q).

- (5) If the Authority does not reimburse the employer in respect of a payment referred to in subsection (3) 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.

- (6) 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.
- (7) A weekly payment may be made by post by properly addressing, prepaying and posting to the worker a letter containing a cheque for the amount of the weekly payment.
- (8) A weekly payment made in accordance with subsection (7) is deemed to have been made when the letter was posted.
- (9) The liability to a worker is not satisfied until the worker receives the weekly payment.
- (10) In subsections (1) to (5) **employer** means a person who is or has been an employer of the worker and whom the Authority determines to be the employer for the purposes of this section but does not include a self-insurer or a subsidiary of a self-insurer except in relation to the employment of a student worker.

S. 114D(10)
amended by
Nos 47/1996
s. 17(c)(i)(ii),
81/1998
s. 23(q).

114E Outstanding weekly payments

S. 114E
inserted by
No. 50/1994
s. 50.

- (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—
 - (a) if a Conciliation Officer directs that weekly payments be commenced or continued to be paid at the current rate or increased, from the day—

S. 114E(1)
amended by
No. 41/2006
s. 22(1).

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 114E

S. 114E(1)
(a)(iii)
amended by
No. 81/1998
s. 23(o).

- (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;

S. 114E(1)(b)
amended by
No. 41/2006
s. 22(2).

- (b) subject to subsection (1A), 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;

S. 114E(1)(c)
amended by
No. 41/2006
s. 22(2).

- (c) subject to subsection (1A), 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;

S. 114E(1)(d)
amended by
No. 41/2006
s. 22(2).

- (d) subject to subsection (1A), 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;

S. 114E(1)(e)
amended by
No. 81/1998
s. 23(m).

- (e) if an employer, the Authority or a self-insurer fails to make any weekly payment as and when required by the 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.

- (1A) If a worker has not made an application to the Magistrates' Court or the County Court within one year of being notified by a Conciliation Officer under section 59(4) that the Conciliation Officer is satisfied that there is a genuine dispute with respect to the liability to make or continue to make weekly payments and that an application may be made to the Magistrates' Court or the County 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.
- (2) 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).
- (3) Subsection (2) does not apply to a self-insurer or a subsidiary of a self-insurer except in relation to the employment of a student worker.

S. 114E(1A)
inserted by
No. 41/2006
s. 22(3).

S. 114E(2)
amended by
Nos 47/1996
s. 18(1),
81/1998
s. 23(r).

S. 114E(3)
inserted by
No. 47/1996
s. 18(2).

114EA Outstanding superannuation contributions

S. 114EA
inserted by
No. 9/2010
s. 47.

- (1) Subject to subsection (2), outstanding payments of compensation in the form of superannuation contributions under section 93CE, and 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 93CE for the benefit of the worker if a decision to terminate superannuation contributions under section 114AA is set aside by the court.
- (2) If a worker has not made an application to the court within one year after being notified by a Conciliation Officer that the Conciliation Officer is satisfied that there is a dispute with respect to liability to make or continue to make payments of

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compensation in the form of superannuation contributions under section 93CE and 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 114E, outstanding payments of compensation in the form of weekly payments are payable in the circumstances referred to in section 114E(1)(b), (c) or (d), then, subject to section 93CE, compensation in the form of superannuation contributions under that section in respect of those outstanding payments and interest at the prescribed rate on each such payment are also payable.

S. 114EB
inserted by
No. 9/2010
s. 47.

114EB 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.

114F Recovery of payments

S. 114F
inserted by
No. 50/1994
s. 50.

- (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.
- (2) 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 the Act.

S. 114F(1)
amended by
No. 81/1998
s. 23(m).

S. 114F(2)
amended by
No. 81/1998
s. 23(k)(s).

Division 3AA—Employer objections

Pt 4 Div. 3AA
(Heading and
ss 114H–
114R)
inserted by
No. 9/2010
s. 91.

114H Definition

S. 114H
inserted by
No. 9/2010
s. 91.

In this Division—

claimed employer means an employer that—

- (a) considers that section 114I(1)(a) or (b) applies to the employer; and
- (b) makes a lodged objection under section 114I;

lodged objection means an objection made by a claimed employer and received by the Authority under section 114I;

proceedings includes—

- (a) the inquiry into, hearing and determination of any question or matter under this Act;

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- (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;
- (c) seeking any order under the **Administrative Law Act 1978**;
- (d) any other action or proceeding.

S. 114I
inserted by
No. 9/2010
s. 91.

114I 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, the claimed employer may lodge an objection with the Authority in respect of that decision to accept the claim if the claimed employer considers that—
 - (a) the alleged worker is not a worker within the meaning of this Act; or
 - (b) the claimed employer was not the correct employer of the worker at the time of the injury or death.
- (2) An objection lodged by a claimed 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 114J 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 claimed 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 (WorkCover Insurance) Act 1993**.

114J Objection lodged out of time

**S. 114J
inserted by
No. 9/2010
s. 91.**

- (1) The Authority may permit a claimed employer to lodge an objection with the Authority after the period specified in section 114I(2)(d).
- (2) The claimed 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.

114K Authority may refuse to review a decision to which a claimed employer has objected

**S. 114K
inserted by
No. 9/2010
s. 91.**

- (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—

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- (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.

S. 114L
inserted by
No. 9/2010
s. 91.

114L 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 114N.

S. 114M
inserted by
No. 9/2010
s. 91.

114M Request for information and suspension of review

- (1) The Authority may suspend consideration of a lodged objection and review if the claimed employer fails to provide information relevant to the review that the Authority has requested under this Act.
- (2) If the Authority suspends consideration of a lodged objection and review under subsection (1), the Authority must give the claimed employer written notice of the suspension which states—
- (a) that the suspension takes effect on service of the notice; and
 - (b) that the review has been suspended pending the provision of the information relevant to the review that the Authority has requested under this Act; and

-
- (c) the details of the requested information; and
 - (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.
- (3) 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.
- (4) If a claimed employer is deemed to have had a lodged objection withdrawn under subsection (3), the claimed employer may again lodge an objection in respect of the same decision that was the subject of the deemed withdrawn lodged objection.
- (5) An objection lodged under subsection (4) 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 (3); and
 - (b) is accompanied by the information specified in the notice of suspension.
- (6) If the objection of a claimed employer is deemed to be withdrawn under subsection (3) and the claimed employer fails to lodge the objection again in accordance with subsection (5), the decision of the Authority to accept the claim for compensation against the claimed employer is deemed to be confirmed.
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- (7) Proceedings to seek review of a deemed confirmation under subsection (6), must not be brought, whether against the Authority or otherwise.

**S. 114N
inserted by
No. 9/2010
s. 91.**

114N Decision following review

- (1) The Authority must, after reviewing an objection lodged under section 114I—
- (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.
- (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.

114O Appeals

S. 114O
inserted by
No. 9/2010
s. 91.

- (1) Despite anything to the contrary in section 39(1), if a claimed employer—
- (a) is not satisfied with the decision made by the Authority under section 114N (including a deemed decision under that section); or
 - (b) has received notice that the Authority has declined to consider the objection and conduct a review under section 114K—
- 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 114N(3) must be made within 60 days of the decision being deemed.

114P Grounds of appeal

S. 114P
inserted by
No. 9/2010
s. 91.

On an appeal—

- (a) the claimed employer's case is limited to the grounds of the objection under section 114I; and
- (b) the Authority's case is limited to the grounds on which the Authority made a decision under section 114N—

unless the Supreme Court otherwise orders.

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S. 114Q
inserted by
No. 9/2010
s. 91.

114Q 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;
 - (b) by order confirm, reduce or vary the decision of the Authority under section 114N.
- (2) If the Supreme Court determines—
 - (a) the alleged worker is not a worker within the meaning of this Act; 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.

S. 114R
inserted by
No. 9/2010
s. 91.

114R Costs of worker

If the worker is joined as a party to proceedings commenced by the claimed employer under section 114O, unless the 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.

Division 3A—Voluntary settlements

New Pt 4
Div. 3A
(Heading)
inserted by
No. 50/1994
s. 50,
substituted by
No. 82/2001
s. 3.

**Subdivision 1—Settlements for certain serious injuries
suffered on or after 12 November 1997 and before
20 October 1999**

Pt 4 Div. 3A
Subdiv. 1
(Heading)
inserted by
No. 82/2001
s. 3.

115 Who this Subdivision applies to

S. 115
substituted by
Nos 64/1989
s. 10, 67/1992
s. 31,
amended by
Nos 50/1993
ss 78(1)(c),
100, 50/1994
s. 52, 7/1996
s. 29(1)-(4),
107/1997
ss 30(11)(q),
44(1)(2),
81/1998
ss 24(1)(a)(b),
30,
substituted by
No. 82/2001
s. 3.

This Subdivision applies to a worker—

- (a) who suffered an injury arising out of, or in the course of, or due to the nature of, employment on or after 12 November 1997 and before 20 October 1999; and
- (b) who is receiving weekly payments of compensation in respect of the injury, or who would be entitled to receive such payments but for the operation of section 96(2); and
- (c) who has been assessed in respect of the injury as having no current work capacity and as likely to continue indefinitely to have no current work capacity; and
- (d) who has received weekly payments in respect of the injury for at least 104 weeks; and
- (e) who has been assessed, in accordance with sections 91 and 115C, as having a 30% or more degree of impairment in respect of the injury.

s. 115A

New s. 115A
inserted by
No. 82/2001
s. 3.

115A 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 section 99) with respect to the injury.
- (2) The application must be made in accordance with Subdivision 5.

Note

Although this Subdivision is intended to come into operation on the day after the **Accident Compensation (Amendment) Act 2001** receives the Royal Assent, section 119(3) will have the effect of delaying the application process under this Subdivision. The process can be delayed from starting until a date that can be no later than 1 July 2002.

S. 115B
inserted by
No. 82/2001
s. 3.

115B Calculation of settlement amount

- (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 96(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 96(2), would be, entitled as at the notification date.

B is the number in Column 2 of Schedule 1 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 96(2), the day after the specified period defined in section 96(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 119.

s. 115C

S. 115C
inserted by
No. 82/2001
s. 3.

115C Procedure for assessment of impairment

For the purposes of section 115(e)—

- (a) the worker must—
 - (i) have made a claim for compensation under section 98C; and
 - (ii) have had the degree of his or her impairment assessed under section 104B; and
- (b) either—
 - (i) the worker must have advised the Authority or self-insurer under section 104B(7) that he or she accepts the assessments; or
 - (ii) the assessments must have been referred to a Medical Panel under section 104B(9) and the Medical Panel must have given its opinion in relation to the assessments.

S. 115D
inserted by
No. 82/2001
s. 3.

115D Notice to worker

- (1) This section applies if the Authority or self-insurer is of the opinion that a worker satisfies the requirements set out in paragraphs (a), (c), (d) and (e) of section 115.
- (2) The Authority or self-insurer may give the worker a written notice advising him or her—
 - (a) that it is of that opinion, as at the date of the notice; and
 - (b) that he or she may be eligible to apply for a settlement under this Subdivision.
- (3) The Authority or self-insurer may only give a notice under this section on or after the relevant date (as defined in section 115E(1)).

115E Existing assessments to be used

S. 115E
inserted by
No. 82/2001
s. 3.

- (1) In this section *relevant date* means the earliest date an expression of interest in applying for a settlement under this Subdivision may be lodged under section 119(3).
- (2) This section applies if, before the relevant date—
 - (a) a worker had the degree of his or her impairment assessed under section 104B; and
 - (b) either—
 - (i) the worker has advised the Authority or self-insurer under section 104B(7) that he or she accepts the assessments; or
 - (ii) the assessments have been referred to a Medical Panel under section 104B(9) and the Medical Panel has given its opinion in relation to the assessments.
- (3) Subject to sections 115F and 115G, the assessments are deemed to be assessments for the purposes of this Subdivision.

115F Transitional provision for workers who have had psychiatric impairment assessed

S. 115F
inserted by
No. 82/2001
s. 3.

- (1) This section applies if—
 - (a) section 115E applies; and
 - (b) the worker has had the degree of his or her impairment assessed under section 104B and the assessment process included an assessment of psychiatric impairment in accordance with section 91; and
 - (c) either—
 - (i) the worker has advised the Authority or self-insurer under section 104B(7) that he or she accepts the assessments; or

s. 115G

- (ii) the assessments have been referred to a Medical Panel under section 104B(9) and the Medical Panel has given its opinion in relation to the assessments.
- (2) The Authority or self-insurer must combine the assessment for psychiatric impairment with the assessments for any other impairments that were assessed, using the combination tables in the *A.M.A. Guides*.
- (3) The result obtained by combining the assessments is the assessment for the purposes of this Subdivision.
- (4) In this section *A.M.A. Guides* has the same meaning as it has in section 91(8).

S. 115G
inserted by
No. 82/2001
s. 3.

115G Transitional provisions for workers who have not had psychiatric impairment assessed

- (1) This section applies if section 115E applies, but no assessment was made of any psychiatric impairment of the worker.
- (2) The worker may apply to the Authority or self-insurer in writing for an assessment under section 104B of his or her degree of permanent psychiatric impairment for the purposes of this Subdivision.
- (3) An application under subsection (2) must be made in a form approved by the Authority.
- (4) For the purposes of this section, sections 104B(2), 104B(3), 104B(4) and 104B(11) apply as if a reference in those sections to a claim was a reference to the application.
- (5) The purpose of a further assessment under this section is—
 - (a) to assess the degree of the worker's permanent psychiatric impairment in accordance with section 91; and

- (b) if such an impairment exists, to combine the assessment for the psychiatric impairment with the assessments for any other impairments that were assessed in the initial assessments, using the combination tables in the A.M.A. Guides to obtain a result for the purposes of this Subdivision.
- (6) The result of a further assessment under this section is the assessment for the purposes of this Subdivision.
- (7) During a further assessment, any result of the initial assessment—
 - (a) must not be re-assessed; and
 - (b) must be adopted for the purposes of subsection (5)(b).
- (8) For the purposes of subsection (5), the only medical question that may be referred to a Medical Panel under section 104B(9) is a question as to the worker's degree of permanent psychiatric impairment in accordance with section 91 resulting from the injury.
- (9) The results of any further assessments made under this section can only be used for the purposes of this section.
- (10) In this section *A.M.A. Guides* has the same meaning as it has in section 91(8).

115H Certain workers may re-start section 98C claim

S. 115H
inserted by
No. 82/2001
s. 3.

- (1) In this section *relevant date* has the same meaning as it has in section 115E(1).
- (2) This section applies if a worker submitted a claim for compensation under section 98C before the relevant date, but had not, before that date, either—

s. 115I

- (a) advised the Authority or self-insurer under section 104B(7) that he or she accepts assessments under section 104B of the degree of his or her impairment; or
 - (b) had such assessments referred to the Medical Panel under section 104B(9) and had the Medical Panel give its opinion in relation to the assessments.
- (3) The worker may, by notice in writing given to the Authority or self-insurer, withdraw his or her claim.
 - (4) If a worker withdraws a claim under this section, he or she may submit a new claim under section 98C as if it was the first claim he or she was submitting in respect of the injury under that section.

S. 115I
inserted by
No. 82/2001
s. 3.

115I Continuation of existing claims

- (1) In this section *relevant date* has the same meaning as it has in section 115E(1).
- (2) This section applies if section 115H applies to a worker, but the worker does not withdraw his or her claim in accordance with that section.
- (3) Sections 115E(3), 115F and 115G apply in respect of any assessments of the degree of the worker's impairment made for the purposes of section 104B before the relevant date.
- (4) Any assessments that are still to be made are to be made under section 104B as amended by section 6 of the **Accident Compensation (Amendment) Act 2001**.

**Subdivision 2—Settlements for certain injuries suffered on
or after 4.00 p.m. on 31 August 1985 and before
1 December 1992**

Pt 4 Div. 3A
Subdiv. 2
(Heading and
ss 116–116C)
inserted by
No. 82/2001
s. 3.

116 Who this Subdivision applies to

New s. 116
inserted by
No. 82/2001
s. 3.

(1) This Subdivision applies to a worker—

(a) who suffered an injury arising out of, or in the course of, or due to the nature of, employment on or after 4.00 p.m. on 31 August 1985 and before 1 December 1992; and

(b) who was—

(i) on 3 September 2001; and

(ii) on the notification date—

receiving weekly payments of compensation in respect of the injury, or who would have been entitled to receive such payments on both of those dates but for the operation of section 96(2); and

(c) who has been assessed in respect of the injury as having either—

(i) no current work capacity and as likely to continue indefinitely to have no current work capacity; or

(ii) a serious injury within the meaning of section 91E; and

S. 116(1)(c)(ii)
amended by
No. 9/2010
s. 33(3)(c).

(d) who had, as at 3 September 2001, received weekly payments in respect of the injury for at least 104 weeks.

s. 116A

- (2) In this section *notification date* means the date on which the Authority or self-insurer receives an expression of interest from the worker under section 119.

New s. 116A
inserted by
No. 82/2001
s. 3.

116A 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 section 99) with respect to the injury.
- (2) The application must be made in accordance with Subdivision 5.

Note

Although this Subdivision is intended to come into operation on the day after the **Accident Compensation (Amendment) Act 2001** receives the Royal Assent, section 119(4) will have the effect of delaying the application process under this Subdivision. The process can be delayed from starting until a date that can be no later than 1 July 2002.

S. 116B
inserted by
No. 82/2001
s. 3.

116B Calculation of settlement amount

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 116C.

S. 116C
inserted by
No. 82/2001
s. 3.

116C Order in Council concerning settlements

- (1) The Governor in Council, may by Order made on the recommendation of the Minister, 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—Other settlements in specific circumstances

Pt 4 Div. 3A
Subdiv. 3
(Heading and
ss 117–117G)
inserted by
No. 82/2001
s. 3.

117 Who this Subdivision applies to

New s. 117
inserted by
No. 82/2001
s. 3.

This Subdivision applies to a worker who is receiving, or who is entitled to receive, compensation under this Act (other than section 99) if—

- (a) the claim for the payment of weekly payments was received by the Authority or a self-insurer before 1 January 2005 and the worker—
 - (i) is over the age of 55 years; and
 - (ii) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and
 - (iii) has been receiving weekly payments for at least 104 weeks; or

S. 117(a)
amended by
No. 41/2006
s. 5(6).

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 117A

S. 117(aa)
inserted by
No. 41/2006
s. 5(7).

(aa) the claim for the payment of weekly payments was received by the Authority or self-insurer on or after 1 January 2005 and the worker—

(i) is over the age of 55 years; and

(ii) has no current work capacity and is likely to continue indefinitely to have no current work capacity; and

(iii) has been receiving weekly payments for at least 130 weeks; or

(b) the worker—

S. 117(b)(i)
amended by
No. 9/2010
s. 33(3)(d).

(i) has a serious injury within the meaning of section 91E; and

(ii) has been receiving weekly payments for at least 104 weeks.

S. 117A
inserted by
No. 82/2001
s. 3.

117A 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 section 99) with respect to the injury.

(2) The application must be made in accordance with Subdivision 5.

S. 117B
inserted by
No. 82/2001
s. 3.

117B Amount of settlement

(1) The amount of the settlement is the amount resulting from applying the following formula—

$$A \times C$$

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 96(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 96(2),
would be, entitled as at the notification
date.

C is the number in Column 3 of Schedule 1
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
96(2), the day after the specified period
defined in section 96(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.

s. 117C

- (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 119.

S. 117C
inserted by
No. 82/2001
s. 3.

117C Transitional provision concerning applications under former section 115(1)(a)

- (1) In this section **relevant date** means the day after the day on which the **Accident Compensation (Amendment) Act 2001** receives the Royal Assent.
- (2) Any application that was made under section 115(1)(a) as in force immediately before the relevant date and that had not been determined before that date—
- (a) is deemed to be the giving, on the date the application was received by the Authority or self-insurer, of an expression of interest in applying for a settlement under this Subdivision; and
 - (b) is to be dealt with on the basis of this Act as amended by Part 2 of the **Accident Compensation (Amendment) Act 2001**.

S. 117D
inserted by
No. 82/2001
s. 3.

117D Transitional provision concerning former section 115(1)(b) claims

- (1) In this section **relevant date** has the same meaning as it has in section 117C(1).
- (2) Regulation 17 of the Accident Compensation Regulations 2001 is **revoked**.
- (3) Any application made under regulation 17 or 25 of the Accident Compensation Regulations 1990 that had not been determined before the relevant date—
- (a) is deemed to be the giving, on the date the application was received by the Authority or self-insurer, of an expression of interest in

applying for a settlement under this
Subdivision; and

- (b) is to be dealt with on the basis of this Act as
amended by Part 2 of the **Accident
Compensation (Amendment) Act 2001**.

**117E Qualification concerning operation of sections 117C
and 117D**

S. 117E
inserted by
No. 82/2001
s. 3.

- (1) In this section *relevant date* has the same meaning
as it has in section 117C(1).
- (2) Despite sections 117C(2) and 117D(3), the
Authority or self-insurer is not required to give the
worker a response under section 119B until it
receives any documents required by section
119(2)(b).
- (3) As soon as is practicable after the relevant date,
the Authority or self-insurer must advise the
worker in writing of the effect of section 117C(2)
or 117D(3) (as the case may be) and of
subsection (2).

**117F Further qualification concerning operation of
sections 117C and 117D**

S. 117F
inserted by
No. 82/2001
s. 3.

- (1) Despite sections 117C(2) and 117D(3), if a
worker who made an application referred to in
either of those sections is, or may be, a worker to
whom Subdivision 1 or 2 applies, the Authority or
self-insurer must not proceed any further with the
application unless—
- (a) the Authority or self-insurer advises the
worker that he or she is, or may be, eligible
to apply for a settlement under Subdivision 1
or 2 and should obtain advice in relation to
that matter; and

s. 117G

- (b) the worker advises the Authority or self-insurer in writing that he or she wishes the Authority or self-insurer to proceed with the application.
- (2) The worker may withdraw the application at any time before the worker gives the Authority or self-insurer advice under subsection (1)(b) without prejudice to his or her right to make an application under Subdivision 1 or 2.

S. 117G
inserted by
No. 82/2001
s. 3.

117G Exception to sections 117C(2) and 117D(3)

- (1) Sections 117C(2) and 117D(3) do not apply to an application that was received—
 - (a) by the Authority on or before 3 November 2000; or
 - (b) by a self-insurer before 28 November 2000.
- (2) Applications received before the relevant date specified in subsection (1) are to be dealt with on the basis of this Act as in force immediately before the commencement of section 3 of the **Accident Compensation (Amendment) Act 2001**.

Pt 4 Div. 3A
Subdiv. 4
(Heading and
ss 118–118C)
inserted by
No. 82/2001
s. 3.

Subdivision 4—Other settlements

New s. 118
inserted by
No. 82/2001
s. 3.

118 Application of this Subdivision

This Subdivision applies if—

- (a) a worker is receiving, or is entitled to receive, compensation under this Act (other than section 99) with respect to an injury; and

- (b) the regulations state that the worker may apply for the settlement of his or her entitlement under the Act (other than section 99) in any particular circumstances specified by the regulations.

118A Right to apply for settlement

New s. 118A
inserted by
No. 82/2001
s. 3.

- (1) A worker to whom this Subdivision applies may apply for the settlement of his or her entitlement under this Act (other than section 99) with respect to the injury.
- (2) The application must be made in accordance with Subdivision 5.

118B Amount of settlement

New s. 118B
inserted by
No. 82/2001
s. 3.

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 118C.

118C Order in Council concerning settlements

S. 118C
inserted by
No. 82/2001
s. 3.

- (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.

Pt 4 Div. 3A
Subdiv. 5
(Heading and
ss 119–119L)
inserted by
No. 82/2001
s. 3.

Subdivision 5—Application procedure

New s. 119
inserted by
No. 82/2001
s. 3.

119 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 119L.
- (3) An expression of interest in applying for a settlement under Subdivision 1 is only valid if it is given on or after whichever of these dates occurs first—
 - (a) the date specified for the purposes of this subsection by the Minister in a notice published in the Government Gazette; or
 - (b) 1 July 2002.

- (4) An expression of interest in applying for a settlement under Subdivision 2 is only valid if it is given on or after whichever of these dates occurs first—
- (a) the date specified for the purposes of this subsection by the Minister in a notice published in the Government Gazette; or
 - (b) 1 July 2002.

119A Time limits apply to some expressions of interest

**S. 119A
inserted by
No. 82/2001
s. 3.**

- (1) A worker who is entitled to apply for a settlement under Subdivision 1 and who is given a notice under section 115D must give the Authority or self-insurer an expression of interest before the expiry of 12 months from the date the notice was given to the worker.
- (2) A worker who is entitled to apply for a settlement under Subdivision 2 must give the Authority or self-insurer an expression of interest before the expiry of 3 months from the earliest date a valid expression of interest in applying for a settlement under that Subdivision may be lodged under section 119(4).
- (3) If a worker fails to comply with subsection (1), the worker ceases to be entitled to apply for a settlement under Subdivision 1.
- (4) If a worker fails to comply with subsection (2), the worker ceases to be entitled to apply for a settlement under Subdivision 2.

119B Authority or self-insurer must respond to expression of interest

**S. 119B
inserted by
No. 82/2001
s. 3.**

- (1) On receiving an expression of interest in applying for a settlement from a worker, the Authority or self-insurer must give the worker a written response to the expression of interest.

s. 119B

-
- (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 this Division 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 119L, 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.
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119C Application for settlement

**S. 119C
inserted by
No. 82/2001
s. 3.**

- (1) This section applies if a worker is given a response from the Authority or a self-insurer under section 119B(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 119L.

119D Time limit for making applications

**S. 119D
inserted by
No. 82/2001
s. 3.**

- (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 119B(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 ceases to be entitled to apply for a settlement under that Subdivision.
- (3) If a worker who is entitled to apply for a settlement under Subdivision 3 or 4 fails to comply with subsection (1), the worker is not entitled to apply for a settlement under that Subdivision 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 119B(2).

s. 119E

S. 119E
inserted by
No. 82/2001
s. 3.

119E 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 119B(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.
- (5) A worker—
 - (a) who applied for a settlement under Subdivision 1 or 2; and
 - (b) who is given a notice under subsection (4)—ceases to be entitled to apply for a settlement under that Subdivision in respect of the injury.

S. 119F
inserted by
No. 82/2001
s. 3.

119F 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.

119G Payment and nature of settlement amounts

S. 119G
inserted by
No. 82/2001
s. 3.

- (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 119L.
- (2) A settlement payment under this Division is a capital sum for loss of earning capacity.

119H Adjustment of settlement amount offers

S. 119H
inserted by
No. 82/2001
s. 3.

- (1) This section applies if the Authority or a self-insurer becomes aware at any time after providing the response required by section 119B, 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 amount does not comply with this Division and explaining the effect of this section; and
 - (b) an amended written response complying with section 119B.
- (3) For the purposes of section 119D(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 made under section 115B(2) or 117B(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% greater than the last settlement amount previously advised; and

(ii) \$5 000 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) In any other case, if—

(a) a worker has obtained financial advice in respect of a response from the Authority or self-insurer that has been amended under this section; and

(b) the settlement amount specified in the amended response is more than—

(i) 5% greater or less than the last settlement amount previously advised; and

(ii) \$5 000 greater or less than that last amount—

the worker is entitled to obtain further financial advice at the expense of the Authority or self-insurer.

(6) If the worker is given an amended response after—

(a) the worker has applied for a settlement; or

(b) the worker has been offered a settlement; or

(c) the worker has 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).

- (7) A worker to whom subsection (6) 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.
- (8) The Authority or self-insurer must give effect to a notice given to it under subsection (7).
- (9) The rights conferred on a worker by subsection (6) are in addition to any rights conferred on the worker by section 119I(1).

119I Worker may withdraw application at any time

- (1) 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.
- (2) If a worker who is entitled to apply for a settlement under Subdivision 1 or 2 withdraws an application, the worker ceases to be entitled to apply for a settlement under that Subdivision.

**S. 119I
inserted by
No. 82/2001
s. 3.**

s. 119IA

S. 119IA
inserted by
No. 102/2004
s. 19.

119IA 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;
 - (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 119E whether or not to offer a settlement to the worker.
- (3) Without limiting the generality of subsection (2), the circumstances include—
 - (a) the worker ceases to satisfy any of the eligibility criteria specified in section 115, 116, 117 or 118;
 - (b) the worker is serving a sentence of imprisonment which would disentitle the worker to weekly payments in accordance with section 97(7);
 - (c) the worker becomes aware that any other ground for the termination of weekly payments in accordance with section 114 applies but weekly payments have not been terminated.

119J Preclusion of further claims

**S. 119J
inserted by
No. 82/2001
s. 3.**

- (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 section 99); or
 - (b) to recover damages in any proceedings against—
 - (i) a person whom the Authority is liable to indemnify under section 134; or
 - (ii) the Authority under section 134(8); or
 - (iii) an employer who is a self-insurer or a subsidiary of a self-insurer; or
 - (iv) an employer or the Authority; or
 - (v) a person whom the Authority is liable to indemnify under the **Accident Compensation (WorkCover Insurance) Act 1993**; or
 - (vi) the Authority under the **Accident Compensation (WorkCover Insurance) Act 1993**—

in respect of the injury, any recurrence of the injury (other than a recurrence resulting from, or that is materially contributed to by, any employment engaged in after the date of the settlement) or any other injury arising out of, or in the course of, or due to the nature of, or contributed to by, any employment in which the person engaged before the date of the settlement.

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- (2) Despite subsection (1), the person remains entitled—
- (a) to compensation for medical and the like services under section 99 in respect of the injury; and
 - (b) to compensation and damages in respect of any injury that was caused to the worker before the date of the settlement if that injury was not manifest on or before the date of the settlement; and
 - (c) to compensation under section 98, 98A 98C or 98E in respect of—
 - (i) an injury other than the injury to which the settlement relates; or
 - (ii) a recurrence of the injury to which the settlement relates (being an injury arising out of, or in the course of, or due to the nature of, or contributed to by, employment in which the person engaged before the date of the settlement)—
- if the claim for that compensation had been given, served or lodged before the date on which the person's application for the settlement was given to the Authority or self-insurer.
- (3) A person who accepts a settlement under Subdivision 3 or 4 is not entitled, after accepting the settlement—
- (a) to any further compensation or other payment under this Act (other than section 99); or
 - (b) to recover damages in any proceedings against—
 - (i) a person whom the Authority is liable to indemnify under section 134; or
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- (ii) the Authority under section 134(8); or
- (iii) an employer who is a self-insurer or a subsidiary of a self-insurer; or
- (iv) an employer or the Authority; or
- (v) a person whom the Authority is liable to indemnify under the **Accident Compensation (WorkCover Insurance) Act 1993**; or
- (vi) the Authority under the **Accident Compensation (WorkCover Insurance) Act 1993**—

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.

- (4) 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**.
- (5) In this section, *recurrence* includes aggravation, acceleration, exacerbation, or deterioration.

119K Authority or self-insurer may extend or waive time limits

S. 119K
inserted by
No. 82/2001
s. 3.

- (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.

s. 119L

- (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; and
 - (c) in the case of a worker seeking a settlement under Subdivision 1 or 2, the entitlement to apply for the settlement is to cease if the worker does not do the relevant act before the expiry of the time limit specified under subsection (4).

S. 119L
inserted by
No. 82/2001
s. 3.

119L Minister may issue directions

- (1) The Minister may issue written directions that—
 - (a) require an expression of interest under section 119 to be accompanied by proof of the identity and date of birth of the worker giving the expression of interest;
 - (b) specify what documents may be used to satisfy such a requirement;
 - (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;

- (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;
- (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;
- (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;
- (g) specify the maximum amounts that the Authority or a self-insurer is liable to pay a worker in respect of such advice;
- (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;
- (i) specify the form in which an application for settlement is to be made;
- (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;
- (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.

**S. 119L(1)(i)
amended by
No. 11/2002
s. 3(Sch. 1
item 4).**

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 119L

- (2) A direction must be published in the Government Gazette.
- (3) The Minister may amend or revoke a direction by publishing the amendment or revocation in the Government Gazette.
- (4) A direction, amendment or revocation takes effect on the day after it is published in the Government Gazette, or on any later day specified in the direction, amendment or revocation.
- (5) A person to whom a direction applies must comply with the direction.

S. 115A
inserted by
No. 67/1992
s. 31,
amended by
Nos 50/1993
ss 78(1)(c),
100, 35/1996
s. 453(Sch. 1
item 1.3),
repealed by
No. 81/1998
s. 24(2).

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Pt 4 Div. 3A
(Heading)
inserted by
No. 64/1989
s. 10,
repealed by
No. 50/1994
s. 51(a).

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Ss 118, 119
substituted by
No. 64/1989
s. 10,
repealed by
No. 67/1992
s. 35.

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Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 120

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S. 120
substituted by
No. 64/1989
s. 10,
amended by
No. 67/1992
ss 36(2),
64(7)(a),
repealed by
No. 50/1993
s. 101(1).

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Pt 4 Div. 3B
(Heading and
ss 121–121E)
inserted by
No. 64/1989
s. 10,
amended by
Nos 18/1991
ss 7, 12(2),
67/1992
ss 16(2) (as
amended by
No. 50/1993
s. 111(2)(a)),
29(2), 37(a)(b)
(ii) (as
amended by
No. 50/1993
s. 111(2)(b)),
64(7)(a),
repealed by
No. 50/1994
s. 51(b).

Division 3C—General

Pt 4 Div. 3C
(Heading)
inserted by
No. 64/1989
s. 10.

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S. 122
substituted by
No. 64/1989
s. 10,
amended by
Nos 67/1992
s. 38, 50/1994
ss 53, 92(3)(a),
7/1996 ss 30,
31, 47/1996
s. 19, 107/1997
s. 30(11)(r),
repealed by
No. 95/2003
s. 11(a).

s. 123

S. 123
substituted by
No. 64/1989
s. 10.

123 Return to work

S. 123(1)
amended by
Nos 67/1992
s. 64(7)(a),
50/1994
s. 54(1),
47/1996
s. 20(1),
81/1998
s. 25(1),
9/2010 s. 161.

(1) When—

S. 123(1)(a)
amended by
No. 107/1997
s. 30(11)(s).

- (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

S. 123(1)(b)
amended by
No. 107/1997
s. 30(11)(t).

- (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,
40 penalty units;

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

S. 123(2)
amended by
Nos 67/1992
s. 64(7)(a),
50/1994
s. 54(2)(a)(b),
substituted by
No. 81/1998
s. 25(2),
repealed by
No. 9/2010
s. 130(4).

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Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 123A

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S. 123(3)
amended by
Nos 67/1992
s. 39, 107/1997
s. 30(11)(u),
repealed by
No. 9/2010
s. 130(4).

- (4) Subsection (1) does not apply to a self-insurer or a subsidiary of a self-insurer except in relation to the employment of a student worker.

S. 123(4)
repealed by
No. 50/1994
s. 54(3),
new s. 123(4)
inserted by
No. 47/1996
s. 20(2).

123A Notice to include statement of right of review

Where the Authority or a self-insurer gives a notice under this Part or Part VIIB 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.

S. 123A
inserted by
No. 64/1989
s. 10,
amended by
Nos 67/1992
ss 40, 64(7)(a),
50/1994 s. 55,
81/1998
s. 23(a),
9/2010
s. 130(5).

123B Prohibition on recovery of certain costs

A person is not entitled to recover any costs in respect of assisting a person to make, lodge or forward any application or claim for compensation under this Act.

S. 123B
inserted by
No. 67/1992
s. 41.

Division 4—Liability for payment of compensation

124 Application of Division

This Division does not apply to an employer who is a self-insurer or a subsidiary of a self-insurer except in relation to the employment of a student worker.

S. 124
substituted by
No. 47/1996
s. 21.

125 Liability to pay compensation

S. 125(1AAA)
inserted by
No. 50/1993
s. 75(1).

(1AAA) This section does not apply to the liability to pay compensation in respect of an injury arising out of or in the course of any employment on or after 4 p.m. on 30 June 1993.

(1) Where a worker or a worker's dependants are entitled to compensation, the liability to pay compensation shall be assumed—

S. 125(1)(a)
amended by
No. 83/1987
s. 67(a).

(a) if the total amount of leviable remuneration paid or payable by an employer during a financial year exceeds the amount which is twice the exemption limit within the meaning of section 180—by the worker's employer in the case of—

S. 125(1)(a)(i)
substituted by
No. 83/1987
s. 67(b),
amended by
No. 107/1997
s. 30(11)(v).

(i) weekly payments in respect of a worker who has no current work capacity or has a current work capacity, being a full-time worker for the first five days of the period of incapacity resulting from the relevant injury; and

S. 125(1)(a)(ii)
amended by
No. 48/1986
s. 20(a),
substituted by
No. 83/1987
s. 67(b),
amended by
No. 107/1997
s. 30(11)(v).

(ii) a proportion of the weekly payments in respect of a worker who has no current work capacity or has a current work capacity who is not a full-time worker with that employer for the first five days of the period of incapacity resulting from the relevant injury; and

S. 125(1)(a)(iii)
amended by
Nos 7/1996
s. 49(i),
102/2004
s. 40(c).

(iii) payment of the first \$506 of the reasonable costs referred to in section 99(1)(a) in relation to the relevant injury; and

S. 125(1)(b)
amended by
No. 67/1992
s. 64(7)(a).

(b) in all other cases—by the Authority.

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- (1A) If a worker is employed by more than one employer at the time of the injury and is injured while travelling between one place of employment and another the liability to pay compensation under subsection (1)(a) is to be assumed as follows:
- (a) Each employer providing those places of employment shares the liability in the same proportion as the number of hours per week worked by the worker for that employer bears to the total number of hours per week worked by the worker for all of his or her employers;
- (b) The Authority is to meet any liability remaining after the two employers have shared the liability in accordance with paragraph (a).
- (1AA) If a worker who has been receiving weekly payments returns to work, an employer of the worker is not liable to make payments under subsection (1)(a) in respect of any injury to the worker occurring within the first twelve months after the worker returns to work.
- (2) A payment or payments made by an employer to a worker to discharge the employer's liability under subsection (1)(a) shall not prejudice the determination of the liability of the Authority under subsection (1)(b).
- (3) The proportion for the purposes of subsection (1)(a)(ii) 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.
- S. 125(1A) inserted by No. 48/1986 s. 20(b).
- S. 125(1A)(b) amended by No. 67/1992 s. 64(7)(a).
- S. 125(1AA) inserted by No. 83/1987 s. 67(c), amended by No. 64/1989 s. 20(1).
- S. 125(2) amended by No. 67/1992 s. 64(7)(a).

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 125

S. 125(4)
amended by
No. 83/1987
s. 67(d).

- (4) In subsection (1)(a), 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 where the worker's employment was a contributing factor to that recurrence.

S. 125(5)
substituted by
No. 48/1986
s. 20(c),
amended by
No. 67/1992
s. 64(7)(a),
repealed by
No. 102/2004
s. 35(3).

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S. 125(5A)
inserted by
No. 48/1986
s. 20(c),
repealed by
No. 102/2004
s. 35(3).

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S. 125(5B)
inserted by
No. 48/1986
s. 20(c),
amended by
No. 67/1992
s. 64(7)(a),
repealed by
No. 102/2004
s. 35(3).

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S. 125(5C)
inserted by
No. 48/1986
s. 20(c),
repealed by
No. 102/2004
s. 35(3).

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S. 125(6)
inserted by
No. 10255
s. 8(2)(b),
amended by
No. 10255
s. 8(4).

- (6) Subsection (1)(a) does not apply to the liability to pay compensation in respect of an injury to a worker receiving remuneration of a kind referred to in paragraph (h) or (i) of the definition of *remuneration* in section 5.

(7) Subsection (1)(a) does not apply to the liability to pay compensation in respect of an injury—

S. 125(7)
inserted by
No. 83/1987
s. 67(e).

(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 83(2) (except section 83(2)(a)(i)) of this Act.

(8) For the purposes of subsection (1), in calculating the first five days of the period of incapacity resulting from the relevant injury—

S. 125(8)
inserted by
No. 83/1987
s. 67(e).

(a) the day on which the incapacity commenced shall be included; and

(b) any day on which the worker would not have worked if he or she had not suffered the injury shall be excluded.

125A Liability to pay compensation—on or after 4 p.m. on 30 June 1993

S. 125A
inserted by
No. 50/1993
s. 75(2).

(1) This section applies to the liability to pay compensation in respect of an injury arising out of or in the course of any employment on or after 4 p.m. on 30 June 1993.

(2) Where 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 4 p.m. on 30 June 1993, the liability to pay compensation is to be assumed in all cases by the worker's employer.

(3) A WorkCover insurance policy under the **Accident Compensation (WorkCover Insurance) Act 1993** in respect of an employer's liability under subsection (2) is subject to an employer's excess in respect of each claim equal to—

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 125A

S. 125A(3)(a)
amended by
No. 107/1997
s. 30(11)(v).

(a) in the case of weekly payments in respect of a worker who has no current work capacity or has a current work capacity, being a full-time worker, the first 10 days of the period of incapacity resulting from the relevant injury; and

S. 125A(3)(b)
amended by
No. 107/1997
s. 30(11)(v).

(b) a proportion of the weekly payments in respect of a worker who has no current work capacity or has a current work capacity who is not a full-time worker with that employer for the first 10 days of the period of incapacity resulting from the relevant injury; and

S. 125A(3)(c)
amended by
Nos 7/1996
s. 49(j),
102/2004
s. 40(c).

(c) payment of the first \$506 of the reasonable costs referred to in section 99(1)(a) in relation to the relevant injury.

S. 125A(3A)
inserted by
No. 50/1994
s. 56,
amended by
No. 74/2000
s. 3(Sch. 1
item 1.4).

(3A) A payment or payments 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) The proportion for the purposes of subsection (3)(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.

(5) In subsection (3), 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 where the worker's employment was a significant contributing factor to that recurrence.

- (6) Subject to guidelines issued by the Authority and in accordance with the premiums order, an employer may elect to increase, reduce or eliminate the excess under subsection (3) by paying an adjusted premium under the employer's WorkCover insurance policy under the **Accident Compensation (WorkCover Insurance) Act 1993**.
- (7) The premiums order made under section 15 of the **Accident Compensation (WorkCover Insurance) Act 1993** may specify different rates or levels of premium for the purposes of this section.
- (8) Subsection (3) does not apply to the liability to pay compensation in respect of an injury to a worker referred to in paragraph (d) or (e) of the definition of *worker* in section 5.
- (9) Subsection (3) 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 83(1)(a) or 83(1)(c).
- (10) For the purposes of subsection (3), 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.

S. 125A(8)
amended by
No. 85/1995
s. 9(b).

s. 125B

S. 125B
inserted by
No. 50/1993
s. 75(2).

125B Liability to pay compensation—recovery

S. 125B(2)
amended by
Nos 50/1994
s. 57, 9/2010
s. 153(1).

S. 125B(3)
amended by
No. 9/2010
s. 153(2).

- (1) Section 125A applies to the liability to pay compensation in respect of an injury arising out of or in the course of any employment partly before 4 p.m. on 30 June 1993 and partly on or after 4 p.m. on 30 June 1993.
- (2) There is no right to contribution as between the Authority, employers, self-insurers or authorised insurers in respect of liability to which section 125A applies irrespective of whether the liability arises wholly or partly before or after 4 p.m. on 30 June 1993.
- (3) This section does not affect any rights conferred under Division 6A of this Part.

126 Provisions to apply where there is no employer

S. 126(1)
amended by
No. 67/1992
s. 64(7)(a).

- (1) If the employer of the worker—
 - (a) cannot be identified;
 - (b) cannot be found;
 - (c) is dead; or
 - (d) is a corporation which has been wound up—the Authority shall assume that employer's liability under section 125(1)(a).
- (2) Without derogating from the generality of subsection (1), an employer shall be deemed to be unable to be found if the employer cannot be found at—
 - (a) the last known place of residence of the employer; and
 - (b) the last place of business at which the worker was employed by the employer.

(3) Where the Authority has assumed an employer's liability under subsection (1), the Authority shall be entitled to recover the amount of any compensation paid in discharge of the employer's liability—

S. 126(3)
amended by
Nos 64/1989
s. 20(2),
67/1992
s. 64(7)(a).

(a) from any insurer with whom the employer held a policy indemnifying the employer in respect of that liability; or

(b) if the employer is subsequently identified or found, from that employer.

S. 126(3)(b)
substituted by
No. 83/1987
s. 68.

127 Provisions to apply where employer does not meet liabilities

S. 127
amended by
Nos 64/1989
s. 20(2),
50/1993
s. 110(2)(a)(b),
substituted by
No. 50/1994
s. 58.

(1) If the employer of the worker neglects, refuses or is unable to pay compensation in discharge of the employer's liability under section 125(1)(a) or 125A(3) within 21 days of receiving the claim for payment of compensation, the Authority shall assume that liability.

S. 127(1)
amended by
No. 81/1998
s. 25(3).

(2) If the Authority has assumed the employer's liability under subsection (1), the Authority may impose on the employer a penalty calculated in accordance with the method determined under subsection (3).

S. 127(2)
amended by
No. 81/1998
s. 25(3),
substituted by
No. 24/2000
s. 3(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 Authority has assumed the employer's liability under subsection (1).

S. 127(3)
inserted by
No. 24/2000
s. 3(3).

s. 128

S. 127(4)
inserted by
No. 24/2000
s. 3(3).

- (4) The Authority may recover a penalty imposed under subsection (2) in a court of competent jurisdiction as a debt due to the Authority.

Division 5—Payment of compensation

128 Provisions relating to payment of compensation

S. 128(1)
substituted by
No. 83/1987
s. 69,
amended by
Nos 67/1992
ss 43(1)(a),
64(7)(a),
50/1994
s. 59(a),
107/1997
ss 18(3),
27(2)(d),
37(2)(a),
81/1998
s. 24(3)(a).

- (1) If in any proceedings under this Act for the payment of compensation under section 92, 92A, 92B, 98, 98A, 98C or 98E or weekly payments or compensation under section 99, the Magistrates' Court or the County Court is of the opinion that the employer, the Authority or a self-insurer is responsible for any unreasonable delay—

S. 128(1)(a)
amended by
No. 67/1992
s. 43(1)(b).

- (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

S. 128(1)(b)
amended by
Nos 67/1992
s. 64(7)(a),
50/1994
s. 59(a),
81/1998
s. 24(3)(a).

- (b) the Authority or self-insurer must pay the person entitled to compensation the amount of the increase.

S. 128(2)
amended by
No. 48/1986
s. 21,
substituted by
No. 83/1987
s. 69,
amended by
Nos 67/1992
ss 43(1)(c),
64(7)(a),
50/1994
s. 59(b)(c),
81/1998
s. 24(3)(b)(c).

- (2) If the Magistrates' Court or the County 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 the **Accident Compensation (WorkCover Insurance) Act 1993**.

(3) The amount of the increase shall not exceed—

- (a) in the case of compensation under section 92, 92A, 98 or 98A—one-tenth of the total amount of the compensation;

S. 128(3)(a)
amended by
Nos 67/1992
s. 43(1)(d),
107/1997
s. 27(2)(e).

- (b) 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.

- (c) in the case of weekly pensions under section 92B—one-tenth of the total amount of the weekly pensions accrued due at the date of the assessment of compensation.

S. 128(3)(c)
inserted by
No. 107/1997
s. 27(2)(f).

- (d) in the case of compensation under section 98C or 98E—one-tenth of the lump sum calculated in accordance with section 98D.

S. 128(3)(d)
inserted by
No. 107/1997
s. 37(2)(b).

128A Interim payments

If in respect of any claim, the Magistrates' Court or County Court determines that compensation is or may be payable under this Act, but is unable presently to ascertain the total amount of the compensation, under section 92, 98 or 98A or the rate of weekly payments, the Court may make an interim award or recommendation for payment of the whole or any part of the compensation and the making of any such interim payments—

S. 128A
inserted by
No. 83/1987
s. 70,
amended by
No. 67/1992
s. 43(2)(a)–(c).

- (a) shall not preclude the Court from making in respect of the same claim a further interim recommendation or determination or a final recommendation or determination; and
- (b) shall not prejudice the rights of either of the parties in respect of any such further or final recommendation or determination.

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 129A

Pt 4 Div. 6
(Heading and
s. 129)
amended by
Nos 48/1986
s. 22(a)-(h) (as
amended by
No. 64/1989
s. 37(2)),
83/1987 s. 71(a)
(as amended
by No. 64/1989
s. 37(3)(b)) (b),
13/1988 s. 5,
67/1992
s. 64(7)(a),
50/1994
ss 60(1), 61,
52/1998
s. 311(Sch. 1
item 1.2),
81/1998
s. 25(4),
repealed by
No. 9/2010
s. 154.

* * * *

Pt 4 Div. 6A
(Heading and
ss 129A–
129M)
inserted by
No. 13/1988
s. 6.

Division 6A—Contribution by contributors

S. 129A
inserted by
No. 13/1988
s. 6.

129A Definitions

In this Division—

contributing employer means—

- (a) the employer of a worker at the time a contribution injury within the meaning of paragraph (a) of the definition of contribution injury was caused to the worker, being an employer who, at that time, did not have or hold accident insurance as defined by section 3(1) of the **Workers Compensation Act 1958**

and was not a contributing self-insurer;
or

- (b) the employer of a worker at any time during the period of employment due to which or out of or in the course of which a contribution injury within the meaning of paragraph (b) or (c) of the definition of contribution injury was suffered by, or caused to, the worker, being an employer who, during that period, did not have or hold accident insurance as defined by section 3(1) of the **Workers Compensation Act 1958** and was not a contributing self-insurer;

contribution injury means any injury, disease or industrial deafness as each is defined in section 5(1)—

S. 129A def. of *contribution injury* amended by Nos 67/1992 s. 64(7)(a), 50/1994 s. 62(1), 81/1998 s. 25(4).

- (a) caused to a worker before the appointed day and which has arisen out of or in the course of any employment of the worker; or
- (b) suffered by a worker before the appointed day and which is due to the nature of any employment in which a worker was employed before the appointed day; or
- (c) which has been caused to or suffered by a worker after the appointed day and which, in whole or in part, has arisen out of or in the course of any employment of a worker or is due to the nature of any employment in which a worker was employed at any time before the appointed day—

and includes any injury within the meaning of the **Workers Compensation Act 1958**—

- (d) caused to a worker before the appointed day and which has arisen out of or in the course of any employment of the worker; or
- (e) suffered by a worker before the appointed day and which is due to the nature of any employment in which a worker was employed before the appointed day; or
- (f) which has been caused to or suffered by a worker after the appointed day and which, in whole or in part, has arisen out of or in the course of any employment of a worker or is due to the nature of any employment in which a worker was employed at any time before the appointed day—

and which has directly or indirectly caused or contributed to any injury, disease or industrial deafness or any incapacity, death or physical or mental condition of the worker in respect of which or in relation to which the Authority or self-insurer has made or is liable to make payments under this Act or in respect of any period after 4 p.m. on 30 June 1993, in respect of which or in relation to which the Authority has made or is liable to make payments under a re-insurance arrangement under section 34 of the **Accident Compensation (WorkCover Insurance) Act 1993** or under a WorkCover insurance policy under that Act or under Part 5 of that Act;

contributing insurer means an insurer as defined in section 3(1) of the **Workers Compensation Act 1958** of the employer of a worker—

- (a) at the time a contribution injury within the meaning of paragraph (a) of the definition of ***contribution injury*** was caused to the worker; or
- (b) during the whole or any part of the period of employment due to which or out of or in the course of which a contribution injury within the meaning of paragraph (b) or (c) of the definition of ***contribution injury*** was suffered by, or caused to, the worker;

contributing self-insurer means the Victorian Railways Board and any body or person which held a certificate under the **Workers Compensation Act 1928** and their respective successors and assigns which employed a worker—

- (a) at any time a contribution injury within the meaning of paragraph (a) of the definition of ***contribution injury*** was caused to the worker; or
- (b) during the whole or any part of the period of employment due to which or out of or in the course of which a contribution injury within the meaning of paragraph (b) or (c) of the definition of ***contribution injury*** was suffered by, or caused to, the worker;

contributor means a person who is a contributing employer, contributing insurer or contributing self-insurer;

s. 129B

employer means—

- (a) an employer as defined in section 5(1);
and
- (b) an employer as defined in section 3(1)
of the **Workers Compensation Act 1958**; and
- (c) any person deemed to be an employer
under the **Workers Compensation Act 1958**;

S. 129A def. of
Tribunal
inserted by
No. 67/1992
s. 44,
repealed by
No. 52/1998
s. 311(Sch. 1
item 1.3).

* * * * *

worker means—

- (a) a worker as defined in section 5(1); and
- (b) a worker as defined in section 3(1) of
the **Workers Compensation Act 1958**;
and
- (c) any person deemed to be working under
a contract of service or deemed to be a
worker under the **Workers
Compensation Act 1958**;

Workers Compensation Act 1958 includes any
corresponding previous enactment.

S. 129B
inserted by
No. 13/1988
s. 6.

129B Application and object of Division

- (1) This Division applies to and in relation to—

S. 129B(1)(a)
amended by
No. 67/1992
s. 64(7)(a).

- (a) all payments under this Act made or to be
made by the Authority or a self-insurer on
and after the appointed day; and

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|---|--|
| (b) all payments which the Authority or a self-insurer is or may become liable to make under this Act on and after the appointed day; and | S. 129B(1)(b) amended by Nos 67/1992 s. 64(7)(a), 50/1994 s. 62(2). |
| (c) all payments which the Authority has made or is or may be liable to make under a re-insurance arrangement under section 34 of the Accident Compensation (WorkCover Insurance) Act 1993 or under a WorkCover insurance policy under that Act or under Part 5 of that Act on and after 4 p.m. on 30 June 1993. | S. 129B(1)(c) inserted by No. 50/1994 s. 62(2), amended by No. 81/1998 s. 25(4). |
| (2) Nothing in this Division imposes any liability on a contributor in respect of payments under this Act or the Accident Compensation (WorkCover Insurance) Act 1993 unless a claim for compensation to which those payments relate or will relate has been made under this Act or the Accident Compensation (WorkCover Insurance) Act 1993 and, if such a claim has been made, this Division applies whether the claim was made before or after the commencement of the Accident Compensation (Further Amendment) Act 1988 . | S. 129B(2) amended by No. 50/1994 s. 62(3). |
| (3) If the Authority or a self-insurer receives a payment in relation to an injury which was the subject of a claim for compensation by a worker under this Act or the Accident Compensation (WorkCover Insurance) Act 1993 from a person other than a contributor before or after the Authority or self-insurer has received contribution payments under an assessment made under this Division and that payment was not taken into account in making, amending or varying an assessment, the Authority or self-insurer must | S. 129B(3) amended by Nos 67/1992 s. 64(7)(a), 50/1994 s. 62(3). |
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s. 129B

make a refund to each contributor of an amount calculated in accordance with the formula—

$$\frac{E}{F} \times F$$

where—

C has the same value as "C" in paragraph (b) of section 129B(6);

E is the amount of the contributions paid by the contributor;

F is the payment received by the Authority or self-insurer from a person other than the contributor.

S. 129B(4)
amended by
Nos 67/1992
s. 64(7)(a),
50/1994
s. 62(3).

- (4) The object of this Division is to make provision for the Authority and self-insurers to obtain from contributors a just and equitable and timely contribution to payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** that the Authority or a self-insurer has made or may become liable to make to or in respect of a worker who has suffered a contribution injury.

S. 129B(5)
amended by
No. 67/1992
s. 64(7)(a).

- (5) It is the intention of Parliament that the Authority and the Tribunal in giving effect to this Division regard as paramount the object of this Division.

S. 129B(6)
amended by
No. 67/1992
s. 64(7)(a).

- (6) The Authority, in making or amending an assessment or in considering an objection under this Division and the Tribunal, in reviewing an assessment under this Division, must apply the following principles—

S. 129B(6)(a)
amended by
Nos 67/1992
s. 64(7)(a),
50/1994
s. 62(3).

- (a) the liability of a contributor under an assessment must not exceed the amount determined by the Authority or Tribunal to be—

- (i) in respect of a contributor which is a contributing employer or a contributing self-insurer, the amount that the contributor would have been liable to pay as compensation whether by way of weekly payments, redemption, compromise or otherwise in accordance with the **Workers Compensation Act 1958**; or
- (ii) in respect of a contributor which is a contributing insurer, the amount that would have been payable by the contributor whether by way of weekly payments, redemption, compromise, settlement or otherwise under the policy of insurance or indemnity obtained under section 72 of the **Workers Compensation Act 1958**—

as if the contribution injury were the sole cause of the injury, disease or industrial deafness or the incapacity, death or physical or mental condition of the worker in respect of which or in relation to which the Authority or self-insurer has made or is liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**;

- (b) the liability of a contributor under an assessment shall be the amount determined by the Authority or the Tribunal in accordance with the formula—

$$\frac{A}{A + B} \times C - D$$

where—

A is the extent, expressed as a percentage, determined by the Authority or the Tribunal to be the extent to which the

S. 129B(6)(b)
amended by
Nos 18/1991
s. 12(1)(h),
67/1992
s. 64(7)(a),
50/1994
s. 62(3).

contribution injury directly or indirectly caused or contributed to the injury, disease or industrial deafness or the incapacity, death or physical or mental condition of the worker in respect of which or in relation to which the Authority or self-insurer has made or is liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**.

B is the extent, expressed as a percentage, determined by the Authority or Tribunal to be the extent to which—

- (i) any other contribution injury; and
- (ii) any other injury after the appointed day for which compensation has been paid or is payable under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**—

have directly or indirectly caused or contributed to the injury, disease or industrial deafness or the incapacity, death or physical or mental condition of the worker in respect of which or in relation to which the Authority or self-insurer is liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**.

C is the amount determined by the Authority or Tribunal to be the amount that the contributor would have been liable to pay in the circumstances described in paragraph (a) in accordance with the provisions of that paragraph.

D is the amount determined by the Authority or Tribunal as the amount the contributor would have been entitled to be recompensed from the Accident Compensation Fund by reason of the operation of section 2C(1), 2C(7), 2F(1) or 2G(3) of the **Workers Compensation Act 1958** if the contributor had paid, on the date of the making of the assessment, the amount to be calculated by the Authority in accordance with the formula—

$$\frac{A}{A + B} \times C$$

where A, B and C are to be determined in the manner set out above as compensation in circumstances which entitled the contributor to be recompensed in accordance with section 2C(1), 2C(7), 2F(1) or 2G(3) of the **Workers Compensation Act 1958**.

- (7) The liability of a contributor to make payments under this Division in respect of a contribution injury shall not commence unless and until the Authority or the Tribunal has determined that payments made under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** in respect of the injury, disease or industrial deafness or any incapacity, death or physical or mental condition of the worker in respect of which or in relation to which the Authority or self-insurer has made payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**, directly or indirectly caused or contributed to by that contribution injury exceed in the aggregate \$11 240.

S. 129B(7)
amended by
Nos 67/1992
s. 64(7)(a),
50/1994
s. 62(3),
7/1996
s. 49(k),
102/2004
s. 40(d).

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 129C

S. 129B(8)
amended by
Nos 67/1992
s. 64(7)(a),
50/1994
s. 62(3).

- (8) If a contribution injury is not a proclaimed medical condition that portion of the contribution injury which has occurred more than 10 years before the last date on which the injury, disease or industrial deafness or any incapacity, death or physical or mental condition was caused to or suffered by the worker prior to the claim of the worker in respect thereof under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** in respect of which or in relation to which the Authority or self-insurer has made or is liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** shall be wholly disregarded for the purposes of this Division.
- (9) The Governor in Council may from time to time by proclamation published in the Government Gazette proclaim a medical condition to be a proclaimed medical condition under this Division.

S. 129C
inserted by
No. 13/1988
s. 6,
amended by
No. 67/1992
s. 64(7)(a).

129C Contribution in case of contribution injury

If—

S. 129C(a)
amended by
No. 50/1994
s. 62(3).

- (a) the Authority or a self-insurer has made or is or may become liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** to or in respect of a worker; and
- (b) a contribution injury has been caused to or suffered by the worker—

each contributor shall pay to the Authority or a self-insurer (as the case may be) the amount or amounts determined to be payable in accordance with this Division.

129D Assessments

(1) If the Authority—

- (a) has made or is or may become liable to make payments under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** to or in respect of a worker; and
- (b) believes that the worker has suffered a contribution injury and that a contributor ought to pay such amount or amounts as is just and equitable as contribution—

the Authority may, by an assessment in writing, determine the amount or amounts payable as contribution to the Authority by each contributor.

(2) If a self-insurer—

- (a) has made or is or may become liable to make payments under this Act to or in respect of a worker; and
- (b) satisfies the Authority that the self-insurer has reason to believe and believes that the worker has suffered a contribution injury and that a contributor ought to pay such amount or amounts as is just and equitable as contribution—

the Authority shall, by an assessment in writing, determine the amount or amounts payable as contribution to the self-insurer by each contributor.

(3) The Authority must not make an assessment under subsection (1) or (2) unless—

- (a) not less than 42 days before making the assessment, the Authority has given notice in writing to each person it believes is a

S. 129D
inserted by
No. 13/1988
s. 6,
amended by
No. 67/1992
s. 64(7)(a).

S. 129D(1)(a)
amended by
No. 50/1994
s. 62(3).

s. 129D

contributor of the intention to make an assessment; and

- (b) the Authority has made reasonable attempts to engage in consultations with each person it believes is a contributor in relation to its intention to make an assessment.

S. 129D(4)
amended by
Nos 64/1989
s. 35(f),
50/1993
s. 81(g),
50/1994
s. 62(4),
81/1998
s. 25(5).

- (4) Within 28 days after the Authority gives a notice under subsection (3) to a contributor, in addition to any other requirement for the giving or exchange of documents—

- (a) the Authority must give to the contributor; and

- (b) the contributor must give to the Authority—

a copy of each document in its possession or under its control which may be relevant to determining the liability of a contributor under this Part including any claim for compensation or any certificate or report by a provider of medical, hospital, nursing, personal and household or ambulance services or any assessor's report or any other document from the worker's employer relating to any injury to or incapacity of the worker or filed with a court or tribunal in relation to claims by the worker for compensation under this Act or the **Workers Compensation Act 1958** or damages provided always that the giving or exchange of documents under this section shall not extend to documents in relation to which any legal privilege attaches.

S. 129D(5)
amended by
No. 50/1994
s. 62(3).

- (5) In determining the amount or amounts to be payable as contribution in an assessment, the Authority may determine and set out in the assessment the present and future liability of the contributor to pay amounts as contribution in respect of payments made or to be made under this Act or the **Accident Compensation**

(WorkCover Insurance) Act 1993 upon terms and conditions set out in the assessment that the Authority believes to be just and equitable.

- (6) The Authority may, at any time, amend an assessment made under this section by making such alterations, reductions or additions to it as the Authority deems appropriate, whether or not an amount has been paid under the assessment.
- (7) An amended assessment is an assessment for the purposes of this Division.
- (8) The Authority or a self-insurer, as the case requires, shall within a reasonable time after the making of an assessment—
 - (a) serve a copy of the assessment on each contributor; and
 - (b) serve on each contributor a notice stating the grounds on which the Authority believes that the contributor ought to pay such amount or amounts as is just and equitable as contribution.
- (9) The validity of an assessment and the liability of a contributor to pay any amount determined to be payable by an assessment is not affected by reason that any of the provisions of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** have not been complied with or a claim for compensation has not been determined but any failure to comply with the provisions of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** or the fact that a claim has not been determined may be taken into account by the Tribunal in any review of the assessment.

S. 129D(9)
amended by
No. 50/1994
s. 62(3).

s. 129E

S. 129D(10)
amended by
No. 50/1994
s. 62(5).

- (10) Notwithstanding anything to the contrary in this Division a contributor is not required to make payments of a contribution which relates to any amount of compensation to be paid prior to that compensation being paid.

S. 129E
inserted by
No. 13/1988
s. 6,
amended by
No. 67/1992
s. 64(7)(a).

129E Evidence

- (1) The production of an assessment, a copy of an assessment or of a copy of a document under the hand of the Chief Executive of the Authority purporting to be an assessment or a copy of an assessment is conclusive evidence of the due making of the assessment and (except in proceedings before the Tribunal under this Division for a review of the assessment) that the amount payable under and all the particulars of the assessment are correct.
- (2) The production of an assessment, or a copy of an assessment, under the hand of the Chief Executive of the Authority purporting to be an assessment or a copy of an assessment by the Authority shall be conclusive evidence that the assessment was by the Authority in accordance with this Division.

S. 129F
inserted by
No. 13/1988
s. 6,
amended by
No. 67/1992
s. 64(7)(a).

129F Recovery of amounts assessed as payable

- (1) An amount determined to be payable by an assessment by the Authority under section 129D is due and payable to the Authority or self-insurer, as the case requires, by each person liable to pay the amount in accordance with the terms and conditions as to payment set out in the assessment and if periodic payments are required to be paid then those payments shall be made at such intervals between payments as the Authority or the Tribunal determines to be reasonable.

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- (2) A contributor is not required under this section to pay any amount payable by reason of an assessment within less than 28 days after service of a copy of the assessment on the contributor.
 - (3) The Authority or a self-insurer, as the case requires, may, in writing, grant an extension of time for payment of any amount determined to be payable by an assessment (whether or not the time has expired) or permit payment of any such amount by such instalments and within such time as it considers the circumstances warrant and, in such a case, the amount is due and payable accordingly.
 - (4) If an amount determined by an assessment to be payable as contribution remains unpaid after the time when it became due and payable in accordance with the provisions of this Division, the person liable to pay the amount shall pay interest at the prescribed rate on the amount unpaid, computed from the date on which the amount was due and payable until payment.
 - (5) If interest is due and payable by a person under this section and the Authority or a self-insurer, as the case requires, is satisfied that there are special circumstances by reason of which it would be just and equitable to remit the interest or part of the interest, the Authority or self-insurer may remit the interest or a part of the interest.
 - (6) A contributor and the Authority or self-insurer may agree or the Tribunal may determine that the contributor pay a lump sum in full and final settlement of its liability to make payments under this Division, including future periodic payments, in accordance with the assessment.
 - (7) An agreement or determination under subsection (6) is deemed to be an assessment for the purposes of this Division.
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s. 129G

- (8) An amount determined to be payable by an assessment as contribution to the Authority, including interest payable (if any), when it becomes due and payable, is a debt due to Her Majesty and payable to the Authority.
- (9) An amount determined to be payable by an assessment as contribution to a self-insurer, including interest payable (if any), when it becomes due and payable is a debt due and payable to the self-insurer.
- (10) Any amount due and payable under this Division may be sued for and recovered in any court of competent jurisdiction.

S. 129G
inserted by
No. 13/1988
s. 6,
amended by
No. 67/1992
s. 64(7)(a).

129G Review of assessment

- (1) If a contributor is dissatisfied with any assessment under this Division, the contributor may, if the contributor has paid the amount determined to be payable by the assessment within 28 days after service of a copy of the assessment on the contributor, post to, or lodge with, the Authority an objection in writing against the assessment stating the amount (if any) the contributor contends should be payable as contribution and stating fully the grounds on which the contributor relies but, if the assessment is an amended assessment, and the objection is posted to or lodged with the Authority after the period of 28 days, after notice of the original assessment was served, the contributor may object only against the amendment.
- (2) The Authority, within 28 days after receiving the objection, shall consider the objection and either disallow it or allow it either wholly or in part by amending, or further amending, the assessment and shall serve on the contributor and, in the case of an assessment under section 129D(2), on the

self-insurer, notice of its decision and any amendment.

(3) If—

- (a) a contributor is dissatisfied with the decision and any amendment made under subsection (2); or
- (b) the Authority does not, within 28 days after receiving an objection from a contributor, comply with subsection (2)—

the contributor may, within 28 days after service of the notice of the decision on the contributor or, where paragraph (b) applies, after the Authority receives the objection, apply to the Tribunal for review of the assessment or the amendment.

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**S. 129G(4)
repealed by
No. 52/1998
s. 311(Sch. 1
item 1.4).**

- (5) If a self-insurer is dissatisfied with the decision and any amendment notice of which was required to be served on the self-insurer under section 129G(2), the self-insurer may, within 28 days after service of notice of the decision on the self-insurer apply to the Tribunal for a review of the amendment.

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**S. 129G(6)
repealed by
No. 52/1998
s. 311(Sch. 1
item 1.4).**

- (7) Upon a review by the Tribunal under this Division—

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**S. 129G(7)(a)
repealed by
No. 52/1998
s. 311(Sch. 1
item 1.5).**

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- (b) if the application for the review was made by a self-insurer—
 - (i) the burden of proving that an amendment of an assessment was in error lies on the self-insurer; and
 - (ii) the Authority shall not be a party to the review; and
 - (c) the Tribunal shall not regard an assessment under this Division, a notice under section 129D(8) or an objection or contention under section 129G(1) as an admission.
- (8) The Tribunal when hearing an application shall determine which party shall bear the burden of satisfying the Tribunal that the assessment or the amended assessment should be confirmed, reduced, increased or varied (as the case requires) in accordance with what it considers is just and equitable in all the circumstances of the application.
- (9) When the Tribunal determines what is just and equitable under subsection (8) it will not be a relevant factor—
- (a) that the contributor is applying for a review of the assessment or the amended assessment; and
 - (b) that the Authority made the assessment or the amended assessment.
- (10) If a contributor has applied to the Tribunal for a review of the assessment or the amended assessment, the contributor and the Authority must on the request of the other party—
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- (a) provide a copy of every certificate or report by a medical practitioner that may be relevant to determining the liability of the contributor; and
- (b) permit any medical practitioner who has given a certificate or report that may be relevant to determining the liability of the contributor to give evidence in the proceedings before the Tribunal under this Division.
- (11) If the Tribunal increases an assessment, the Tribunal must determine that the contributor pay to the Authority or self-insurer interest at the prescribed rate upon the whole or part of the amount by which the amount of the increased assessment exceeds the amount of the assessment. **S. 129G(11) amended by No. 50/1994 s. 62(10)(a).**
- (12) If the Tribunal reduces the assessment, the Tribunal must determine that the Authority or self-insurer pay to the contributor interest at the prescribed rate upon the whole or part of the amount by which the amount of the assessment exceeds the amount of the reduced assessment. **S. 129G(12) amended by No. 50/1994 s. 62(10)(a).**
- (13) If the Authority or the Tribunal determines that a contributor is entitled to a refund, the Authority or self-insurer must make the refund within 28 days of the determination.
- (14) If the Authority or self-insurer fails to comply with subsection (13), it must pay interest at the prescribed rate for the period after the period specified in subsection (13) that the default continues. **S. 129G(14) amended by No. 50/1994 s. 62(10)(b).**
- (15) A court, other than the Tribunal exercising power under this Division, does not have jurisdiction to review an assessment made under this Division by way of—
- (a) the grant of an injunction; or
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s. 129H

(b) the grant of a prerogative or statutory writ or the making of any order of the same nature or having the same effect as, or of a similar nature or having a similar effect to, any such writ; or

(c) the making of a declaratory order.

S. 129G(16) amended by Nos 64/1989 s. 35(g)(i)(ii), 50/1993 s. 110(1)(e), 50/1994 s. 62(6) (as amended by No. 74/2000 s. 3(Sch. 1 item 2)), substituted by No. 52/1998 s. 311(Sch. 1 item 1.6).

(16) Subsection (15) does not apply to or in relation to a referral of a question of law under section 96 of the **Victorian Civil and Administrative Tribunal Act 1998** or an appeal under section 148 of that Act.

S. 129G(17) inserted by No. 107/1997 s. 11(5), substituted by No. 52/1998 s. 311(Sch. 1 item 1.6).

(17) An application for leave to appeal under section 148 of the **Victorian Civil and Administrative Tribunal Act 1998** against an order of the Tribunal under this Division by a person other than the Authority or a self-insurer does not operate as a stay of the order or of the liability of a contributor to make such payment as is, or payments as are, determined to be payable.

S. 129H inserted by No. 13/1988 s. 6, amended by No. 67/1992 s. 64(7)(a).

129H Information

(1) If a claim is made under this Act and the Authority or a self-insurer believes that there may have been a contribution injury, the Authority or self-insurer may require the worker or a dependant of the worker to give such information as he or she possesses as to the names and addresses of all contributors.

- (2) If the Authority or self-insurer has reason to believe that a person is a contributor in relation to a claim made under this Act the Authority or self-insurer shall give notice of the claim to that person.
- (3) A failure to give notice under subsection (2) does not affect the entitlement of the Authority or a self-insurer to contribution under this Division.

129I Recoveries Review Committee

S. 129I
inserted by
No. 13/1988
s. 6,
amended by
No. 67/1992
s. 64(7)(a).

- (1) If the Authority or a self-insurer requires information about the medical treatment of a worker and the worker does not consent to a medical practitioner giving the information, the Authority or a self-insurer may apply to the Tribunal to have the matter referred to the Recoveries Review Committee.
- (2) The Recoveries Review Committee shall be required to present a report to the Tribunal within 21 days or such longer period as the Tribunal allows on such matters as the Tribunal directs, having regard to the reasons for the application by the Authority or self-insurer.
- (3) After the report is presented to the Tribunal, the Tribunal may require a member of the Recoveries Review Committee or the medical practitioner to appear before the Tribunal and, if required to appear, the member or practitioner shall answer questions on the report.
- (4) If the Recoveries Review Committee fails to provide a report as required by subsection (2) or the Committee reports that it has not had access to all relevant evidence to make a report, the Tribunal may determine that the medical practitioner is required to give evidence in accordance with subsection (5).

s. 129J

- (5) If subsection (4) applies, for the purposes of this Division and despite any provision of any Act or law to the contrary or any privilege of a worker, a medical practitioner or worker shall not refuse to divulge to the Tribunal, or refuse to give evidence before the Tribunal in respect of, information acquired or given in relation to the medical treatment of a worker, any injury to a worker arising out of or in the course of employment or any physical or mental condition of that worker but any such evidence is not admissible in any other proceedings in any court or tribunal without the written consent of the worker.
- (6) The Recoveries Review Committee shall consist of such medical practitioners as are appointed from time to time by the Minister administering the **Health Act 1958** or by a person, or persons, authorized by that Minister in that behalf.

S. 129J
inserted by
No. 13/1988
s. 6.

129J Refund of contributions

S. 129J(1)
amended by
Nos 18/1991
s. 12(1)(i),
67/1992
s. 64(7)(a).

- (1) If a contributor has paid a contribution under this Division and the worker recovers from the contributor or the contributor subsequently pays compensation under the **Workers Compensation Act 1958** damages at common law for the contribution injury, the contributor may apply to the Authority or self-insurer for a refund of the contribution in total or in part.
- (2) The Authority or self-insurer must determine the application within 28 days of receiving it and must make a refund to the extent that it considers just and equitable to do so.

S. 129J(2)
amended by
No. 67/1992
s. 64(7)(a).

- (3) If a contributor is aggrieved about a determination made under subsection (2) it may within 28 days of the date of the determination apply to the Tribunal for a review of the Authority's determination.
- (4) On hearing a review the Tribunal may determine the amount of any refund that it considers is just and equitable.

S. 129J(3)
amended by
No. 67/1992
s. 64(7)(b).

129K Time

S. 128K
inserted by
No. 13/1988
s. 6,
re-numbered
as s. 129K by
No. 18/1991
s. 12(1)(j),
amended by
No. 67/1992
s. 64(7)(a).

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S. 129K(1)
repealed by
No. 52/1998
s. 311(Sch. 1
item 1.7).

- (2) The Authority may at any time in writing enlarge the time for the doing of any act or the taking of any step by any person other than the Authority under this Division upon such terms as it deems appropriate and the time so enlarged shall be the time within which the act is required to be carried out or the step is required to be taken under this Division.

129L Extension of policies

S. 129L
inserted by
No. 13/1988
s. 6.

- (1) When a contributing insurer has entered into a contract or arrangement for a policy of insurance or for re-insurance in respect of or in relation to its liability to indemnify an employer under the terms of a policy of insurance for compensation payable by the employer under the **Workers Compensation Act 1958** and the contributing

s. 129M

insurer pays an amount by reason of an assessment made under this Division, the payment, for the purposes of the policy and the contract or arrangement for a policy of insurance or for re-insurance, shall be deemed—

- (a) to be a payment by the insurer in satisfaction of or by reason of its liability to indemnify the employer under the terms of the policy; and
 - (b) to have been a payment in respect of compensation payable by the employer under the **Workers Compensation Act 1958** as if the contribution injury resulting in the assessment was an injury or disease for which compensation was payable and paid under that Act.
- (2) If a contributing insurer is not entitled to recover any sum under any contract or arrangement for a policy of insurance or for re-insurance in respect of a payment of an amount by reason of an assessment, that matter shall not be regarded as a relevant matter by the Tribunal upon a review under this Division.

S. 129M
inserted by
No. 13/1988
s. 6.

129M Offences

S. 129M(1)
amended by
No. 67/1992
s. 64(7)(a).

- (1) A person must not—
- (a) obstruct or hinder the Authority or any other person acting in the administration of this Division; or
 - (b) prevent or defeat or attempt to prevent or defeat the operation or enforcement of this Division.

- (2) If, on or after 18 September 1987 and before the commencement of the **Accident Compensation (Further Amendment) Act 1988**, a person entered into, or after that commencement, a person enters into, an arrangement or transaction for the purpose, or for purposes which include the purpose, of securing, either generally or for a limited period, that a contributor (whether or not a party to the arrangement or transaction) will be unable, or will be likely to be unable, having regard to other debts of the contributor, to pay the amount payable under an assessment under this Division or to pay an amount which may become payable in the near future by reason of this Division, the person is guilty of an offence.

S. 129M(2)
amended by
No. 9/2010
s. 162.

Penalty: In the case of a natural person,
100 penalty units;
In the case of a body corporate,
500 penalty units.

- (3) Proceedings for an offence under this section may be commenced within three years after the day on which the offence occurred.

Division 6AB—Choice of law

Pt 4 Div. 6AB
(Heading and
ss 129MA–
129MF)
inserted by
No. 95/2003
s. 21.

129MA The applicable substantive law for work injury claims

S. 129MA
inserted by
No. 95/2003
s. 21.

- (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—

s. 129MB

- (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.

S. 129MB
inserted by
No. 95/2003
s. 21.

129MB Claims to which 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.

129MC What constitutes injury and employment and who is employer

S. 129MC
inserted by
No. 95/2003
s. 21.

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

s. 129MD

that those concepts include anything that is within the scope of a corresponding concept in the statutory workers compensation scheme of another State.

S. 129MD
inserted by
No. 95/2003
s. 21.

129MD 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.

S. 129ME
inserted by
No. 95/2003
s. 21.

129ME Meaning of *substantive law*

In this Division—

S. 129ME
def. of
a State's
legislation
about
damages for a
work related
injury
amended by
No. 41/2006
s. 23.

a State's legislation about damages for a work related injury means—

- (a) for this State—this Part and the **Accident Compensation (WorkCover Insurance) Act 1993** 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.

129MF Availability of action in another State not relevant

**S. 129MF
inserted by
No. 95/2003
s. 21.**

- (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.

Pt 4 Div. 6B
(Heading and
ss 129N–
129S)
inserted by
No. 13/1988
s. 6.

Division 6B—Conduct of common law proceedings

S. 129N
inserted by
No. 13/1988
s. 6.

129N Definitions

(1) In this Division—

S. 129N(1)
def. of
common law
insurer
amended by
Nos 67/1992
s. 64(7)(a),
50/1994
s. 62(7),
81/1998
s. 25(6).

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.

129O Application of Division

S. 129O
inserted by
No. 13/1988
s. 6,
amended by
Nos 67/1992
s. 64(7)(a),
50/1994
s. 62(8).

- (1) This Division applies to and in relation to all common law proceedings brought or made (as the case may be) after the appointed day in respect of which the Authority is liable to indemnify a defendant in whole or in part under section 134, or under the **Accident Compensation (WorkCover Insurance) Act 1993** or a policy under that Act, in relation to an injury, disease or death caused to or suffered by a worker.
- (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 shall not thereafter apply to the extent that they are inconsistent with that agreement.

S. 129O(1)
amended by
No. 81/1998
s. 25(7).

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S. 129O(3)
inserted by
No. 50/1994
s. 62(9),
repealed by
No. 81/1998
s. 25(8).

129P Apportionment of liability

Liability to pay damages and all costs recovered or recoverable by a worker in a common law proceeding shall be apportioned between the Authority and all other persons under any legal liability in respect of the injury the subject of the proceeding and any common law insurer who is liable to indemnify any such persons in respect of or in relation to the common law proceeding in

S. 129P
inserted by
No. 13/1988
s. 6,
amended by
No. 67/1992
s. 64(7)(a).

s. 129Q

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.

S. 129Q
inserted by
No. 13/1988
s. 6,
amended by
No. 67/1992
s. 64(7)(a).

129Q Notice of proceedings

- (1) The defendant in a common law proceeding made or brought (as the case may be) after the appointed day shall give to the Authority notice in writing of the proceeding within 14 days after the defendant receives notice of the proceeding or within 28 days after the commencement of the **Accident Compensation (Further Amendment) Act 1988**, whichever is the later.
- (2) The common law insurer in respect of the common law proceeding shall give to the Authority notice in writing of the proceeding within 14 days after the insurer receives notice of the proceeding or within 28 days after the commencement of the **Accident Compensation (Further Amendment) Act 1988**, whichever is the later.

S. 129R
inserted by
No. 13/1988
s. 6,
amended by
No. 67/1992
s. 64(7)(a).

129R Conduct of defence

- (1) The defendant or the common law insurer is not entitled to conduct the defence of the common law proceeding unless—
 - (a) the defendant or common law insurer, within 14 days after the last date for giving notice under section 129Q 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

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- (b) 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
- (c) 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)(b) 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.
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s. 129S

- (5) Subject to subsection (3), any 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 authorized 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) shall 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.

S. 129S
inserted by
No. 13/1988
s. 6,
amended by
No. 67/1992
s. 64(7)(a).

129S Order for apportionment of liability

- (1) In default of agreement under section 129P, 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.

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- (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) shall 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 129P, 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) shall 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) shall be made within 12 months after the commencement of the **Accident Compensation (Further Amendment) Act 1988** or within 12 months of the person making the application receiving notice of the entry of judgment, settlement or compromise of the common law proceeding, whichever is the later.
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- (6) An apportionment in accordance with this Division is an apportionment in relation to the amount of damages and costs awarded or agreed to be paid in accordance with this Division and of the costs of the conduct of the defence of the common law proceedings.

Pt 4 Div. 7
(Heading)
amended by
Nos 64/1989
s. 37(1)(c),
67/1992
s. 45(a),
50/1994
s. 63(1)(a),
74/2000
s. 3(Sch. 1
item 1.5).

Division 7—Administration by a trustee company³⁹

130 Certain funds to be administered by trustee company⁴⁰

S. 130(1)
amended by
Nos 83/1987
s. 72(1)(a),
67/1992
s. 45(a),
50/1994
s. 63(1)(b),
15/1998
s. 4(1)(a)(b).

- (1) The following payments of compensation shall be paid to a trustee company determined by the Court or the Authority (as the case requires) to be administered by the trustee company in accordance with this Act—

S. 130(1)(a)
amended by
Nos 83/1987
s. 72(1)(b),
50/1993
s. 110(1)(f).

- (a) any payment under section 92, 98 or 98A to a person under the age of 18 years;

S. 130(1)(b)
amended by
No. 67/1992
s. 45(b).

- (b) unless the County Court otherwise determines, any payment under section 92 to a person of or over the age of 18 years; and

S. 130(1)(c)
amended by
No. 67/1992
s. 45(b).

- (c) any other payment of compensation under this Act where on an application to the County Court the County Court considers it would be in the best interests of the worker.

- (1A) If the Court or Authority determines under subsection (1) that State Trustees (within the meaning of the **State Trustees (State Owned Company) Act 1994**) administer payments of compensation, State Trustees must accept a transfer of the amount of compensation to be administered and the acceptance of that amount is a sufficient discharge to the person transferring that amount.
- (2) The County Court in making a determination on an application under subsection (1)(c) may impose any conditions, restrictions or limitations it considers appropriate on the duration and termination of the administration.

S. 130(1A)
inserted by
No. 15/1998
s. 4(2).

S. 130(2)
amended by
Nos 83/1987
s. 72(1)(c),
67/1992
s. 45(b).

131 Powers of trustee company in relation to administration

- (1) Except as otherwise provided in section 130, any money administered by a trustee company determined under that section may be invested in any manner in which money may be invested under the **Trustee Act 1958** and may be applied in any manner that the trustee company considers appropriate for the benefit of the person entitled to that money.

S. 131(1)
amended by
Nos 83/1987
s. 72(2)(a),
67/1992
s. 45(a),
50/1994
s. 63(1)(b),
substituted by
No. 15/1998
s. 4(3).

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S. 131(2)
amended by
Nos 83/1987
s. 72(2)(a),
67/1992
s. 45(a),
50/1994
s. 63(1)(b),
repealed by
No. 15/1998
s. 4(4).

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 131

S. 131(3)
substituted by
No. 83/1987
s. 72(2)(b),
amended by
Nos 67/1992
s. 45(b),
50/1993
s. 110(1)(g),
repealed by
No. 50/1994
s. 63(1)(c).

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S. 131(4)
amended by
Nos 83/1987
s. 72(2)(c)(i)(ii),
67/1992
s. 45(a),
50/1994
s. 63(1)(b),
substituted by
No. 15/1998
s. 4(5).

- (4) If the amount of money administered on behalf of any person by a trustee company determined under section 130 becomes less than an amount determined by the trustee company, the amount shall be paid out by the trustee company to that person.

S. 131(5)
substituted by
No. 83/1987
s. 72(2)(d),
amended by
Nos 64/1989
s. 35(h),
67/1992
s. 45(a)(c),
50/1993
s. 110(1)(h),
repealed by
No. 50/1994
s. 63(1)(c),
new s. 131(5)
inserted by
No. 15/1998
s. 4(5).

- (5) A trustee company must, within a reasonable period of time before paying out an amount under subsection (4), give written notice to the person entitled to the money of its intention to pay out that amount.

S. 131(6)
repealed by
No. 83/1987
s. 72(2)(e),
new s. 131(6)
inserted by
No. 15/1998
s. 4(5).

- (6) A person entitled to money under this section who objects to a determination of the trustee company made under subsection (4) may appeal to the County Court and the Court may make a new determination.

132 Powers of trustee company to make determinations

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S. 132(1)
amended by
Nos 83/1987
s. 72(3)(a),
67/1992
s. 45(a),
50/1994
s. 63(1)(b),
repealed by
No. 15/1998
s. 4(6).

- (2) If a deceased worker leaves more than one dependant the trustee company determined under section 130 after having regard to the circumstances of the various dependants and any variations in the circumstances from time to time may determine to—

S. 132(2)
amended by
Nos 83/1987
s. 72(3)(a),
67/1992
s. 45(a),
50/1994
s. 63(1)(b),
15/1998
s. 4(7)(a).

- (a) apply or otherwise deal with any money administered by the trustee company in a manner which the trustee company considers will for the time being be most beneficial to the dependants;

S. 132(2)(a)
amended by
Nos 83/1987
s. 72(3)(a),
67/1992
s. 45(a),
50/1994
s. 63(1)(b),
15/1998
s. 4(7)(b).

- (b) make a payment to any dependant;
(c) provide for any two or more dependants collectively; or
(d) exclude any dependant from participating in any benefit.

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 132

S. 132(3)
amended by
Nos 83/1987
s. 72(3)(a),
67/1992
s. 45(a),
50/1994
s. 63(1)(b),
substituted by
No. 15/1998
s. 4(8).

- (3) A dependant may apply to the trustee company to vary any determination made under subsection (2) if the dependant believes that the dependant is inadequately provided for or the circumstances of the dependant or other dependants have changed, and the trustee company may make any determination it considers appropriate for the variation of the earlier determination.

S. 132(4)
repealed by
No. 83/1987
s. 72(3)(b).

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S. 132(5)
amended by
Nos 67/1992
s. 45(a)(b),
50/1994
s. 63(1)(b),
substituted by
No. 15/1998
s. 4(9).

- (5) A dependant who objects to any determination of the trustee company made under this section may appeal to the County Court and the Court may make a new determination.

S. 133
repealed by
No. 83/1987
s. 72(4).

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Division 8—Insurance of common law liabilities

S. 134
amended by
Nos 10255
s. 8(2)(c),
83/1987 s. 73,
67/1992
s. 64(7)(a),
repealed by
No. 102/2004
s. 35(3).

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**Division 8A—Actions in respect of injuries arising on or
after 20 October 1999**

Pt 4 Div. 8A
(Heading and
ss 134AA–
134AF)
inserted by
No. 26/2000
s. 18.

134AA Actions for damages

S. 134AA
inserted by
No. 26/2000
s. 18.

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 on or after 20 October 1999 shall not, in proceedings in respect of the injury, recover any damages in respect of pecuniary loss except—

- (a) in proceedings in respect of an injury or death arising out of a transport accident within the meaning of the **Transport Accident Act 1986** on or after 20 October 1999—
 - (i) otherwise than under Part III of the **Wrongs Act 1958**, against the employer or any other person, subject to and in accordance with the **Transport Accident Act 1986**; or
 - (ii) under Part III of the **Wrongs Act 1958** against the employer or the employer and any other person, subject to and in accordance with the **Transport Accident Act 1986**; or
 - (iii) under Part III of the **Wrongs Act 1958** against a person other than the employer, subject to and in accordance with the **Transport Accident Act 1986**; or

s. 134AB

- (b) in proceedings to which the employer is not a party where, by reason of section 83(1), the injury is deemed to have arisen out of or in the course of employment, if the worker's place of employment is a fixed place of employment and the injury did not occur while the worker was present at that fixed place of employment.

S. 134AB
inserted by
No. 26/2000
s. 18.

134AB Actions for damages

- (1) 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 on or after 20 October 1999—
 - (a) shall not, in proceedings in respect of the injury, recover any damages for non-pecuniary loss except—
 - (i) in accordance with the **Transport Accident Act 1986** and subsections (25)(b), (26) and (36)(b) of this section; or
 - (ii) in proceedings of a kind referred to in section 134AA(b) and in accordance with subsections (25)(b), (26) and (36)(b) of this section; or
 - (iii) if subparagraphs (i) and (ii) do not apply, as permitted by and in accordance with this section; and
 - (b) shall not, in proceedings in respect of the injury recover any damages for pecuniary loss except—
 - (i) in proceedings of a kind referred to in a paragraph of section 134AA and in accordance with subsections (25)(a), (26) and (36)(a) of this section; or

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- (ii) if subparagraph (i) does not apply, as permitted by and in accordance with this section.
- (2) 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 and arose on or after 20 October 1999. **S. 134AB(2) amended by No. 95/2003 s. 3(8).**
- (3) A worker may not bring proceedings in accordance with this section unless— **S. 134AB(3) substituted by No. 102/2004 s. 6(1).**
- (a) determinations of the degree of impairment of the worker have been made under section 104B and the worker has made an application under subsection (4); or
- (b) subject to any directions issued under section 134AF, the worker elects to make an application under subsection (4) on the ground that the worker has a serious injury within the meaning of this section.
- (4) A worker may only make an application— **S. 134AB(4) substituted by No. 102/2004 s. 6(1).**
- (a) if subsection (3)(a) applies, after the worker— **S. 134AB (4)(a)(i) amended by No. 41/2006 s. 24(a).**
- (i) has advised the Authority or self-insurer under section 104B(6B) or 104B(7B) 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 104B(10); or
- (b) if subsection (3)(b) applies—
- (i) after a period of at least 18 months has elapsed since the event or circumstance giving rise to the injury occurred; or
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Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 134AB

S. 134AB
(4)(b)(ii)
amended by
No. 41/2006
s. 24(b).

(ii) if an application had been made under section 104B as in force before the commencement of section 5 of the **Accident Compensation Legislation (Amendment) Act 2004**, subject to sections 104B(21), 104B(22) and 104B(23).

S. 134AB(5)
substituted by
No. 9/2010
s. 57(1).

- (5) An application under subsection (4) 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.

S. 134AB(5AA)
inserted by
No. 9/2010
s. 57(1).

- (5AA) An authority to release information referred to in subsection (5)(b) has effect and cannot be revoked by the worker—
- (a) until all proceedings brought in accordance with this section have been heard and determined or compromised; or
 - (b) the worker withdraws his or her application.

- (5A) A copy of any claim under section 104B referred to in subsection (3) and of an application under subsection (4) must be served on each person against whom the applicant claims to have a cause of action.
- (6) If the worker 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 in any way hinders such an examination, the period between the date on which the worker so refused to comply, or hindered the examination, and the date of the examination must be disregarded in calculating the period referred to in subsection (7).
- (7) The Authority or self-insurer must, within 120 days (or such other period as may be specified in directions made under section 134AF) 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 subsection (16)(a).
- (8) The advice referred to in subsection (7)(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 of which the employer, Authority or self-insurer or the legal representative of any of them is aware and on which they intend to rely or the substance of which they intend to adduce in evidence in proceedings brought by the worker in accordance with this section or in any related proceedings.

S. 134AB(5A)
inserted by
No. 102/2004
s. 7.

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- (9) If the Authority or self-insurer fails to advise the worker in writing within the period referred to in subsection (7) as required by subsection (7), the worker is deemed to have suffered a serious injury.
- (10) The worker, within 28 days after receiving the advice referred to in subsections (7) and (8), may give to the Authority or self-insurer an affidavit attesting to such further material (whether or not existing before the worker made the application under subsection (4)) in rebuttal of the material (other than medical reports) attested to in affidavits accompanying the advice.
- (11) In proceedings in accordance with this section, 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 subsections (7) and (8); and
 - (ii) it had not been disclosed to the worker in accordance with subsections (7) and (8); 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 subsections (7) and (8); and
 - (ii) it had not been disclosed to the other party in accordance with subsection (5) or (10).
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- (12) The worker must not commence proceedings in accordance with this section, other than an application under subsection (16)(b) or the commencement of proceedings with the consent of the Authority under subsection (20) or (20A), 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 counter offer within 21 days after it is made; and
 - (e) the proceedings are commenced not earlier than 21 days, and not more than 51 days, after the counter offer is made or, if a counter offer is deemed to have been made under subsection (14), not more than 30 days after the day on which the counter offer is deemed to have been made.
- (13) If the Authority or self-insurer does not make a statutory offer under subsection (12), the Authority or self-insurer is deemed, for the purposes of that subsection, to have made, on the 60th day after the response date, a statutory offer of nothing.

S. 134AB(12)
amended by
No. 82/2001
s. 22(1)(a).

s. 134AB

S. 134AB(15)
amended by
No. 102/2004
s. 6(2).

- (14) If the Authority or self-insurer makes a statutory offer under subsection (12) and the worker does not make a statutory counter offer under that subsection, the worker is deemed, for the purposes of that subsection, to have made, on the 21st day after the statutory offer was made, a statutory counter offer of the maximum amount that may be awarded as damages under subsection (22)(a) and (b).
- (15) If the assessment under section 104B made before an application under subsection (4) is made of the degree of impairment of the worker as a result of the injury is 30 per centum or more, the injury is deemed to be a serious injury within the meaning of this section.
- (16) If the assessment under section 104B of the degree of impairment of the worker as a result of the injury is less than 30 per centum, the person may not bring proceedings for the recovery of damages in respect of the injury unless—
 - (a) 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
 - (b) a court, other than the Magistrates' Court, on the application of the worker made within 30 days after the worker received advice under subsection (7) or, with the consent of the Authority under subsection (20), after that period, gives leave to bring the proceedings.

- (17) For the purposes of paragraphs (a) and (b) of subsection (16), a worker who satisfies subparagraph (i) of subsection (38)(b) but not subparagraph (ii) of that subsection, is entitled to bring proceedings in accordance with subsection (16)(b) for the recovery of damages for pain and suffering only.
- (18) A copy of an application under subsection (16) must be served on the Authority or self-insurer and on each person against whom the applicant claims to have a cause of action.
- (19) For the purposes of subsection (16)(b)—
- (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;
 - (b) for the purposes of proving a loss of earning capacity in accordance with subsection (38), a worker bears the onus of proving any inability to be retrained or rehabilitated or to undertake suitable employment or any employment including alternative or further or additional employment and the extent of such inability;

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S. 134AB(19)(c)
repealed by
No. 9/2010
s. 57(2).

- (19A) 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 section which is heard and determined on and from the commencement of section 57(3) of the **Accident Compensation Amendment Act 2010**.
- S. 134AB(19A)
inserted by
No. 9/2010
s. 57(3).

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 134AB

S. 134AB(20)
amended by
No. 82/2001
s. 22(1)(b)(iii).

(20) If, on the application of a worker, the Authority is satisfied that—

S. 134AB
(20)(a)
amended by
No. 82/2001
s. 22(1)(b)(i).

(a) the worker is unable to commence proceedings in accordance with this section because of the operation of subsection (16)(b); and

S. 134AB
(20)(b)
amended by
No. 82/2001
s. 22(1)(b)(i).

(b) the failure to comply with subsection (16)(b) 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 subsection (16)(b).

S. 134AB(20A)
inserted by
No. 82/2001
s. 22(2).

(20A) If the Authority is satisfied that a worker is unable to commence proceedings in accordance with this section because of the operation of subsection (12), 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 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 counter offer is made if the Authority is satisfied that the failure to comply with subsection (12) was not due to any fault or omission of the worker or the worker's legal representative.

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- (20B) The Authority may consent to the commencement of proceedings under subsection (20A) even though the relevant time limit expired before the date of commencement of section 22 of the **Accident Compensation (Amendment) Act 2001**. S. 134AB(20B) inserted by No. 82/2001 s. 22(2).
- (21) If a worker makes an application under subsection (4) in respect of an injury the worker must not make a further application under that subsection in respect of that injury. S. 134AB(21) substituted by No. 9/2010 s. 57(4).
- (21A) If after a worker has failed to satisfy a court that the relevant injury is a serious injury on an application for leave to bring proceedings in accordance with subsection (16)(b), the worker obtains under section 104B determinations that the degree of impairment of the worker is 30 per centum or more, the worker is not entitled to recover damages for the same relevant injury. S. 134AB(21A) inserted by No. 102/2004 s. 6(3).
- (22) A court must not, in proceedings in accordance with this section, 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 subsection (25), is less than \$44 730 or that amount as varied in accordance with section 100 as at the date of the award; or S. 134AB(22) (a)(i) amended by No. 102/2004 s. 40(e).
- (ii) in excess of \$1 006 760 or that amount as varied in accordance with section 100 as at the date of the award; or S. 134AB(22) (a)(ii) amended by No. 102/2004 s. 40(f).
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s. 134AB

S. 134AB(22)
(b)(i)
amended by
No. 102/2004
s. 40(g).

(b) pain and suffering damages—

(i) if the total pain and suffering damages assessed, before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** and before the reduction (if any) under subsection (25), is less than \$43 190 or that amount as varied in accordance with section 100 as at the date of the award; or

S. 134AB(22)
(b)(ii)
amended by
Nos 102/2004
s. 40(h),
9/2010 s. 55.

(ii) in excess of \$503 000 or that amount as varied in accordance with section 100 as at the date of the award; or

(c) damages of any other kind, other than damages in the nature of interest.

(23) In the trial of a proceeding brought under this section, a jury must not be informed—

(a) of the monetary thresholds and statutory maximums specified by or under subsection (22); 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 subsection (16)(a).

(24) Damages awarded under this section in respect of pecuniary loss shall 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 section 99; or

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- (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.
 - (25) 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 subsection (1), the amount of the judgment, order for damages, settlement or compromise must be reduced by—
 - (a) to the extent that it is in respect of pecuniary loss, the amount of compensation (if any) paid otherwise than under section 98C, 98E and 99 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 under section 98C and 98E.
 - (26) If the amount of a judgment is subject to a reduction under subsection (25), that reduction must be made before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** is made.
 - (27) Subject to the rules of the court—
 - (a) in proceedings relating to an application for leave of the court under subsection (16), costs are to be awarded against a party against whom a decision is made; and
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- (b) unless subsection (28) applies in proceedings for the recovery of damages in accordance with this section—
- (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 section, each party bears its own costs; and
 - (iii) if damages are awarded, costs are to be awarded against the Authority or self-insurer.
- (28) In proceedings for the recovery of damages commenced in accordance with this section after a statutory offer was made, or deemed to have been made, under subsection (12)—
- (a) if no liability to pay damages is established, the worker must pay the party and party costs of the employer, Authority or self-insurer and the worker's own costs;
 - (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 subsection (12) and more than the statutory offer of the Authority or self-insurer, the Authority or self-insurer must pay the worker's party and party costs and its own costs;
 - (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 subsection (12), the worker must pay the party and party costs of the Authority or self-insurer and the worker's own costs;
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- (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 subsection (12) 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.

- (28A) For the purposes of determining a liability to pay costs, or an entitlement to be paid costs, under subsection (28)(b), (c) or (d), if the amount of a judgment, order for damages, settlement or compromise is required to be reduced under subsection (25), the amount of the reduction must be the amount of compensation paid—

S. 134AB(28A)
inserted by
No. 9/2010
s. 57(5).

- (a) to the date of the statutory counter offer under subsection (12); or
(b) to the date of the deemed statutory counter offer under subsection (14).

- (28B) A reduction under subsection (28A) must be made before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** is made.

S. 134AB(28B)
inserted by
No. 9/2010
s. 57(5).

- (29) For the purpose of the taxing of costs in proceedings to which this section applies, any applicable scale of costs has effect as if amounts in the scale were reduced by 20 per cent.

- (30) 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 section; 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 section by the worker.

(31) 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.

(32) Where an award of damages in accordance with this section 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 centum in order to make appropriate allowance for inflation, the income from investment of the sum awarded and the effect of taxation on that income.

(33) Except as provided by subsection (32), nothing in that subsection affects any other law relating to the discounting of sums awarded as damages.

- (34) A court must not, in relation to an award of damages in accordance with this section, order the payment of interest, and no interest shall be 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.
- (35) Except as provided by subsection (34), nothing in that subsection affects any other law relating to the payment of interest on any amount of damages, other than special damages.
- (36) If judgment is obtained, or a compromise or settlement made in respect of proceedings referred to in subsection (1) 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 pain and suffering damages are awarded, to make payments under section 98C or 98E in respect of the injury.
- (36A) If judgment is obtained, or a compromise or a settlement is made, in respect of proceedings referred to in subsection (1) and the worker was, at the date of the judgment, compromise or settlement, still in receipt of compensation in the form of weekly payments, where pecuniary loss damages are awarded against the Authority, employer or self-insurer, the Authority, employer or self-insurer must, until the date on which a cheque is drawn for the purpose of payment of the

**S. 134AB
(36)(a)**
amended by
Nos 41/2006
s. 15(4),
9/2010
s. 57(6).

S. 134AB(36A)
inserted by
No. 9/2010
s. 57(7).

s. 134AB

judgment, compromise or settlement, pay to the worker a weekly amount equal to the net weekly amount that, but for subsection (36), would have been payable to the worker as compensation in the form of weekly payments in respect of the injury.

S. 134AB(36B)
inserted by
No. 9/2010
s. 57(7).

(36B) Subsection (36A) applies only in respect of proceedings referred to in subsection (1) against a sole defendant where that sole defendant was the worker's employer at the date of the injury the subject of the proceedings.

S. 134AB(36C)
inserted by
No. 9/2010
s. 57(7).

(36C) An amount paid in accordance with subsection (36A) is, to the extent of the payment, part satisfaction of the liability in respect of the judgment, settlement or compromise.

(37) In this section—

S. 134AB(37)
def. of
determination date
amended by
No. 102/2004
s. 8(1)(2).

determination date, in relation to an injury, means the date on which—

- (a) if the worker is assessed under section 104B to have a degree of impairment of 30 per centum or more, the date on which the worker receives advice under subsection (7); or
- (ab) if the Authority or self-insurer fails to advise the worker in writing as required by subsection (7) within the period referred to in subsection (7), the date on which under subsection (9) the injury is deemed to be a serious injury; or
- (b) if the worker is assessed under section 104B to have a degree of impairment of less than 30 per centum, the date—
 - (i) on which a certificate is issued under subsection (16)(a) in relation to the injury; or

- (ii) unless subparagraph (iii) applies,
on which a court gives leave under
subsection (16)(b); or
- (iii) on which any appeal by the
Authority or a self-insurer against
a decision of a court to give leave
under subsection (16)(b) is
determined—

whichever is applicable;

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 was in existence at the time
the statement was made or was a
document which he or she obtained or
caused to be brought into existence
subsequently;

pain and suffering damages means damages for
pain and suffering, 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.
- (38) For the purposes of the assessment of *serious injury* in accordance with subsections (16) and (19)—
- (a) the following definitions apply—
 - foetus* has the same meaning as in section 98C(5);
 - 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 shall not be held to be serious for the purposes of subsection (16) unless the

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- pain and suffering consequence or 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 shall not be held to be severe for the purposes of subsection (16) unless the pain and suffering consequence or 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) where a worker relies upon paragraph (a), (b) or (c) of the definition of serious injury in subsection (37), the Authority or self-insurer shall not grant a certificate under subsection (16)(a) and a court shall not grant leave under subsection (16)(b) 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 subsection (16)(a) or at the date of the hearing of an application under subsection (16)(b), the worker has a loss of earning capacity of 40 per centum or more, measured (except in the case of a worker referred to in section 5A(7) or a worker under the age
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s. 134AB

**S. 134AB
(38)(f)
substituted by
No. 9/2010
s. 57(8)(a).**

- 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 section 5A(7) 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 centum 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) where the worker has, or would have after rehabilitation or retraining, and 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, 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 centum 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* shall be made at the time that the application is heard by the court, unless sections 134ABAA and 135BBA apply;
- (k) the monetary thresholds and statutory maximums specified by or under subsection (22) must be disregarded for the purposes of the assessment of *serious injury*.

S. 134AB
(38)(j)
amended by
No. 9/2010
s. 57(8)(b).

S. 134ABAA
inserted by
No. 9/2010
s. 58.

**134ABAA Determination of serious injury application
following death of worker**

- (1) This section applies if—
- (a) a worker dies; and
 - (b) the worker made an application served under section 134AB(4) before his or her death; 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 134AB(16)(b) 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 134AB; 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 134AB(4) before his or her death; or

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- (ii) in respect of an application referred to in section 134AB(16)(b)—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 134AB(20);
 - (b) if an application under section 134AB(4) 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;
 - (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 134AB(38) 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 134AB(4).
 - (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 134AB(4), notwithstanding anything to the
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contrary in section 134AB, the legal personal representative of the deceased worker may bring proceedings for the recovery of—

- (a) pain and suffering damages in respect of the injury; and
- (b) if the deceased worker's application established the matters specified in section 134AB(38)(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 134AB(38)(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 134AB(4) was served;
- (b) section 134AB(38)(f) applies as if a reference to "that date" were a reference to the date on which the application under section 134AB(4) 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 134AB(4); and
- (b) evidence that would have otherwise been admissible under section 134AB.

(8) 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 the incapacity of the worker resulting from, or materially contributed to by, the serious injury the subject of the application, or any incapacity of the worker due to the injury or disease which caused or materially contributed to the worker's death.
- (9) A reference to service of an application under section 134AB(4) in this section means the service of an application in accordance with directions made by the Minister under section 134AF.

134ABA Calculation of limitation of actions period

S. 134ABA
inserted by
No. 102/2004
s. 9.

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, section 134AB may be commenced on or after the commencement of section 9 of the **Accident Compensation Legislation (Amendment) Act 2004**, 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 impairment benefits is lodged under section 98C or 98E and ending 30 days after—
 - (i) the Authority or self-insurer advises the worker of the determination under section 104B(2); or
 - (ii) the Authority or self-insurer notifies the worker of the decision of the Medical Panel—

whichever is applicable;

s. 134ABB

- (b) if the worker elects to make an application under section 134AB(4), 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 134AB(12)(e).

S. 134ABB
inserted by
No. 9/2010
s. 59.

134ABB Calculation of limitation of actions period

- (1) For the avoidance of doubt, it is declared that, section 134AB does not affect the date of accrual of a cause of action for the purposes of the **Limitation of Actions Act 1958**.
- (2) Subsection (1) is deemed to have commenced on 20 October 1999.

S. 134AC
inserted by
No. 26/2000
s. 18.

134AC Effect of decision on application

A decision granting or refusing leave made on an application made under section 134AB(16)(b) shall be taken not to be a judgment or order in an interlocutory application for the purposes of an appeal to the Court of Appeal.

S. 134AD
inserted by
No. 26/2000
s. 18,
repealed by
No. 9/2010
s. 60.

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S. 134AE
inserted by
No. 26/2000
s. 18.

134AE Giving of reasons

The reasons given by the court in deciding an application under section 134AB(16)(b) shall not be summary reasons but shall be detailed reasons which are as extensive and complete as the court would give on the trial of an action.

134AF Directions

- (1) For the purposes of section 134AB, the Minister may issue directions for or with respect to procedures under that section.
- (1A) For the purposes of section 134AB(3)(b), the Minister may issue directions specifying or limiting the classes of cases or circumstances in which an election can be made under that section.
- (2) The directions must be published in the Government Gazette.
- (3) The directions may include directions about the provision of information by affidavit and the attending of conferences.
- (4) 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.
- (5) 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 that section.

S. 134AF
inserted by
No. 26/2000
s. 18.

S. 134AF(1A)
inserted by
No. 102/2004
s. 10.

134AG Legal costs order

- (1) The Governor in Council may by Order in Council make a legal costs order—
 - (a) specifying the legal costs that may be recovered by a legal practitioner acting on behalf of a worker in respect of any claim, application or proceedings under section 134AB, 135, 135A or 135B; and
 - (b) prescribing or specifying any matter or thing required to give effect to the legal costs order.

S. 134AG
inserted by
No. 26/2000
s. 19 (as
amended by
No. 84/2000
s. 39(3)(a)(b)).

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- (2) A legal costs order—
- (a) must be published in the Government Gazette;
 - (b) takes effect on and from the date on which it is published or any later date of commencement as may be specified in the order;
 - (c) 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;
 - (b) apply differently according to different circumstances or factors of a specified kind;
 - (c) specify different methods of calculation whether by reference to formulas, scales, tables or other means;
 - (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;
 - (e) authorise any specified person or body to determine or apply a specified matter or thing.
- (4) Section 134AB(29), 135A(13B) or 135B(7) does not apply in proceedings to which a legal costs order applies.
- (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 Act 2004**, the **Supreme Court**

S. 134AG(5)
amended by
No. 18/2005
s. 18(Sch. 1
item 1.2).

Act 1986 or the **County Court Act 1958** or in any regulation, rules, order or other document made under any of those Acts.

**Division 9—Actions in respect of injuries to which
Division 8A does not apply**

Pt 4 Div. 9
(Heading)
substituted by
No. 26/2000
s. 20(2).

**134A Actions for damages only in accordance with this
Act**

S. 134A
inserted by
No. 107/1997
s. 45.

- (1) 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 on or after 12 November 1997 but before 20 October 1999 shall not, in proceedings commenced in respect of the injury or otherwise, recover any damages of any kind.
- (2) Subsection (1) does not prevent the recovery of damages in proceedings under Part III of the **Wrongs Act 1958**, subject to and in accordance with the **Transport Accident Act 1986**, in respect of the death of a worker—
 - (a) arising out of a transport accident within the meaning of the **Transport Accident Act 1986**; and
 - (b) arising out of, or in the course of, or due to the nature of, any employment that was a significant contributing factor resulting in or materially contributing to the death.

S. 134A(1)
amended by
No. 26/2000
s. 21.

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135 Actions for damages^{41, 42}

S. 135(1)
amended by
Nos 111/1986
s. 180(3)(Sch.
2 item 3(b)(i)),
83/1987
s. 74(a),
67/1992
s. 46(1),
50/1994
s. 64(1)–(4),
repealed by
No. 107/1997
s. 46(1).

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S. 135(1A)
inserted by
No. 111/1986
s. 180(3)(Sch.
2 item 3(b)(ii)),
amended by
No. 83/1987
s. 74(a),
repealed by
No. 67/1992
s. 46(2).

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S. 135(2)
amended by
No. 83/1987
s. 74(a),
substituted by
No. 67/1992
s. 46(2),
amended by
No. 107/1997
s. 46(2).

- (2) For the purposes of proceedings to which subsection (1) (as in force at any time) or section 134A(2) applies, sections 135(1A) to (7) and 135A, and any other relevant provisions, of this Act as in force immediately before the commencement of section 46 of the **Accident Compensation (WorkCover) Act 1992** continue to apply as if they had not been repealed by that Act.

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- (3) Subsection (1), as in force immediately before 12 November 1997, continues to apply, subject to section 135AC, in respect of an injury arising out of, or in the course of, or due to the nature of, employment before that commencement.

S. 135(3)
amended by
Nos 48/1986
s. 23, 111/1986
s. 180(3)
(Sch. 2
item 3(b)(iii)),
83/1987
s. 74(b),
repealed by
No. 67/1992
s. 46(2),
new s. 135(3)
inserted by
No. 107/1997
s. 46(3).

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S. 135(3A)
inserted by
No. 83/1987
s. 74(c),
amended by
No. 18/1991
s. 10(2),
repealed by
No. 67/1992
s. 46(2).

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S. 135(3B)
inserted by
No. 83/1987
s. 74(c),
repealed by
No. 67/1992
s. 46(2).

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S. 135(4)
amended by
Nos 48/1986
s. 23, 83/1987
s. 74(d),
64/1989
s. 35(i),
repealed by
No. 67/1992
s. 46(2).

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S. 135(4A)
inserted by
No. 83/1987
s. 74(e),
repealed by
No. 67/1992
s. 46(2).

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S. 135(4B) inserted by No. 83/1987 s. 74(e), repealed by No. 67/1992 s. 46(2).	*	*	*	*	*
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S. 135(5) amended by No. 111/1986 s. 180(3)(Sch. 2 item 3(b)(iv) (v)), repealed by No. 67/1992 s. 46(2).	*	*	*	*	*
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S. 135(6) substituted by No. 83/1987 s. 74(f), repealed by No. 67/1992 s. 46(2).	*	*	*	*	*
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S. 135(7) inserted by No. 83/1987 s. 74(f), repealed by No. 67/1992 s. 46(2).	*	*	*	*	*
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S. 135A inserted by No. 37/1992 s. 5, substituted by No. 67/1992 s. 46(3).	135A Actions for damages^{43, 44}
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S. 135A(1) amended by Nos 50/1994 s. 64(5), 107/1997 s. 47(1).	(1) 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 before 12 November 1997—
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S. 135A(1)(a) inserted by No. 50/1994 s. 64(5).	(a) shall not, in proceedings in respect of the injury, recover any damages for non-pecuniary loss except—
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- (i) in accordance with the **Transport Accident Act 1986** and subsections (11)(b), (12) and (18)(b) of this section; or
- (ii) in proceedings of a kind referred to in section 135(1)(c) and in accordance with subsections (11)(b), (12) and (18)(b) of this section; or
- (iii) if subparagraphs (i) and (ii) do not apply, as permitted by and in accordance with this section; and
- (b) shall not, in proceedings in respect of the injury recover any damages for pecuniary loss except—
- (i) in proceedings of a kind referred to in a paragraph of section 135(1) and in accordance with subsections (11)(a), (12) and (18)(a) of this section; or
- (ii) if subparagraph (i) does not apply, as permitted by and in accordance with this section.
- (2) 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—
- (a) if employment of that nature was a significant contributing factor, and the injury is a serious injury and arose on or after 1 December 1992; or
- (b) if the injury is a serious injury and arose before that date but the incapacity arising from the injury did not become known until that date or a later date.
- (2A) Subject to subsection (2D), a worker may not bring proceedings in accordance with this section unless a determination of the degree of

S. 135A(1)(b)
inserted by
No. 50/1994
s. 64(5).

S. 135A(2A)
inserted by
No. 7/1996
s. 32(1).

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impairment of the worker has been made under subsection (3)⁴⁵.

S. 135A(2AA)
inserted by
No. 84/2000
s. 37.

(2AA) For the purposes of the procedures relating to an application for a determination from a worker made under subsection (2B) and received by the Authority or a self-insurer after 10 August 2000 but before 1 September 2000, subsections (2B), (2D) and (2DB) have effect as if the reference in each of those subsections to 120 days was a reference to 210 days.

S. 135A(2B)
inserted by
No. 7/1996
s. 32(1),
amended by
Nos 107/1997
s. 47(2),
81/1998
s. 25(9).

(2B) Subject to subsection (2C), the Authority or self-insurer must make a determination under subsection (3) within 120 days of receiving a written application for a determination from the worker⁴⁶.

S. 135A(2BA)
inserted by
No. 107/1997
s. 47(3).

(2BA) An application under subsection (2B)—
(a) must be in a form approved by the Authority;
and
(b) must be accompanied by—
(i) a copy of all medical reports; and
(ii) affidavits attesting to such 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.

S. 135A(2BB)
inserted by
No. 107/1997
s. 47(3),
amended by
No. 81/1998
s. 25(9).

(2BB) If the worker 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 in any way hinders such an examination, the period

between the date on which the worker so refused to comply, or hindered the examination, and the date of the examination must be disregarded in calculating the period of 120 days referred to in subsections (2B) and (2D).

- (2C) Despite subsection (2B), if the application is received during the first 104 weeks after the injury, the Authority or self-insurer may refuse to make a determination if the Authority or self-insurer is not satisfied that the worker's injury has stabilised⁴⁷.
- (2D) The Authority or self-insurer must, within 120 days of receiving the application, advise the worker in writing—
- (a) of the determination; or
 - (b) of the refusal to make a determination under subsection (2C).
- (2DA) The advice referred to in subsection (2D) 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 of which the employer, Authority or self-insurer or the legal representative of any of them is aware and on which they intend to rely or the substance of which they intend to adduce in evidence in proceedings brought by the worker in accordance with this section or in any related proceedings.
- (2DB) If the Authority or self-insurer fails to advise the worker in writing within 120 days of receiving the application—
- (a) of the determination; or
- S. 135A(2C)**
inserted by
No. 7/1996
s. 32(1),
amended by
No. 81/1998
s. 25(9).
- S. 135A(2D)**
inserted by
No. 7/1996
s. 32(1),
substituted by
No. 107/1997
s. 47(4),
amended by
No. 81/1998
s. 25(9).
- S. 135A(2DA)**
inserted by
No. 107/1997
s. 47(5),
amended by
No. 81/1998
s. 25(9).
- S. 135A(2DB)**
inserted by
No. 107/1997
s. 47(5),
amended by
No. 81/1998
s. 25(9).

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(b) of the refusal to make a determination under subsection (2C)—

the worker is deemed to have suffered a serious injury.

S. 135A(2DC)
inserted by
No. 107/1997
s. 47(5),
amended by
No. 81/1998
s. 25(9).

(2DC) The worker, within 28 days after receiving the advice referred to in subsections (2D) and (2DA), may give to the Authority or self-insurer an affidavit attesting to such further material (whether or not existing before the worker made the application under subsection (2B)) in rebuttal of the material (other than medical reports) attested to in affidavits accompanying the advice.

S. 135A(2DD)
inserted by
No. 107/1997
s. 47(5).

(2DD) In proceedings in accordance with this section, a medical report or other material is inadmissible in evidence—

S. 135A
(2DD)(a)
amended by
No. 81/1998
s. 25(9).

(a) on behalf of the Authority or self-insurer if—

S. 135A
(2DD)(a)(i)
amended by
No. 81/1998
s. 25(9).

(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 subsections (2D) and (2DA); and

(ii) it had not been disclosed to the worker in accordance with subsections (2D) and (2DA); 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 subsections (2D) and (2DA); and

- (ii) it had not been disclosed to the other party in accordance with subsection (2BA) or (2DC).

(2DE) The worker must not commence proceedings in accordance with this section, other than an application under subsection (4)(b) or the commencement of proceedings with the consent of the Authority under subsection (6A) or (6B), unless—

S. 135A(2DE)
inserted by
No. 107/1997
s. 47(5),
amended by
No. 82/2001
s. 23(1)(a).

- (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 counter offer within 21 days after it is made; and
- (e) the proceedings are commenced not earlier than 21 days, and not more than 51 days, after the counter offer is made or, if a counter offer is deemed to have been made under subsection (2DG), not more than 30 days after the day on which the counter offer is deemed to have been made.

**S. 135A
(2DE)(a)**
amended by
No. 81/1998
s. 25(9).

**S. 135A
(2DE)(b)**
amended by
No. 81/1998
s. 25(9).

**S. 135A
(2DE)(d)**
amended by
No. 81/1998
s. 25(9).

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S. 135A(2DF)
inserted by
No. 107/1997
s. 47(5),
amended by
Nos 81/1998
s. 25(9),
74/2000
s. 3(Sch. 1
item 1.6).

(2DF) If the Authority or self-insurer does not make a statutory offer under subsection (2DE), the Authority or self-insurer is deemed, for the purposes of that subsection, to have made, on the 60th day after the response date, a statutory offer of nothing.

S. 135A(2DG)
inserted by
No. 107/1997
s. 47(5),
amended by
No. 81/1998
s. 25(9).

(2DG) If the Authority or self-insurer makes a statutory offer under subsection (2DE) and the worker does not make a statutory counter offer under that subsection, the worker is deemed, for the purposes of that subsection, to have made, on the 21st day after the statutory offer was made, a statutory counter offer of the maximum amount that may be awarded as damages under subsection (7)(a) and (b).

S. 135A(3)
amended by
Nos 50/1994
s. 64(6)(a),
60/1996
s. 11(3),
81/1998
s. 25(9).

(3) If the Authority or self-insurer determines that the degree of impairment of the worker as a result of the injury would, if assessed in accordance with section 91 be 30 per centum or more, the injury is deemed to be a serious injury within the meaning of this section.

S. 135A(3A)
inserted by
No. 7/1996
s. 33(1),
amended by
No. 81/1998
s. 25(9).

(3A) A decision by the Authority or self-insurer that a worker has a serious injury for the purposes of section 93B is not to be taken to be a determination for the purposes of subsection (3) unless the decision specifically states that it is to be taken to be a determination for the purposes of subsection (3)⁴⁸.

S. 135A(4)
amended by
Nos 50/1994
s. 64(6)(a),
81/1998
s. 25(9).

(4) If the Authority or self-insurer has determined in accordance with subsection (3) that the degree of impairment of a worker is less than 30 per centum, the person may not bring proceedings for the recovery of damages in respect of the injury unless—

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| <p>(a) the Authority or self-insurer—</p> <p style="padding-left: 40px;">(i) is satisfied that the injury is a serious injury; and</p> <p style="padding-left: 40px;">(ii) issues to the worker a certificate in writing consenting to the bringing of the proceedings; or</p> <p>(b) a court, on the application of the worker made within 30 days after the determination was made or, with the consent of the Authority under subsection (6A), after that period, gives leave to bring the proceedings.</p> <p>(4A) If a worker makes an application for a determination under subsection (3) of the degree of impairment of the worker, the worker must not make a further application for such a determination unless it is the first application made after the Authority or self-insurer has refused to make a determination in accordance with subsection (2C).</p> <p>(5) A copy of an application under subsection (4) must be served on the Authority or self-insurer and on each person against whom the applicant claims to have a cause of action.</p> <p>(6) A court must not give leave under subsection (4)(b) unless it is satisfied that the injury is a serious injury.</p> <p>(6A) If, on the application of a worker, the Authority is satisfied that—</p> <p style="padding-left: 40px;">(a) the worker is unable to commence proceedings in accordance with this section because of the operation of subsection (4)(b); and</p> | <p>S. 135A(4)(a) amended by No. 81/1998 s. 25(9).</p> <p>S. 135A(4)(b) amended by No. 107/1997 s. 47(6).</p> <p>S. 135A(4A) inserted by No. 107/1997 s. 47(7), amended by No. 81/1998 s. 25(9).</p> <p>S. 135A(6) amended by No. 50/1994 s. 64(6)(b).</p> <p>S. 135A(6A) inserted by No. 107/1997 s. 47(8), amended by No. 82/2001 s. 23(1)(b)(ii).</p> <p>S. 135A(6A)(a) amended by No. 82/2001 s. 23(1)(b)(i).</p> |
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s. 135A

S. 135A(6A)(b)
amended by
No. 82/2001
s. 23(1)(b)(i).

(b) the failure to comply with subsection (4)(b) 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 subsection (4)(b).

S. 135A(6B)
inserted by
No. 82/2001
s. 23(2).

(6B) If the Authority is satisfied that a worker is unable to commence proceedings in accordance with this section because of the operation of subsection (2DE), 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 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 counter offer is made if the Authority is satisfied that the failure to comply with subsection (2DE) was not due to any fault or omission of the worker or the worker's legal representative.

S. 135A(6C)
inserted by
No. 82/2001
s. 23(2).

(6C) The Authority may consent to the commencement of proceedings under subsection (6B) even though the relevant time limit expired before the date of commencement of section 23 of the **Accident Compensation (Amendment) Act 2001**.

(7) A court must not, in proceedings in accordance with this section, 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 subsection (11), is less than \$44 730 or that amount as varied in accordance with section 100 as at the date of the award; or
- (ii) in excess of \$1 006 760 or that amount as varied in accordance with section 100 as at the date of the award; or

S. 135A(7)(a)(i) amended by Nos 50/1994 s. 64(6)(c) (d)(i), 7/1996 s. 49(l), 102/2004 s. 40(i).

S. 135A(7) (a)(ii) amended by Nos 50/1994 s. 64(6)(d)(ii), 7/1996 s. 49(m), 102/2004 s. 40(k).

(b) pain and suffering damages—

- (i) if the total pain and suffering damages assessed, before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** and before the reduction (if any) under subsection (11), is less than \$39 900 or that amount as varied in accordance with section 100 as at the date of the award; or
- (ii) in excess of \$404 900 or that amount as varied in accordance with section 100 as at the date of the award; or

S. 135A(7) (b)(i) amended by Nos 50/1994 s. 64(6)(c) (d)(i), 7/1996 s. 49(l), 102/2004 s. 40(j).

S. 135A(7) (b)(ii) amended by Nos 50/1994 s. 64(6)(d)(iii), 7/1996 s. 49(n), 102/2004 s. 40(l).

(c) damages of any other kind, other than damages in the nature of interest.

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- (8) A dependant of a worker may recover damages under Part III of the **Wrongs Act 1958** in respect of the death of a worker.
- (9) A court must not, in proceedings under Part III of the **Wrongs Act 1958** award damages in accordance with subsection (8) in respect of the death of a person in excess of \$500 000.
- (10) Damages awarded under this section in respect of pecuniary loss shall 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 section 99; 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.
- (11) 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 subsection (1), the amount of the judgment, order for damages, settlement or compromise must be reduced by—
 - (a) to the extent that it is in respect of pecuniary loss, the amount of compensation (if any) paid otherwise than under sections 98, 98A and 99 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;

S. 135A(11)
amended by
No. 50/1994
s. 64(6)(e).

S. 135A(11)(a)
amended by
Nos 84/1994
s. 63, 74/2000
s. 3(Sch. 1
item 1.7).

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- (b) to the extent that it is in respect of non-pecuniary loss, the amount of compensation (if any) paid under sections 98 and 98A. S. 135A(11)(b) amended by No. 74/2000 s. 3(Sch. 1 item 1.8).
- (12) If the amount of a judgment is subject to a reduction under subsection (11), that reduction must be made before the reduction (if any) under section 26(1) of the **Wrongs Act 1958** is made.
- (13) Subject to the rules of the court—
- (a) in proceedings relating to an application for leave of the court under subsection (4)—costs are to be awarded against a party against whom a decision is made; and
- (b) unless subsection (13A) applies in proceedings for the recovery of damages in accordance with this section— S. 135A(13)(b) amended by No. 107/1997 s. 47(9)(a).
- (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 section, each party bears its own costs; and
- (iii) if damages are awarded, costs are to be awarded against the Authority or self-insurer. S. 135A(13)(b)(iii) amended by Nos 107/1997 s. 47(9)(b), 81/1998 s. 25(9).
- (13A) In proceedings for the recovery of damages commenced in accordance with this section after a statutory offer was made, or deemed to have been made, under subsection (2DE)— S. 135A(13A) inserted by No. 107/1997 s. 47(10).
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**S. 135A
(13A)(a)
amended by
No. 81/1998
s. 25(9).**

(a) if no liability to pay damages is established, the worker must pay the party and party costs of the employer, Authority or self-insurer and the worker's own costs;

**S. 135A
(13A)(b)
amended by
No. 81/1998
s. 25(9)**

(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 subsection (2DE) and more than the statutory offer of the Authority or self-insurer, the Authority or self-insurer must pay the worker's party and party costs and its own costs;

**S. 135A
(13A)(c)
amended by
No. 81/1998
s. 25(9)**

(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 subsection (2DE), the worker must pay the party and party costs of the Authority or self-insurer and the worker's own costs;

**S. 135A
(13A)(d)
amended by
No. 81/1998
s. 25(9)**

(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 subsection (2DE) 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.

**S. 135A(13B)
inserted by
No. 107/1997
s. 47(10).**

(13B) For the purpose of the taxing of costs in proceedings to which this section applies, that are commenced on or after 12 November 1997 any applicable scale of costs has effect as if amounts in the scale were reduced by 10 per cent.

(13C) A person who represents or acts on behalf of a worker is not entitled—

S. 135A(13C)
inserted by
No. 107/1997
s. 47(10).

- (a) to recover any costs from that worker in respect of any proceedings under this section commenced on or after 12 November 1997; 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 section by the worker.

(13D) The court, on the application of—

S. 135A(13D)
inserted by
No. 107/1997
s. 47(10).

- (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.

(14) Where an award of damages in accordance with this section is to include an amount, assessed as a lump sum, in respect of damages for future loss which is referable to—

S. 135A(14)
amended by
No. 50/1994
s. 64(6)(f).

- (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

s. 135A

(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 centum in order to make appropriate allowance for inflation, the income from investment of the sum awarded and the effect of taxation on that income.

- (15) Except as provided by subsection (14), nothing in that subsection affects any other law relating to the discounting of sums awarded as damages.
- (16) A court must not, in relation to an award of damages in accordance with this section, order the payment of interest, and no interest shall be 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.
- (17) Except as provided by subsection (16), nothing in that subsection affects any other law relating to the payment of interest on any amount of damages, other than special damages.
- (18) If judgment is obtained, or a compromise or settlement made in proceedings referred to in subsection (1) 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 pain and suffering damages are awarded, to make payments under section 98 or 98A in respect of the injury.

S. 135A(18)
amended by
Nos 50/1994
s. 64(6)(g)(h),
81/1998
s. 25(10).

S. 135A(18)(a)
amended by
Nos 102/2004
s. 11(1),
41/2006
s. 15(4),
9/2010
s. 61(1).

Accident Compensation Act 1985
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| (18AA) If judgment is obtained, or a compromise or a settlement is made, in respect of proceedings referred to in subsection (1) and the worker was, at the date of the judgment, compromise or settlement, still in receipt of compensation in the form of weekly payments, where pecuniary loss damages are awarded against the Authority, employer or self-insurer, the Authority, employer or self-insurer must, until the date on which a cheque is drawn 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 (18), would have been payable to the worker as compensation in the form of weekly payments in respect of the injury. | S. 135A(18AA)
inserted by
No. 9/2010
s. 61(2). |
| (18AB) Subsection (18AA) applies only in respect of proceedings referred to in subsection (1) against a sole defendant where that sole defendant was the worker's employer at the date of the injury the subject of the proceedings. | S. 135A(18AB)
inserted by
No. 9/2010
s. 61(2). |
| (18AC) An amount paid in accordance with subsection (18AA) is, to the extent of the payment, part satisfaction of the liability in respect of the judgment, settlement or compromise. | S. 135A(18AC)
inserted by
No. 9/2010
s. 61(2). |
| (18A) If— | S. 135A(18A)
inserted by
No. 107/1997
s. 47(11),
amended by
No. 81/1998
s. 25(9). |
| (a) a written application for a determination under subsection (3) was made before 12 November 1997 by a worker to the Authority or self-insurer; and | S. 135A
(18A)(a)
amended by
No. 81/1998
s. 25(10). |
| (b) the advice of the Authority or self-insurer was not given before that date; and | S. 135A
(18A)(b)
amended by
No. 81/1998
s. 25(9). |
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S. 135A
(18A)(c)
amended by
No. 81/1998
s. 25(9).

- (c) the period of 60 days after the application was received by the Authority or self-insurer expires on or after that date—

the Authority or self-insurer must advise the worker in accordance with subsections (2D) and (2DA) within 120 days after receiving from the worker—

- (d) a copy of all medical reports; and

- (e) affidavits attesting to such other material—

existing when the worker gives copies of any such reports and affidavits to the Authority 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.

S. 135A(18B)
inserted by
No. 107/1997
s. 47(11).

- (18B) If subsection (18A) applies to an application, this section, as amended by section 47 of the **Accident Compensation (Miscellaneous Amendment) Act 1997**, applies, subject to subsection (18A), as if the application had been made under this section as so amended.

- (19) In this section—

determination date, in relation to an injury, means the date on which—

S. 135A(19)
def. of
determination date
inserted by
No. 107/1997
s. 47(12),
amended by
No. 102/2004
s. 11(2).

- (a) the injury is determined, or deemed, in accordance with this section, or declared by a court, to be a serious injury; or
- (b) a certificate is issued under subsection (4)(a) in relation to the injury; or

- (c) any appeal by the Authority or a self-insurer against a decision of a court to give leave under subsection (4)(b) is determined—

whichever is applicable;

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 was in existence at the time the statement was made or was a document which he or she obtained or caused to be brought into existence subsequently;

S. 135A(19)
def. of
medical report
inserted by
No. 107/1997
s. 47(11).

pain and suffering damages means damages for pain and suffering, 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;

S. 135A(19)
def. of
response date
inserted by
No. 107/1997
s. 47(11).

serious injury means—

- (a) serious long-term impairment or loss of a body function; or
- (b) permanent serious disfigurement; or

s. 135AB

- (c) severe long-term mental or severe long-term behavioural disturbance or disorder; or
- (d) loss of a foetus.

S. 135AB
inserted by
No. 107/1997
s. 48.

135AB Directions

- (1) For the purposes of section 135A, the Minister may issue directions for or with respect to procedures under that section.
- (2) The directions must be published in the Government Gazette.
- (3) The directions may include directions about the provision of information by affidavit and the attending of conferences.
- (4) 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.
- (5) 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 that section.

S. 135AC
inserted by
No. 107/1997
s. 48,
substituted by
No. 26/2000
s. 22.

135AC Limitation of Actions Act 1958

Despite anything to the contrary in the **Limitation of Actions Act 1958**, proceedings in accordance with section 135 or 135A must not be commenced—

- (a) subject to the **Limitation of Actions Act 1958**, unless paragraph (b) applies, unless an application for a determination from the worker under section 135A(2B) has been made to the Authority or a self-insurer before 1 September 2000; or

- (b) if the cause of action arose before 12 November 1997 and the incapacity arising from the injury was not known until after 12 November 1997, unless an application for a determination from the worker under section 135A(2B) has been made to the Authority or a self-insurer before the expiration of 3 years after the date the incapacity became known.

S. 135AC(b)
substituted by
No. 82/2001
s. 24.

135AD Limitation of Actions Act 1958

S. 135AD
inserted by
No. 9/2010
s. 63.

- (1) For the avoidance of doubt, it is declared that, sections 135A and 135AC do not affect the date of accrual of a cause of action for the purposes of the **Limitation of Actions Act 1958**.
- (2) Subsection (1) is deemed to have commenced on the appointed day.

135B Injuries before 1 December 1992^{49, 50}

S. 135B
inserted by
No. 67/1992
s. 46(3).

- (1) In this section, *proceedings to which this section applies* means—

S. 135B(1)
amended by
No. 50/1994
s. 64(7)(a).

- (a) proceedings to which section 135(1) as in force immediately before the commencement of section 46 of the **Accident Compensation (WorkCover) Act 1992** applies that had been commenced before, but the hearing of which had not begun before, that commencement; and
- (b) proceedings commenced on or after 1 December 1992 to recover damages in respect of an injury arising before that date—

S. 135B(1)(b)
substituted by
No. 50/1994
s. 64(7)(b).

but does not include proceedings of a kind referred to in a paragraph of section 135(1) as in force on or after 1 December 1992.

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S. 135B(1AA)
inserted by
No. 26/2000
s. 23(1).

(1AA) The requirement that proceedings in respect of an injury arising before 1 December 1992 must be commenced before 30 June 1994 does not apply to proceedings in respect of an injury to which section 135A(2)(b) would otherwise apply.

S. 135B(1AB)
inserted by
No. 26/2000
s. 23(2).

(1AB) For the purposes of calculating the period of time within which a proceeding referred to in subsection (1AA) must be commenced under the **Limitations of Actions Act 1958**, the period commencing on 4 December 1998 and ending on the day on which section 23(2) of the **Accident Compensation (Common Law and Benefits) Act 2000** comes into operation is to be disregarded.

S. 135B(1AC)
inserted by
No. 26/2000
s. 23(2).

(1AC) It is hereby declared that subsections (1AA) and (1AB) affect the rights of the parties in the proceedings known as *Rizza v Fluor Daniel GTI (Australia) Pty Ltd* and *Inline Courier Systems Pty Ltd v Walker* (1998 VSCA 131).

S. 135B(1A)
inserted by
No. 50/1994
s. 64(8).

(1A) A reference in this section to an injury is a reference to an injury within the meaning of this Act as in force when the injury arose.

S. 135B(2)
substituted by
No. 50/1994
s. 64(9).

(2) A worker who is, or the dependants of a worker who are, or may be, entitled to compensation in respect of an injury arising before 1 December 1992 shall not, in proceedings to which this section applies commenced on or after 30 June 1994, recover any damages in respect of pecuniary loss or damages of any other kind.

S. 135B(3)
amended by
No. 50/1994
s. 64(10)(a)(b).

(3) A worker may commence proceedings before 30 June 1994 to recover damages in accordance with section 135 of this Act as in force immediately before the commencement of section 46 of the **Accident Compensation (WorkCover) Act 1992** in respect of an injury or death arising before 1 December 1992.

(4) A court must not hear proceedings to which this section applies unless, within 3 months after the commencement of section 46 of the **Accident Compensation (WorkCover) Act 1992** or the commencement of the proceedings, whichever is the later, or such longer period as the Authority or self-insurer approves, the parties have attended a conference at which the Authority or self-insurer has made an offer in settlement or compromise of the claim.

S. 135B(4)
amended by
Nos 50/1994
s. 64(10)(c),
81/1998
s. 25(9).

(5) The Minister—

- (a) may appoint persons to act as conciliators for the purposes of subsection (4); and
- (b) may give directions about the procedures for conferences under that subsection.

(6) In proceedings to which this section applies, where a judgment or order for damages is made by the court—

- (a) in an amount that is not more than 120 per centum of the amount of the offer—

S. 135B(6)(a)
substituted by
No. 50/1994
s. 64(10)(d).

- (i) the worker, or dependants of the worker, must pay the costs of the Authority or self-insurer; and

S. 135B
(6)(a)(i)
amended by
No. 81/1998
s. 25(9).

- (ii) the court must not make an order for the payment of the costs of the worker or dependants of the worker by the Authority or self-insurer; or

S. 135B
(6)(a)(ii)
amended by
No. 81/1998
s. 25(9).

- (b) in an amount that is more than 120 per centum of the amount of the offer, the Authority or self-insurer must pay the costs of the worker, or dependants of the worker.

s. 135BA

- (7) For the purpose of the taxing of costs in proceedings to which this section applies, any applicable scale of costs has effect as if amounts in the scale were reduced by 10 per centum.

Pt 4 Div. 9A
(Heading and
s. 135BA)
inserted by
No. 102/2004
s. 12.

Division 9A—Actions by terminally ill workers

S. 135BA
inserted by
No. 102/2004
s. 12.

135BA Actions by terminally ill workers

- (1) This section applies if a worker who may have an entitlement to recover damages in accordance with section 134AB or 135A 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.
- (2) If this section applies, the worker may subject to compliance with the requirements of this section bring proceedings in accordance with—
- (a) section 134AB without complying with the requirements of subsections (1) to (21) and subsections (27), (28) and (38) of that section; or
- (b) section 135A without complying with subsections (1) to (6) and subsections (13), (13A), (18A) and (18B) of that section.
- (3) If a worker commences proceedings under section 134AB or 135A 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. 135BA(3)
amended by
No. 24/2008
s. 74(a).

(b) for an order allowing an expedited hearing of the proceedings.

(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 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.

S. 135BA(4)
amended by
No. 24/2008
s. 74(b).

(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 section 134AB or 135A.

S. 135BA(5)
amended by
No. 24/2008
s. 74(b).

(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 section 134AB, 135A or 135AC if the worker establishes that the worker has a serious injury within the meaning of section 134AB(38) or 135A(19).

S. 135BA(6)
amended by
No. 24/2008
s. 74(b).

135BBA Actions by terminally ill workers continued after death of worker

S. 135BBA
inserted by
No. 9/2010
s. 62.

(1) This section applies if—

(a) a worker dies after serving proceedings issued in reliance on section 135BA to commence proceedings, in accordance with section 134AB; and

(b) the worker's death was not caused or materially contributed to by the injury to which the proceedings relate; and

s. 135BB

- (c) at the time of the worker's death, the worker had a dependant or dependants within the meaning of section 134ABAA(8).
- (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 134AB(4) by the worker before the worker's death; and
 - (c) subject to paragraph (d), section 134ABAA applies to the proceedings referred to in subsection (1)(a); and
 - (d) despite section 134ABAA(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.

Pt 4 Div. 9B
(Heading and
s. 135BB)
inserted by
No. 69/2008
s. 9.

Division 9B—Actions by workers with asbestos-related conditions

S. 135BB
inserted by
No. 69/2008
s. 9.

135BB Actions by workers with asbestos-related conditions

- (1) This section applies to a worker who may have an entitlement to recover damages in accordance with section 134AB or 135A 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.
- (2) If this section applies, the worker may, subject to compliance with the requirements of this section, bring proceedings in accordance with—

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- (a) section 134AB without complying with the requirements of subsections (1) to (21) and subsections (27), (28) and (38) of that section; or
 - (b) section 135A without complying with subsections (1) to (6) and subsections (13), (13A), (18A) and (18B) of that section.
 - (3) If a worker commences proceedings under section 134AB or 135A 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
 - (b) for an order allowing an expedited hearing of the proceedings if the asbestos-related condition gives rise to an imminent risk of death.
 - (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 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 section 134AB or 135A.
 - (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 section 134AB, 135A or 135AC if the
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s. 135C

worker establishes that the worker has a serious injury within the meaning of section 134AB(38) or 135A(19).

- (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 134AB(38) or 135A(19).
- (8) In this section, asbestos-related condition has the same meaning as it has in the **Asbestos Diseases Compensation Act 2008**.

Pt 4 Div. 10
(Heading)
inserted by
No. 26/2000
s. 20(3).

Division 10—Other actions and rights

S. 135C
inserted by
No. 107/1997
s. 49.

135C 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 \$664 160.
- (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

S. 135C(2)
amended by
No. 102/2004
s. 40(m).

- (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—
- (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 92, 92A, 92B
or 92D 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.

S. 135C(7)(a)
amended by
No. 9/2010
s. 66(2).

S. 135C(7)(b)
amended by
No. 81/1998
s. 25(10).

s. 135D

S. 135D
inserted by
No. 26/2000
s. 24.

135D Structured settlements

- (1) This section applies if—
 - (a) an award of damages is made by a court in proceedings under this Act; and
 - (b) the plaintiff and the defendant agree in the proceedings that the whole or part of the amount of damages awarded is to be paid in accordance with an arrangement to be approved by the court.
- (2) In deciding whether or not to approve an arrangement under this section, the court—
 - (a) must have regard to such matters as are prescribed for the purposes of this section; and
 - (b) may have regard to any other matters that the court considers are relevant.
- (3) An arrangement under this section—
 - (a) may provide that all or part of the amount of the damages subject to the arrangement are to be paid in the form of periodic payments funded by an annuity or other specified means;
 - (b) must provide for any matters as may be prescribed; and
 - (c) is subject to such conditions and limitations as may be prescribed.
- (4) Subject to this section, an arrangement under this section may only be varied or terminated upon the application of a party to the arrangement to the court that approved the arrangement.
- (5) The costs of an application under subsection (4) must be borne by the party making the application.

136 Authority or employer not liable for certain costs and expenses

Where a worker is or appears to be entitled to costs and expenses in respect of an injury under this Act, and that injury has arisen out of the use of a motor car before the commencement of section 34 of the **Transport Accident Act 1986**, the Authority, a self-insurer or an employer is not liable for any costs or expenses in respect of which the Transport Accident Commission may make payment under section 122 or 145 of the **Transport Accident Act 1986**.

S. 136
amended by
Nos 111/1986
s. 180(3)
(Sch. 2
item 3(c)),
67/1992
s. 64(7)(a).

137 Liability of the Transport Accident Commission

(1) Where—

S. 137(1)
amended by
Nos 111/1986
s. 180(3)
(Sch. 2
item 3(d)(i)
(ii)), 67/1992
s. 64(7)(c).

(a) the Authority, a self-insurer or an employer is required under this Act to pay an amount of compensation in respect of the death or injury of a worker (being death or injury that was caused by or arose out of the use of a motor car before the commencement of section 34 of the **Transport Accident Act 1986**); and

S. 137(1)(a)
amended by
Nos 83/1987
s. 75, 67/1992
s. 64(7)(c).

(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 the death or injury under the **Transport Accident Act 1986**—

S. 137(1)(b)
amended by
No. 111/1986
s. 180(3)
(Sch. 2
item 3(d)(i)(ii)).

the Transport Accident Commission shall, notwithstanding anything to the contrary in the **Transport Accident Act 1986**, be liable to make

Accident Compensation Act 1985
No. 10191 of 1985
Part IV—Payment of Compensation

s. 137

payment to the Authority, self-insurer or employer in accordance with subsection (2).

S. 137(2)
amended by
No. 111/1986
s. 180(3)
(Sch. 2
item 3(d)(iii)).

- (2) The total amount of any payment to be made under subsection (1) by the Transport Accident Commission in respect of an injury or death shall be an amount equal to—

S. 137(2)(a)
amended by
Nos 111/1986
s. 180(3)
(Sch. 2
item 3(d)(iv)),
64/1989
s. 35(j).

- (a) the amount of compensation payable under Division 2 (except sections 98 and 99) of Part IV less the amount of any payment in respect of that injury or death made under section 15A of the **Motor Accident Act 1973** or section 138 of the **Transport Accident Act 1986**;

S. 137(2)(b)
amended by
No. 111/1986
s. 180(3)
(Sch. 2
item 3(d)(v)).

- (b) the total amount of the payments which 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 under section 141, 142 or 143 of the **Transport Accident Act 1986** in respect of that death or injury; or

- (c) \$20 800—

whichever is the lesser.

S. 137(3)
amended by
Nos 111/1986
s. 180(3)
(Sch. 2
item 3(d)(vi)),
67/1992
s. 64(7)(c).

- (3) The Transport Accident Commission is not liable to make a payment under subsection (1) to the Authority, a self-insurer or an employer in respect of an amount of compensation if the Authority, the self-insurer or the employer has not made a claim to the Transport Accident Commission within three months after the Authority, the self-insurer or the employer paid the amount of compensation.

(4) The provisions of the **Transport Accident Act 1986** relating to application for and determination of payments in respect of the death or injury of a person shall apply to payments which the Transport Accident Commission is liable to make under subsection (1) as if the Authority, the self-insurer or employer were the injured person or (in the case of the death of the injured person) a spouse or child of the deceased wholly, mainly or in part dependent upon the earnings of the deceased (as the case requires), and as if in section 69 of that Act the requirement that a claim to the Transport Accident Commission be made within six years after the date of the accident were disregarded.

S. 137(4)
amended by
Nos 111/1986
s. 180(3)
(Sch. 2
item 3(d)(vi)–
(ix)), 67/1992
s. 64(7)(c).

(5) If an employer has made a claim to the Transport Accident Commission within three months after paying an amount of compensation, the Transport Accident Commission shall not make a payment under this section to the Authority in respect of an amount of compensation paid in respect of an injury to a worker unless the Transport Accident Commission has made payment to the employer in respect of the claim.

S. 137(5)
amended by
Nos 111/1986
s. 180(3)
(Sch. 2
item 3(d)(vi)),
67/1992
s. 64(7)(c).

(5A) If—

S. 137(5A)
inserted by
No. 26/2000
s. 25(1).

(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** on or after the commencement of section 25 of the **Accident Compensation (Common Law and Benefits) Act 2000**; 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 shall, notwithstanding anything to the contrary in the **Transport Accident Act 1986**, be 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.

S. 137(5B)
inserted by
No. 26/2000
s. 25(1),
amended by
No. 84/2000
s. 38.

(5B) If—

- (a) a self-insurer has appointed the Transport Accident Commission to be its agent under section 143A; 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** on or after the commencement of section 25 of the **Accident Compensation (Common Law and Benefits) Act 2000** and arising during the course of the agency arrangement; 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 shall, notwithstanding anything to the contrary in the **Transport Accident Act 1986**, be 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 125A if a WorkCover insurance policy was in force.

- (6) Moneys in 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.

S. 137(6)
substituted by
No. 111/1986
s. 180(3)
(Sch. 2
item 3(d)(x)).

137A Settlement between Transport Accident Commission and the Authority

S. 137A
inserted by
No. 50/1994
s. 66.

- (1) If—

S. 137A(1)
amended by
No. 26/2000
s. 25(2).

- (a) the Transport Accident Commission is liable to make a payment to the Authority in accordance with section 137(2) or 137(5A);
or

S. 137A(1)(a)
amended by
No. 26/2000
s. 25(2).

- (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 section 137(2) or 137(5A)—

S. 137A(1)(b)
amended by
No. 26/2000
s. 25(2).

the Transport Accident Commission and the Authority may undertake a settlement of that liability or potential liability to make payments in accordance with section 137(2) or 137(5A).

- (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 137(2)

S. 137A(2)
amended by
No. 26/2000
s. 25(2).

or 137(5A), determine the value of that liability or potential liability in any manner they think fit.

138 Indemnity by third party

S. 138
amended by
Nos 111/1986
s. 180(3)
(Sch. 2
item 3(e)),
67/1992
ss 47, 64(7)(c),
50/1993
s. 102(1)
(a)–(d),
substituted by
No. 50/1994
s. 67.

S. 138(1)
amended by
Nos 107/1997
s. 50, 81/1998
s. 25(9)(10),
65/2008
s. 8(1).

S. 138(2)
amended by
Nos 82/2001
s. 25, 65/2008
s. 8(1).

- (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 or that would have created such a liability if the injury or death had been caused in Victoria or that would, but for section 134A, create such a liability in respect of the injury or death, 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, Divisions 8A and 9 of Part IV 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—

S. 138(3)(b)
amended by
Nos 60/1996
s. 22(a)(b),
81/1998
s. 25(11),
65/2008
s. 8(2).

$$[A - (B + C)] \times \frac{X}{100}$$

where—

- 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;
- 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, the self-insurer or the employer under section 137 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.

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(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.

S. 138(4A)
inserted by
No. 9/2010
s. 121.

(4A) 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.

S. 138(5)
inserted by
No. 26/2000
s. 25(3).

(5) If the Transport Accident Commission is liable to make payment to the Authority under section 137(5A) or to a self-insurer under section 137(5B) in respect of a death or injury and 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.

S. 138(6)
inserted by
No. 9/2010
s. 122.

(6) 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 125(1)(a) or 125A(3), 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.

S. 138(7)
inserted by
No. 9/2010
s. 122.

(7) 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 125(1)(a) or 125A(3), the Authority may, in its absolute discretion, decide how that amount is to be dispersed.

- (8) Any proceedings to seek review of a decision made by the Authority under subsections (6) or (7) 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.

S. 138(8)
inserted by
No. 9/2010
s. 122.

- (9) In subsection (8), *proceedings* includes—

S. 138(9)
inserted by
No. 9/2010
s. 122.

- (a) the inquiry into, hearing and determination of any question or matter under this Act;
- (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;
- (c) seeking any order under the **Administrative Law Act 1978**;
- (d) any other action or proceeding.

138A Substantive law

For the avoidance of doubt, it is hereby declared that all the provisions of Division 8A, Division 9 and this Division contain matters that are substantive law and are not procedural in nature.

S. 138A
inserted by
No. 107/1997
s. 51,
amended by
No. 26/2000
s. 20(4).

138B Compensation for pain and suffering

New s. 138B
inserted by
No. 26/2000
s. 26.

- (1) A court must not exercise the powers conferred by Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991** to make a compensation order within the meaning of that Subdivision if the compensation would be for a matter arising from

S. 138B(1)
amended by
Nos 54/2000
s. 25(3)(a)(b),
9/2010 s. 25.

s. 138B

discriminatory conduct that constitutes an offence against section 242AA or for a matter—

(a) 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

S. 138B(1)(b)
amended by
No. 107/2004
s. 177(6).

(b) 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.

S. 138B(2)
amended by
No. 54/2000
s. 25(4).

(2) Notwithstanding anything to the contrary in Subdivision (1) of Division 2 of Part 4 of the **Sentencing Act 1991**, this section applies to and in respect of any offence referred to in subsection (1) committed on or after the commencement of section 26 of the **Accident Compensation (Common Law and Benefits) Act 2000**.

(3) For the purposes of subsection (1)(a), a person is not to be regarded as having an entitlement to any compensation under this Act if the entitlement would only arise under any or all of sections 99(1)(aa), 99(1)(b) and 92A (only by virtue of subsection (10)).

Pt 4 Div. 10
(Heading and
s. 138B)
inserted by
No. 60/1996
s. 21 (as
amended by
No. 107/1997
s. 77(a)(b)),
repealed by
No. 81/1998
s. 25(12).

* * * * *

PART V—SELF-INSURERS

Pt 5 (Heading
and ss 139–
155)
substituted by
No. 9/2010
s. 126.⁵¹

Division 1—General

139 Definitions

S. 139
substituted by
No. 9/2010
s. 126.

In this Part—

employer includes a holding company which does not itself employ any workers but the subsidiaries of which do;

holding company means—

- (a) in relation to a participating corporation—the MAV;
- (b) in relation to any other body corporate—the body corporate of which the first-mentioned body corporate is a subsidiary;

local government corporation means—

- (a) a Council within the meaning of the **Local Government Act 1989**;
- (b) a regional corporation under section 196 of the **Local Government Act 1989**;
- (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 1989**;
- (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;

rateable remuneration, of an employer, means the sum of the remuneration paid or payable by the employer and its subsidiaries (if any) that would be rateable remuneration within the meaning of the **Accident Compensation (WorkCover Insurance) Act 1993** were the employer and those subsidiaries required to pay premiums under that Act;

scheme-insured body corporate means an employer that holds a WorkCover insurance policy under section 7(1) of the **Accident Compensation (WorkCover Insurance) Act 1993**;

subsidiary means—

- (a) in relation to the MAV—a participating corporation;
- (b) in relation to any other body corporate—a body corporate that is a wholly owned subsidiary of the first-mentioned body corporate within the meaning of the Corporations Act.

Note

Under section 152(2), if a body corporate that is the subsidiary of a self-insurer becomes a non-WorkCover employer, for the purposes of this Part, the body corporate is taken not to be a subsidiary of the self-insurer for the period that it is a non-WorkCover employer.

139A Student workers

Unless the contrary intention appears, nothing in this Part applies in relation to the employment of a student worker.

S. 139A
substituted by
No. 9/2010
s. 126.

139B 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**.

S. 139B
substituted by
No. 9/2010
s. 126.

Division 2—Application for approval as self-insurer

140 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 141(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. See section 141(2)(b).

New s. 140
inserted by
No. 9/2010
s. 126.

- (2) An application referred to in subsection (1) must be in writing and accompanied by the fee calculated in accordance with Schedule 4.
- (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 subsidiaries under this Act or at common law, in respect of injuries or deaths incurred or suffered, or to be incurred or suffered, by workers employed by the employer and its subsidiaries.

S. 141
substituted by
No. 9/2010
s. 126.

141 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 it; and

-
- (b) if it is a holding company, workers employed by its subsidiaries, other than any subsidiary that is not a non-WorkCover employer within the meaning of Part VIA.
- (2) A body corporate may only make an application under subsection (1) if—
- (a) a determination by the Authority under section 140 is in force stating that the body corporate is eligible to apply for approval as a self-insurer; or
 - (b) the body corporate is a self-insurer and the application is for the renewal of approval as self-insurer; or
 - (c) the Authority has determined that the body corporate will imminently cease to be a 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 5.

Note

Under section 150(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.

s. 141A

- (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.

S. 141A
substituted by
No. 9/2010
s. 126.

141A Estimated rateable remuneration

- (1) For the purposes of determining the assessment remuneration of an employer under clause 2 of Schedule 5, the Authority may estimate the rateable remuneration that an employer 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 its rateable remuneration.
- (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.

S. 141B
inserted by
No. 9/2010
s. 126.

141B 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 5 on the basis of the rateable remuneration of the applicant as estimated by the Authority under section 141A.

-
- (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 rateable remuneration paid or payable by the applicant 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 rateable remuneration varies by 10% 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 rateable 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 rateable remuneration been used to calculate the application fee, the difference must be reimbursed by the Authority to the employer.
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Division 3—Approval as self-insurer

S. 142
substituted by
No. 9/2010
s. 126.

142 Approval as self-insurer

- (1) If an application is made by a body corporate under section 141, 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 subsidiaries of the body corporate.
- (2) If an application is made by the MAV under section 141, 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 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 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.

142A Terms and conditions of approval

**S. 142A
substituted by
No. 9/2010
s. 126.**

- (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 within the meaning of Part VIA it will make any payments in respect of tail claims liabilities required to be made in accordance with that Part.
- (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 146(5);
 - (b) the information to be included in a return required to be submitted under section 146A;
 - (c) the requirements of the contract of insurance a self-insurer must have in respect of the self-insurer's contingent liabilities.

S. 143
substituted by
No. 9/2010
s. 126.

143 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

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- (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.

144 Period that approval has effect

**S. 144
substituted by
No. 9/2010
s. 126.**

- (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.
 - (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.

New s. 145
inserted by
No. 9/2010
s. 126.

145 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 subsidiaries and it ceases to be the holding company in relation to any of those subsidiaries; or
 - (b) the employer is approved as a self-insurer for workers employed by a subsidiary of the employer and that subsidiary ceases to be a subsidiary of the employer; or
 - (c) a subsidiary of the employer—
 - (i) becomes a non-WorkCover employer within the meaning of Part VIA; or
 - (ii) ceases to be a non-WorkCover employer within the meaning of Part VIA; or
 - (iii) is partly acquired by another company; or
 - (d) the employer acquires a subsidiary; or
 - (e) the employer undergoes a corporate re-structure; or

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- (f) 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 142(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 a subsidiary of a self-insurer, the self-insurer must notify the Authority in writing
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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.

S. 145A
inserted by
No. 9/2010
s. 126.

145A 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 142(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

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- (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 145, 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.
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s. 145B

- (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.

S. 145B
inserted by
No. 9/2010
s. 126.

145B Cost associated with revocation recoverable from employer

- (1) If the Authority revokes the approval of an employer as a self-insurer under section 145A, 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.

S. 145C
inserted by
No. 9/2010
s. 126.

145C 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 exit date within the meaning of section 164.

Division 4—Contributions to WorkCover Authority Fund

S. 146
substituted by
No. 9/2010
s. 126.

146 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 rateable 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 142A(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 32(4)(d), (e), (f), (fa) or (i) or towards the costs incurred by the Authority in the administration of Division 2 of Part III or in meeting any liability incurred under section 151.

146A Submission of return by self-insurer

- (1) Each self-insurer must submit a return in accordance with the Ministerial Order under section 142A(3) to enable the Authority to determine the amount of contributions payable.

**S. 146A
inserted by
No. 9/2010
s. 126.**

- (2) A self-insurer must submit the return by the date specified in the Ministerial Order.

Penalty: 1 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—Liability for claims for compensation

Subdivision 1—Liability of self-insurer

New s. 147
inserted by
No. 9/2010
s. 126.

147 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 compensation or any other payments, whether under this Act or at common law, 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 the subsidiary of a self-insurer—

the self-insurer is, subject to section 151, liable to pay the compensation or other payments.

S. 147A
inserted by
No. 9/2010
s. 126.

147A 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 Parts III and IV.

- (2) If a self-insurer has appointed the Transport Accident Commission as its agent and a right of recovery arises under section 137(5B) 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.
- (3) Nothing in this section or any arrangement entered into under this section affects the liability of a self-insurer under this Act.

148 Liabilities of self-insurer to be guaranteed

S. 148
substituted by
No. 9/2010
s. 126.

- (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 151D, the employer must—
 - (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 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 142A(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

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- (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 147 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 147 to pay compensation or make other payments; less
 - (ii) the total amount expected to be paid by the employer and its subsidiaries 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 by an actuary approved by the Authority in accordance with guidelines approved by the Authority at intervals of not more than one year.
- (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.

149 Payments by Authority

S. 149
substituted by
No. 9/2010
s. 126.

- (1) This section applies if a Conciliation Officer, the Tribunal, the Magistrates' Court or the County Court has directed or determined that compensation whether under this Act or at common law must be paid in relation to an injury or death for which a self-insurer is liable.
- (2) For the purposes of subsection (1), compensation does not include an amount required to be paid under sections 242AB or 242AD.
- (3) If the self-insurer does not pay the compensation 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**

S. 150
substituted by
No. 9/2010
s. 126.

150 Movement from scheme insurance to self-insurance

- (1) When applying for approval as a self-insurer under section 141, an employer may elect to assume the liability for, and the responsibility for management of, its tail claims.
- (2) If an employer that has been approved as a self-insurer has made an election under subsection (1), the employer must provide to the Authority, on the date the approval takes effect, a guarantee in accordance with section 150B in respect of its tail claims.
- (3) On the provision of a guarantee in accordance with subsection (2), the self-insurer assumes liability for, and responsibility for management of, the tail claims.

Note

If a self-insurer assumes liability for the tail claims, the self-insurer may exercise its powers and functions under Parts III and IV in relation to the injury or death to which a tail claim relates as if the injury or death were one to which section 147 applies.

- (4) If an employer that has been approved as a self-insurer has not made an election under subsection (1), the Authority retains the liability for, and the responsibility for management of, the tail claims of the employer.
- (5) In this section, ***tail claim***, of an employer, means a claim, regardless of when made, in respect of an injury or death—
 - (a) incurred or suffered by a worker employed by the employer or its subsidiaries (if any) before the date the approval of the employer as a self-insurer takes effect under section 144(1); and

- (b) which entitles that worker, the dependants of that worker or the members of that worker's family to compensation or any other payments, whether under this Act or at common law.

150A Acquisition of scheme-insured body corporate by self-insurer

S. 150A
inserted by
No. 9/2010
s. 126.

- (1) This section applies if a self-insurer wholly acquires a scheme-insured body corporate.
- (2) Within 28 days after the acquisition of the body corporate, the self-insurer must notify the Authority in writing of the acquisition.
- (3) A notification under subsection (2) must state whether or not the self-insurer elects to assume the liability for, and the responsibility for management of, the tail claims of the body corporate.
- (4) If the self-insurer has made an election under subsection (3), the self-insurer must provide to the Authority on the transfer date a guarantee in accordance with section 150B in respect of the tail claims of the body corporate.
- (5) On the provision of a guarantee in accordance with subsection (4), the self-insurer assumes liability for, and responsibility for management of, the tail claims.

Note

If a self-insurer assumes liability for the tail claims, the self-insurer may exercise its powers and functions under Parts III and IV in relation to the injury or death to which a tail claim relates as if the injury or death were one to which section 147 applies.

- (6) If the self-insurer has not made an election under subsection (3), the Authority retains the liability for, and the responsibility for management of, the tail claims of the body corporate.

(7) In this section—

tail claim, of a body corporate acquired by a self-insurer, means a claim, regardless of when made, in respect of an injury or death—

- (a) incurred or suffered by a worker employed by the body corporate before the date the body corporate is acquired by the self-insurer; and
- (b) which entitles that worker, the dependants of that worker or the members of that worker's family to compensation or any other payments, whether under this Act or at common law;

transfer date means the date agreed to by the Authority and the self-insurer as the date on which liability for, and responsibility of managing, the tail claims of the body corporate are to be assumed by the self-insurer.

S. 150B
inserted by
No. 9/2010
s. 126.

150B 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 150(1) to assume liability for its tail claims; or
 - (b) has elected under section 150A(3) to assume liability for the tail claims of a scheme-insured body corporate acquired by 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 151D, 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.

- (3) For the purposes of subsection (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 body corporate, as the case may be.
- (4) For the purposes of subsection (3)(c), the assessed tail claim liability of an employer or a body corporate is the actuarial value of the current, non-current and contingent liabilities of the employer or the body corporate in respect of tail claims under this Act.
- (5) For the purposes of subsection (4), an assessment of the tail claim liability of the employer or body corporate must be carried out by an actuary approved by the Authority in accordance with guidelines approved by the Authority at intervals of not more than one year.
- (6) For the purposes of an assessment under subsection (5), 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.
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s. 150C

S. 150C
inserted by
No. 9/2010
s. 126.

150C Payment of settlement amount and other arrangements on assumption of liability for tail claims

- (1) The Minister may, by notice published in the Government Gazette, make a Ministerial Order regarding the arrangements that apply in relation to—
 - (a) the assumption of liability by a self-insurer under section 150(3) for the tail claims of the self-insurer; and
 - (b) the assumption of liability by a self-insurer under section 150A(5) for the tail claims of a scheme-insured body corporate acquired by the self-insurer.
- (2) Without limiting subsection (1), the Ministerial Order may specify—
 - (a) the method of calculating the settlement amount that must be paid by the Authority to the self-insurer; and
 - (b) the manner in which the settlement 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.

S. 150D
inserted by
No. 9/2010
s. 126.

150D Subsequent divestment of scheme-insured body corporate

- (1) This section applies if—
 - (a) under section 150A an employer that is approved as a self-insurer has assumed liability for, and the responsibility for management of, the tail claims of a scheme-insured body corporate acquired by the employer; and

- (b) the employer subsequently divests, wholly or in part, the body corporate.
- (2) The employer must retain liability for, and the responsibility for management of, the tail claims of the body corporate until such time as the employer ceases to be self-insured.

Subdivision 3—Employer or subsidiary of employer ceases to be self-insurer

151 Employer ceases to be self-insurer

**S. 151
substituted by
No. 9/2010
s. 126.**

- (1) 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) as in force before the commencement of section 3 of the **Accident Compensation Amendment Act 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) 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) Part IV applies 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.

- (3) 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.

- (4) In this section—

exit date means—

- (a) in the case of an employer to which subsection (1)(a) applies, the date on which the employer ceases to be a self-insurer; or
- (b) in the case of an employer to which subsection (1)(b) applies, the date the declaration by the Authority is published in the Government Gazette;

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 a 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, whether under this Act or at common law; or

- (b) a claim for which the employer assumed liability under section 150(3) or 150A(5); or
- (c) a claim for which the employer assumed liability by agreement with the Authority before the commencement of section 126 of the **Accident Compensation Amendment Act 2010**.

151A General provisions applying to assessment by an actuary

**S. 151A
substituted by
No. 9/2010
s. 126.**

- (1) This section applies to any assessment of the tail claim liabilities of an employer conducted by an actuary under section 151B or 151C.
- (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.

s. 151B

S. 151B
substituted by
No. 9/2010
s. 126.

151B Initial assessment of liability for tail claims

- (1) This section applies if, under section 151, 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 28 days of receiving notice of the assessment or determination from the Authority or within such 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 148 or under section 150B.
- (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 under this Act.

151C Annual assessment of tail claims liabilities and adjustment of payments

**S. 151C
inserted by
No. 9/2010
s. 126.**

- (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 151 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.

s. 151D

- (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 28 days of receiving notice of the revised assessment from the Authority or within 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 151.

S. 151D
inserted by
No. 9/2010
s. 126.

151D Provision of guarantees

- (1) This section applies if, under section 151, 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 percent 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

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- (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 151E, 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 who contravenes subsection (2) is liable to a penalty of 600 penalty units and, in the case of a continuing offence, 300 penalty units for each day the contravention continues after the date the Authority assumes liability for the tail claims of the employer.
- (3A) If, by virtue of section 250A(1), a natural person commits an offence under subsection (3), that person is liable to a penalty of 120 penalty units.
- (4) The guarantee referred to in subsection (2) must—
- (a) be given by an ADI to or in favour of the Authority; and
 - (b) be in a form approved by the Authority.
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s. 151D

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- (5) If the employer receives a notice of assessment of tail claims liabilities conducted under section 151C, 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.
- (6) 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 151C(3) or 151C(5);
or
 - (b) any of the following occurs—
 - (i) the employer is under official management, is commenced to be wound up or has ceased to carry on business;
 - (ii) a receiver or receiver and manager is appointed in respect of the property or part of the property of the employer under the Corporations Law or the corresponding law of another State or Territory;
 - (iii) the employer enters into a compromise or scheme of arrangement with its creditors.
- (7) 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—
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- (a) an event referred to in subsection (6)(a) or (6)(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.

- (8) This section as inserted by section 126 of the **Accident Compensation Amendment Act 2010** applies to an employer that has ceased to be a self-insurer irrespective of whether the employer ceased to be a self-insurer before, on or after the commencement of section 126 of the **Accident Compensation Amendment Act 2010**.

- (9) In this section—

final assessment date means—

- (a) if a payment is required under section 151C(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 151C 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 151C(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 151C in relation to the assessment carried out in the third year of the liability period.

S. 151E
inserted by
No. 9/2010
s. 126.

151E Review of final revised assessment at the end of the liability period

- (1) If an employer disputes the final revised assessment made under section 151C 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 151C is by virtue of this subsection binding on the employer and the Authority.

152 Subsidiary of self-insurer becomes a non-WorkCover employer

S. 152
substituted by
No. 9/2010
s. 126.

- (1) This section applies if an employer that is the subsidiary of a self-insurer becomes a non-WorkCover employer within the meaning of Part VIA.
- (2) For the purposes of this Part, the employer is taken not to be a subsidiary of the self-insurer for the period that it is a non-WorkCover employer.
- (3) The Authority must in a review on the ground specified in section 145(2)(c)(i) determine whether—
- (a) the employer should retain; or
 - (b) the Authority should assume—
- the liability for, and the responsibility for management of, the tail claims of the employer.
- (4) If the Authority assumes the liability for the tail claims of an employer under subsection (3)—
- (a) Part VIA applies in respect of that liability; 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) Part IV applies 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.
- (5) Within 28 days after the Authority assumes the liability for the tail claims of an employer under subsection (3), 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.
- Penalty: 500 penalty units.
- (6) In this section—

tail claim, of an employer that ceases to be a self-insurer, means a claim, regardless of when made, in respect of an injury or death—

- (a) incurred or suffered by a worker employed by the employer while the employer was a self-insurer; and
- (b) which entitles that worker, the dependants of that worker or the members of that worker's family to compensation or any other payments, whether under this Act or at common law.

Division 6—Miscellaneous

S. 153
substituted by
No. 9/2010
s. 126.

153 Guidelines

- (1) The Authority may make guidelines 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.

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- (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, 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.
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- (6) Guidelines under this section 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.

New s. 154
inserted by
No. 9/2010
s. 126.

154 Investigation of self-insurer by Ombudsman

- (1) The Ombudsman may enquire into or investigate—
- (a) any administrative action of a self-insurer in its capacity as a self-insurer under this Act; and
 - (b) any matter relating to an administrative action.

Note

Under the **Ombudsman Act 1973**, an *administrative action* is defined as including, among other things, a refusal or failure to take a decision, or to perform an act. As a result of subsection (2), this definition applies to references to administrative actions in this subsection.

- (2) For the purposes of subsection (1), the **Ombudsman Act 1973** applies as if—
- (a) the self-insurer was a Public Statutory Body within the meaning of that Act; and
 - (b) the senior executive officer of the self-insurer (by whatever title he or she is known) was the principal officer of that public statutory body; and
 - (c) a reference to the responsible Minister in sections 17 and 23(3) of that Act was a reference to the Minister responsible for administering this section.

155 Secrecy provisions

**S. 155
substituted by
No. 9/2010
s. 126.**

- (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) authorized 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 authorized.
- (2) The person 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,
100 penalty units;
In the case of a body corporate,
500 penalty units.

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- (3) Nothing in subsection (2) precludes a person from—
- (a) producing a document or divulging or communicating information to—
 - (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) a corresponding Authority;
 - (v) 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;
 - (vi) a committee of the Parliament;
 - (vii) a person or body approved by the Governor in Council;
 - (viii) a person who has responsibility for the administration of a welfare, benefit or compensation scheme of a State or Territory or the Commonwealth;
 - (ix) the National Occupational Health and Safety Commission;
 - (x) the Transport Accident Commission;
 - (xi) the Australian Statistician;
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- (xii) any special commission (within the meaning of the **Evidence (Commissions) Act 1982**) where the Minister has received a request in writing for information from the special commission and the Minister has given written approval to the person of the communication of that information; or
- (b) producing a document or disclosing information which is required or permitted to be produced or disclosed by or under this Act or any other Act.
- (4) The Minister must cause a report of requests for the approval of persons or bodies by the Governor in Council under subsection (3)(a)(vii) 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.

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Pt 6
(Heading and
ss 156–178),
repealed by
No. 9/2010
s. 131.⁵²

Pt 6A
(Heading and
ss 164–176)
inserted by
No. 28/2005
s. 6.

PART VIA—NON-WORKCOVER EMPLOYERS

New s. 164
inserted by
No. 28/2005
s. 6.

164 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 166;

liability period means the period of 6 years commencing from the exit date;

non-WorkCover employer means an employer who—

- (a) on or after the commencement of section 6 of the **Accident Compensation (Amendment) Act 2005**, becomes 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 obtain and keep a WorkCover insurance policy; or
 - (ii) to be approved as a self-insurer; or
 - (iii) to be a subsidiary of a holding company which is approved to be a self-insurer;

revised assessment means the assessment of tail claims liabilities under section 169;

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
 - (ii) a self-insurer; or
 - (iii) a subsidiary of a self-insurer; and
- (b) which entitle a worker or the dependants of a worker to compensation whether under this Act, at common law or otherwise;

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—

New s. 165
inserted by
No. 28/2005
s. 6.

165 Authority retains or assumes liability for tail claims

On the exit date the Authority—

- (a) insured under a WorkCover insurance policy; or
 - (b) a self-insurer; or
 - (c) a subsidiary of a self-insurer.
- (a) if the non-WorkCover employer was insured under a WorkCover insurance policy, 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; or
 - (c) if the non-WorkCover employer was a subsidiary of a self-insurer and the Authority has determined to assume liability under section 151A, assumes—
 - (i) the liability for; and
 - (ii) the responsibility for management of—
the tail claims of the non-WorkCover employer.

166 Actuary to assess tail claims liabilities

New s. 166
inserted by
No. 28/2005
s. 6.

- (1) If the non-WorkCover employer was insured under a WorkCover insurance policy, an actuary appointed by the Authority must undertake an assessment of—
 - (a) the tail claims liabilities; and
 - (b) the available assets.
- (2) If the non-WorkCover employer was a self-insurer or a 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).

s. 167

New s. 167
inserted by
No. 28/2005
s. 6.

167 Obligation of non-WorkCover employer who was insured under a WorkCover insurance policy

- (1) If the non-WorkCover employer was insured under a WorkCover insurance policy 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) The non-WorkCover employer must pay the amount under subsection (1) 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.
- (3) If the amount under subsection (1) is not paid to the Authority in accordance with subsection (2), the amount together with interest at the prescribed rate may be recovered by the Authority as a civil debt recoverable summarily.

New s. 168
inserted by
No. 28/2005
s. 6.

168 Obligation of non-WorkCover employer who was a self-insurer or a subsidiary of a self-insurer to which this Part applies

- (1) If the non-WorkCover employer was a self-insurer or a subsidiary of a self-insurer to which this Part applies, the non-WorkCover employer must pay the amount of the tail claims liabilities as assessed in the initial assessment to the Authority.
- (2) The non-WorkCover employer must pay the amount under subsection (1) 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.

- (3) If the amount under subsection (1) is not paid to the Authority in accordance with subsection (2), the amount together with interest at the prescribed rate may be recovered by the Authority as a civil debt recoverable summarily.

169 Annual assessment of tail claims liabilities

New s. 169
inserted by
No. 28/2005
s. 6.

- (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).

170 Adjustment of payments as at the end of the third year

New s. 170
inserted by
No. 28/2005
s. 6.

- (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) The non-WorkCover employer must pay the amount under subsection (1) 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.
- (3) If the amount under subsection (1) is not paid to the Authority in accordance with subsection (2), the amount together with interest at the prescribed rate may be recovered by the Authority as a civil debt recoverable summarily.
- (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 amount of the difference to the non-WorkCover employer.

New s. 171
inserted by
No. 28/2005
s. 6.

171 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) The non-WorkCover employer must pay the amount under subsection (1) 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.

- (3) If the amount under subsection (1) is not paid to the Authority in accordance with subsection (2), the amount together with interest at the prescribed rate may be recovered by the Authority as a civil debt recoverable summarily.
- (4) 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.

172 Provision of guarantees

New s. 172
inserted by
No. 28/2005
s. 6.

- (1) A non-WorkCover employer must ensure that there is in force, until the date a payment is required under section 171 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 171, a guarantee—
 - (a) against insolvency risk given by an authorised deposit-taking institution to or in favour of the Authority in a form approved by the Authority in respect of 50% 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 171; and

S. 172(1)
amended by
No. 34/2007
s. 4(1).

- (b) against claims deterioration given by an authorised deposit-taking institution 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 170 or if no payment is required, until the date which is 28 days after the notice of assessment is received under section 170, 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 171 or if no payment is required, until the date which is 28 days after the notice of assessment is received under section 171, or if a review is conducted under section 173, 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.

S. 172(1A)
inserted by
No. 34/2007
s. 4(2).

- (1A) If a non-WorkCover employer receives a notice of assessment of tail claims liabilities under section 169, 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 subsection (1), to continue in force until the date a payment if required under section 171 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 171.

(2) If—

(a) the non-WorkCover employer fails to make a payment required under section 170 or 171;
or

(b) any of the following occurs—

(i) the non-WorkCover employer is under official management, is commenced to be wound up or has ceased to carry on business;

(ii) a receiver or receiver and manager is appointed in respect of the property or part of the property of the non-WorkCover employer under the Corporations Law or the corresponding law of another State or Territory;

(iii) the non-WorkCover employer enters into a compromise or scheme of arrangement with its creditors—

the Authority may recover under a guarantee under this section any loss suffered by the Authority.

(3) 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—

**S. 172(3)
inserted by
No. 34/2007
s. 4(3).**

(a) an event referred to in subsection (2)(a) or (2)(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.

S. 172(4)
inserted by
No. 34/2007
s. 4(3).

- (4) This section as amended by section 4 of the **Accident Compensation Amendment Act 2007** applies to an employer who is a non-WorkCover employer irrespective of whether the employer became a non-WorkCover employer before, on or after the commencement of the **Accident Compensation Amendment Act 2007**.

New s. 173
inserted by
No. 28/2005
s. 6.

173 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 169 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 169 is by virtue of this subsection binding on the non-WorkCover employer and the Authority.

174 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.

New s. 174
inserted by
No. 28/2005
s. 6.

175 Legal proceedings excluded

No proceedings—

(a) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or quo warranto, or the grant of a declaration or an injunction; or

(b) seeking any order under the **Administrative Law Act 1978**—

may be brought against the Authority, an actuary or any other person in respect of any assessment under this Part, or any proceedings relating to such an assessment or any other act, matter or thing incidental to the conduct of such an assessment.

New s. 175
inserted by
No. 28/2005
s. 6.

s. 176

New s. 176
inserted by
No. 28/2005
s. 6.

176 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) insured under a WorkCover insurance policy; or
- (b) a self-insurer; or
- (c) a subsidiary of a self-insurer.

S. 177
inserted by
No. 9/2010
s. 163.

177 Failure to comply with a provision of this Part

- (1) A non-WorkCover employer must not fail to comply with a provision of this Part.
- (2) An employer who contravenes subsection (1) is liable to a penalty of—
 - (a) if the employer is a natural person—
120 penalty units and, in the case of a continuing offence, 60 penalty units for each day the contravention continues after a finding of guilt in relation to the offence; or
 - (b) if the employer is a body corporate—
600 penalty units and, in the case of a continuing offence, 300 penalty units for each day the contravention continues after a finding of guilt in relation to the offence.
- (3) For the purposes of subsection (2), an offence is a continuing offence if a non-WorkCover employer continues to fail to comply with a provision of this Part after the non-WorkCover employer is found guilty of contravening subsection (1) in respect of that provision.

Accident Compensation Act 1985
No. 10191 of 1985

s. 179

* * * * *

Pt 7
(Heading and
ss 179–236)
amended by
Nos 10255
s. 8(1)(c)(d),
48/1986 ss 27,
29, 30(1)(2),
83/1987
ss 87–91,
57/1989
s. 3(Sch.
items 3.3, 3.4),
64/1989
ss 23–25,
35(n)(o),
37(1)(e)(f),
45/1990
s. 109(e)(i)(ii),
18/1991 ss 9,
11, 12(1)(p),
67/1992 ss 50,
51(1)–(3),
50/1993 ss 76,
110(1)(i),
repealed by
No. 50/1994
s. 78(1).

Pt 7A
(Heading and
ss 179–188)
inserted by
No. 60/1996
s. 26.

PART VIIA—PROHIBITED CONDUCT RELATING TO TOUTING FOR CLAIMS

S. 179
inserted by
No. 60/1996
s. 26.

179 Definitions

(1) In this Part—

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;

prohibited conduct has the same meaning as in section 180;

protected claim means—

S. 179(1)
def. of
*protected
claim*
substituted by
No. 107/1997
s. 53(1).

- (a) a claim under section 98 for loss of hearing;
- (b) a claim under section 99 for the cost of provision of a hearing aid;
- (c) a claim under section 11 of the **Workers Compensation Act 1958** for loss of hearing;
- (d) a claim under section 26 of the **Workers Compensation Act 1958** for the cost of provision of a hearing aid;
- (e) any other claim under this Act or the **Workers Compensation Act 1958** that is declared by the regulations to be a protected claim for the purposes of this section.

- (1A) A reference in this Part to a claim includes a reference to a prospective claim irrespective of whether a claim is subsequently made.
- (2) 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.
- (3) The regulations may provide that persons who engage in specified activities are not to be regarded as agents for the purposes of this Part.

S. 179(1A)
inserted by
No. 107/1997
s. 53(2).

180 Prohibited conduct by agents

S. 180
inserted by
No. 60/1996
s. 26.

- (1) The following conduct by an agent is prohibited conduct for the purposes of this Part—
 - (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;

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- (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) The regulations may specify circumstances in which conduct that would otherwise be prohibited conduct under subsection (1) is not to be regarded as prohibited conduct for the purposes of this Part.
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- (3) For the purposes of this Part 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.

181 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.

S. 181
inserted by
No. 60/1996
s. 26,
amended by
No. 9/2010
s. 164.

182 Consequences of prohibited conduct for recovery of fees by agents

S. 182
inserted by
No. 60/1996
s. 26.

- (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 section 98 for loss 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 further loss of hearing made

s. 183

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.

S. 183
inserted by
No. 60/1996
s. 26.

183 Consequences of prohibited conduct for legal practitioners

S. 183(1)
amended by
No. 9/2010
s. 165.

- (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 section 98 for loss 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 loss 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.

184 Legal practitioner and agents can be requested to certify as to prohibited conduct

S. 184
inserted by
No. 60/1996
s. 26.

- (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

S. 184(1)
amended by
No. 81/1998
s. 26(1)(2).

s. 184

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—

S. 184(3)(a)
amended by
No. 81/1998
s. 26(1).

(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).

S. 184(4)
amended by
No. 81/1998
s. 26(1)(2).

(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.

S. 184(5)
amended by
No. 9/2010
s. 166.

(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.

**185 Power to restrict or ban recovery of costs by agents
who engage in prohibited conduct**

S. 185
inserted by
No. 60/1996
s. 26.

- (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 181; 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.

S. 185(1)
amended by
No. 81/1998
s. 26(3).

s. 186

(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.

S. 185(5)
substituted by
No. 52/1998
s. 311(Sch. 1
item 1.9).

(5) An agent whose interests are affected by a notification under this section may apply to the Tribunal for review of the decision to give the notification.

S. 185(6)
amended by
No. 81/1998
s. 26(4).

(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.

S. 186
inserted by
No. 60/1996
s. 26.

186 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—

S. 186(2)(a)
amended by
No. 9/2010
s. 155.

(a) the Authority is satisfied that the agent concerned has persistently engaged in conduct that constitutes or may constitute a contravention of section 181 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 written submission to the Authority on the matter.

- (3) An agent must not act in contravention of a direction given under this section.

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

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

S. 186(3)
amended by
No. 9/2010
s. 167.

- (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 the Tribunal for review of the decision to give the direction.

S. 186(5)
amended by
No. 52/1998
s. 311(Sch. 1
item 1.10).

- (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.

187 Past conduct included in assessing persistent conduct

S. 187
inserted by
No. 60/1996
s. 26.

- (1) A reference in sections 185 and 186 to conduct that constitutes or may constitute a contravention of section 181 includes a reference to conduct engaged in by a person before the commencement of section 26 of the **Accident Compensation (Further Amendment) Act 1996** that, if engaged in after that commencement, would have constituted a contravention of the provision.
- (2) A person cannot be considered to have persistently engaged in conduct that constitutes or may constitute a contravention of section 181 unless at least one instance of that conduct occurred after the commencement of this section.

s. 188

S. 188
inserted by
No. 60/1996
s. 26.

**188 Duty of claimants to comply with requests for
information about agents and legal practitioners**

S. 188(1)
amended by
No. 81/1998
s. 26(1).

- (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.

Ss 189–236
repealed by
No. 50/1994
s. 78(1).

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PART VIIB—RETURN TO WORK

Pt 7B
(Heading and
ss 189–236B)
inserted by
No. 9/2010
s. 129.

Division 1—Preliminary

189 Purpose

New s. 189
inserted by
No. 9/2010
s. 129.

The purpose of this Part is to provide—

- (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.

190 Obligations of employers and workers

New s. 190
inserted by
No. 9/2010
s. 129.

- (1) The obligations of employers are specified in Division 2.
- (2) The obligations of workers are specified in Division 3.

191 Part does not derogate from other provisions in Act

New s. 191
inserted by
No. 9/2010
s. 129.

Nothing in this Part limits or otherwise affects the operation of other provisions in this Act unless this Part specifically provides otherwise.

New s. 192
inserted by
No. 9/2010
s. 129.

192 Definitions

(1) In this Part—

compliance code means a code approved by the Minister under section 210;

host has the same meaning as it has in section 199(1)(a);

inspector means an officer or employee of the Authority who is appointed as an inspector under section 215 for the purposes of this Part;

labour hire employer has the same meaning as it has in section 199(1)(a);

preceding policy period means the policy period preceding the policy period in respect of which a premiums order made under section 15 of the **Accident Compensation (WorkCover Insurance) Act 1993** 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;

rateable remuneration has the same meaning as it has in section 3(1) of the **Accident Compensation (WorkCover Insurance) Act 1993**;

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 section 224;

serious injury has the same meaning as it has in section 91E;

treating health practitioner means—

- (a) a medical practitioner who has issued a medical certificate referred to in section 105;
- (b) a medical practitioner, registered physiotherapist, registered chiropractor or registered osteopath who has issued a certificate of capacity referred to in section 111(2);

workplace means a place, whether or not in a building or structure—

- (a) where a worker works;
- (b) from where an employer conducts business;
- (c) where records relating to the business of an employer are kept.

- (2) In 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; or
 - (c) who is a ***pre-12 November 1997 claimant*** and who has a serious injury within the meaning of section 91E.
- (3) For the purposes of section 195 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 within the meaning of section 194(1).

New s. 193
inserted by
No. 9/2010
s. 129.

193 Application of Part

- (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 194—
 - (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);
 - (b) employers who hold owner-builders' permits under the **Building Act 1993** (but only to the extent that the workers employed for the purposes of the work to which the permits 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

194 Provide employment

New s. 194
inserted by
No. 9/2010
s. 129.

(1) In this section—

employment obligation period means the period of 52 weeks—

(a) beginning on—

- (i) the date the employer receives from the worker a medical certificate issued in accordance with section 105(1); or
- (ii) the date the employer receives a claim for compensation from the worker in the form of weekly payments; or
- (iii) the date the employer is notified by the Authority that the worker has made a claim for compensation in the form of weekly payments; or
- (iv) the date the employer is notified by the Authority that the worker has provided the Authority with a medical certificate issued in accordance with section 105(1)—

whichever is earliest—

- (b) being an aggregate period beginning on that earliest date, whether or not consecutive, in respect of which the worker has an incapacity for work resulting from or materially contributed to by the injury to which the employment obligation period relates.

-
- (2) An employer must, to the extent that it is reasonable to do so, provide to a worker for the duration of the employment obligation period—
- (a) suitable employment if the worker has a current work capacity; and
 - (b) pre-injury employment if the worker no longer has an incapacity for work.

Penalty: 180 penalty units for a natural person;
900 penalty units for a body corporate.

- (3) For the purposes of this section, the employment obligation period includes any period specified in subsection (4)(b), (4)(c) or (4)(d) if the employer provides suitable employment or pre-injury employment to the worker during that period.
- (4) For the purposes of this section, except as provided in subsection (3), the employment obligation period does not include—
- (a) any period during which the worker does not have an incapacity for work;
 - (b) 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—
 - (i) a Conciliation Officer gives a direction that weekly payments are to be paid in relation to the claim; or
 - (ii) a Conciliation Officer 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;
- (c) the period commencing on the date the Authority sets aside a decision to accept a claim for compensation against an employer under section 114N(1)(b) and ending on a date specified in subparagraph (i), (ii) or (iii) of paragraph (b);
- (d) the period commencing on the date a direction given by a Conciliation Officer that weekly payments are to be made is revoked and the date that the payment of weekly payments is resumed.

195 Plan return to work

**New s. 195
inserted by
No. 9/2010
s. 129.**

- (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: 120 penalty units for a natural person;
600 penalty units for a body corporate.
- (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 196; 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.

New s. 196
inserted by
No. 9/2010
s. 129.

196 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 section 99 and 99A.

Penalty: 120 penalty units for a natural person;
600 penalty units for a body corporate.

- (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 however a worker may be assisted by a representative during any consultation.

197 Nominate a return to work co-ordinator

New s. 197
inserted by
No. 9/2010
s. 129.

- (1) Subject to this section, an employer must nominate a person who has an appropriate level of seniority and is competent to assist the employer to meet the obligations of the employer under this Part to be a return to work co-ordinator.

Penalty: 120 penalty units for a natural person;
600 penalty units for a body corporate.

- (2) A person is competent to assist the 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 functions of the Authority and, if relevant, self-insurers under this Part.
- (3) An employer who has certified, or in respect of whom there has been assessed, total rateable remuneration of \$2 000 000 or more for all workplaces of the employer in respect of the preceding policy period must ensure that a person is—
- (a) nominated as the return to work co-ordinator; and
 - (b) appointed at all times.
- (4) An employer who has certified, or in respect of whom there has been assessed, total remuneration of less than \$2 000 000 for all workplaces of the

employer in respect of the preceding policy period must ensure that the person nominated as a return to work co-ordinator is appointed for the duration of the employer's obligations under this Part to a worker who has an incapacity for work.

- (5) A return to work co-ordinator is not personally liable for any act or omission done or omitted to be done in good faith in the course of acting as a return to work co-ordinator.
- (6) Any liability resulting from an act or omission that, but for subsection (5), would attach to a return to work co-ordinator, instead attaches to the employer.
- (7) The amount specified in subsections (3) and (4) shall be varied, in respect of the financial year beginning on 1 July 2010 and each subsequent financial year, in accordance with the formula—

$$D \times \frac{E}{F}$$

where—

D is the amount specified in subsections (3) and (4) or that amount as last varied in accordance with this subsection;

E is the all groups consumer price index for Melbourne as at 15 June in the preceding financial year last published by the Australian Statistician in respect of the December quarter of that financial year;

F is the all groups consumer price index for Melbourne as at 15 June in the year preceding the preceding financial year published by the Australian Statistician in respect of the December quarter preceding that 15 June.

198 Make return to work information available

New s. 198
inserted by
No. 9/2010
s. 129.

- (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 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 207.

Penalty: 120 penalty units for a natural person;
600 penalty units for a body corporate.

- (2) An employer must consult with the employer's workers as to how the information is to be made available under this section.

Penalty: 120 penalty units for a natural person;
600 penalty units for a body corporate.

199 Host to co-operate with labour hire employer

New s. 199
inserted by
No. 9/2010
s. 129.

- (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 194, 195 and 196, to facilitate the worker's return to work.
- Penalty: 120 penalty units for a natural person;
600 penalty units for a body corporate.

Division 3—Obligations of workers

New s. 200
inserted by
No. 9/2010
s. 129.

200 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.

New s. 201
inserted by
No. 9/2010
s. 129.

201 Use occupational rehabilitation services

A worker who has an incapacity for work must actively use an occupational rehabilitation service provided in accordance with sections 99 and 99A and co-operate with the provider of that service.

New s. 202
inserted by
No. 9/2010
s. 129.

202 Participate in assessments

A worker who has an incapacity for work must, when requested to do so by the employer, Authority or self-insurer, actively participate and co-operate in any assessment of—

- (a) capacity for work;

- (b) rehabilitation progress;
- (c) future employment prospects.

203 Return to work

New s. 203
inserted by
No. 9/2010
s. 129.

- (1) A worker who has an incapacity for work must, in co-operation with the employer, Authority or self-insurer make reasonable efforts 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 reasonable 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 must not be treated as making a reasonable effort 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 obligations under this Division.

New s. 204
inserted by
No. 9/2010
s. 129.

204 Participate in an interview

- (1) A worker who has an incapacity for work must, as required by the Authority or self-insurer—
- (a) participate in an interview with the representative 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

New s. 205
inserted by
No. 9/2010
s. 129.

205 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.

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- (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 in respect of the injury under this Act.
- (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 after notice is given 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
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must, subject to and in accordance with this Act, resume the payment of weekly payments with effect from the date on which the worker complied with the obligation.

- (6) If subsection (5) applies, 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 that period is included in determining the first or second entitlement period under Part IV.
- (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), the Authority or self-insurer may terminate the payment of compensation in the form of weekly payments to the worker in respect of the injury 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 issued 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 in respect of the injury

to the worker under this Act by written notice stating the reasons for giving the notice.

- (9) Section 114 does not apply to a notice given under this section.
- (10) This section does not derogate from any other provision of this Act.

206 Notification of return to work

**New s. 206
inserted by
No. 9/2010
s. 129.**

- (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

207 Resolution of return to work issues

**New s. 207
inserted by
No. 9/2010
s. 129.**

- (1) 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 written directions issued by the Minister for the purposes of this section.

New s. 208
inserted by
No. 9/2010
s. 129.

- (2) The Minister may issue written directions in respect of the procedure for the resolution of a return to work issue.

208 Information about the employer 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 for the duration 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 issued 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 what the Authority or self-insurer estimates to be 36 weeks after the expiration of the employment obligation period—
- (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 issue written directions 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 an employer under this Part.
- (5) In this section—
employment obligation period has the same meaning as it has in section 194.

209 Authority may give direction

New s. 209
inserted by
No. 9/2010
s. 129.

- (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: 120 penalty units for a natural person;
600 penalty units for a body corporate.
- (3) A direction made under subsection (1) does not derogate from any matter referred to in section 99.

210 Compliance code

New s. 210
inserted by
No. 9/2010
s. 129.

- (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.

Note

The Minister's power to make an order approving a compliance code, or a variation order, is subject to disallowance by the Parliament (see section 212).

- (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 a newspaper circulating generally throughout the State.
- (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.

New s. 211
inserted by
No. 9/2010
s. 129.

211 Effect of compliance codes

A failure to comply with a compliance code does not of itself give rise to any civil or criminal liability.

Note

A person who complies with a compliance code may, however, be taken to have complied with this Act (see section 213).

212 Disallowance of certain compliance code orders

New s. 212
inserted by
No. 9/2010
s. 129.

- (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) Section 15 and Part 5 of the **Subordinate Legislation Act 1994** apply for the purposes of subsection (1) as though—
 - (a) an order were a statutory rule (within the meaning of that Act); and
 - (b) notice of the making of the statutory rule had been published in the Government Gazette when notice of the order or variation order (as the case may be) was published in the Government Gazette.

213 Effect of compliance with compliance codes

New s. 213
inserted by
No. 9/2010
s. 129.

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.

213A Functions of Authority in respect of compliance codes

S. 213A
inserted by
No. 9/2010
s. 129.

- (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) 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.

s. 214

- (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.

New s. 214
inserted by
No. 9/2010
s. 129.

214 Provisions applying to directions issued by the Minister

- (1) This section applies to directions issued by the Minister under sections 207 and 208.
- (2) A direction must be published in the Government Gazette.
- (3) The Minister may amend or revoke a direction by publishing the amendment or revocation in the Government Gazette.
- (4) A direction, amendment or revocation takes effect on the day after it is published in the Government Gazette, or on any later day specified in the direction, amendment or revocation.
- (5) A person to whom a direction applies must comply with the direction.

S. 214A
inserted by
No. 9/2010
s. 129.

214A Disallowance of certain Ministerial directions

- (1) The Minister's power to issue directions, or amend directions, under this Part is subject to the directions being disallowed by the Parliament.
- (2) Section 15 and Part 5 of the **Subordinate Legislation Act 1994** apply for the purposes of subsection (1) as though—
- (a) a direction were a statutory rule (within the meaning of that Act); and
- (b) notice of the making of the statutory rule had been published in the Government Gazette when notice of the direction or amendment of the direction (as the case may be) was published in the Government Gazette.

Division 6—Return to work inspectorate

Subdivision 1—Appointment of inspectors

214B Interpretation

In this Division, a reference to an employer includes a reference to a host unless the contrary intention appears.

S. 214B
inserted by
No. 9/2010
s. 129.

215 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.

New s. 215
inserted by
No. 9/2010
s. 129.

216 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 Act.
- (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.

New s. 216
inserted by
No. 9/2010
s. 129.

Subdivision 2—Performance of functions or exercise of powers

New s. 217
inserted by
No. 9/2010
s. 129.

217 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 Act.
- (2) A direction under subsection (1) may be of a general nature or may relate to a specified matter or specified class of matter.

New s. 218
inserted by
No. 9/2010
s. 129.

218 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 Subdivision in relation to entering a place that is a workplace are not exercisable in respect of any part of that place that is only used for residential purposes except with the consent of the occupier for the time being of the place.

New s. 219
inserted by
No. 9/2010
s. 129.

219 Announcement on entry

Immediately on entering a workplace under this Subdivision, 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.

New s. 220
inserted by
No. 9/2010
s. 129.

220 Report to be given about entry

- (1) An inspector who enters a workplace under this Subdivision 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.

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- (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—
 - (a) the time of the entry and departure; and
 - (b) the purpose of the entry; and
 - (c) a description of things done while at the workplace; and
 - (d) a summary of the inspector's observations while at the workplace; and
 - (e) the procedure for contacting the Authority and the inspector for further details of the entry; and
 - (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 221(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.

221 General powers on entry

An inspector who enters a workplace under this Subdivision may do any of the following—

- (a) inspect, examine and make enquiries at the workplace;

New s. 221
inserted by
No. 9/2010
s. 129.

- (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;
- (e) take photographs or measurements or make sketches or recordings;
- (f) exercise any other power conferred on the inspector by this Act;
- (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 Act.

Note

This section does not affect legal professional privilege or client legal privilege (see section 248E) or, in the case of a requirement to answer questions, the privilege against self-incrimination (see section 248D).

New s. 222
inserted by
No. 9/2010
s. 129.

222 Powers in relation to obtaining information

- (1) An inspector who enters a workplace under this Subdivision may—
 - (a) require a person to produce a document or part of a document that is in the person's possession or control; and
 - (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: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (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).

Note

This section does not affect legal professional privilege or client legal privilege (see section 248E) or, in the case of a requirement to answer questions, the privilege against self-incrimination (see section 248D).

223 Return of seized things

As soon as possible after an inspector seizes any thing (including a document) under this Subdivision 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

New s. 223
inserted by
No. 9/2010
s. 129.

- (b) the Authority is otherwise authorised (by a law or court order) to retain, destroy or dispose of the thing.

New s. 224
inserted by
No. 9/2010
s. 129.

224 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 229 (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: 120 penalty units for a natural person;
600 penalty units for a body corporate.
- (5) If an application for review of a decision under this section has been made under Subdivision 4, an inspector must not give a certificate under subsection (3)(a) in relation to the Return to Work improvement notice.

225 Directions or conditions in a Return to Work improvement notice

New s. 225
inserted by
No. 9/2010
s. 129.

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.

New s. 226
inserted by
No. 9/2010
s. 129.

226 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.

New s. 227
inserted by
No. 9/2010
s. 129.

227 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
 - (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.
- (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 197 or 198, display a copy of the notice in a prominent place at or near the workplace.

Penalty: 5 penalty units for a natural person;
25 penalty units for a body corporate.
- (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.

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- (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;
 - (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 194, 195 and 196, 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.

228 Formal irregularity or defect in Return to Work improvement notice

New s. 228
inserted by
No. 9/2010
s. 129.

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 227.

New s. 229
inserted by
No. 9/2010
s. 129.

229 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 in connection with any matter in respect of which the Return to Work improvement notice was issued.

New s. 230
inserted by
No. 9/2010
s. 129.

230 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 Act.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

New s. 231
inserted by
No. 9/2010
s. 129.

231 Other assistance in exercising powers

- (1) For the purpose of exercising a power under this Act, an inspector may seek the assistance of any person.
- (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: 60 penalty units for a natural person;
300 penalty units for a body corporate.

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- (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.

232 Inspector may take affidavits and statutory declarations

New s. 232
inserted by
No. 9/2010
s. 129.

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 Act.

233 Inspector may copy documents

New s. 233
inserted by
No. 9/2010
s. 129.

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 Act.

Subdivision 3—Offences

234 Offences in relation to inspections

New s. 234
inserted by
No. 9/2010
s. 129.

- (1) 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 this Act, 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

s. 235

- (c) intentionally prevent or attempt to prevent any other person from assisting an inspector.

Penalty: 60 penalty units for a natural person;
300 penalty units for a body corporate.

- (2) 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: Imprisonment for 2 years, or
240 penalty units, or both for a natural person;
1200 penalty units for a body corporate.

New s. 235
inserted by
No. 9/2010
s. 129.

235 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.

Subdivision 4—Review of decisions

New s. 236
inserted by
No. 9/2010
s. 129.

236 Which decisions are reviewable

- (1) The following table sets out—
- (a) decisions made under this Division that are reviewable in accordance with this Subdivision (*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.

<i>Item</i>	<i>Provision under which reviewable decision is made</i>	<i>Eligible person in relation to reviewable decision</i>
1	Section 224(1) (issue of a Return to Work improvement notice)	<p>(1) The employer to whom the Return to Work improvement notice is issued.</p> <p>(2) A worker whose interests are directly affected by the decision.</p> <p>(3) An employer whose interests are affected by the decision.</p>
2	Section 224(3)(a) (certification that matters the subject of a Return to Work improvement notice have been remedied)	<p>(1) The employer to whom the Return to Work improvement notice was issued.</p> <p>(2) A worker whose interests are directly affected by the decision.</p> <p>(3) An employer whose interests are affected by the decision.</p>
3	Section 226 (variation or cancellation of a Return to Work improvement notice)	<p>(1) The employer to whom the Return to Work improvement notice concerned was issued.</p> <p>(2) A worker whose interests are directly affected by the decision.</p> <p>(3) An employer whose interests are affected by the decision.</p>

S. 236A
inserted by
No. 9/2010
s. 129.

236A Internal review

- (1) An eligible person in relation to a reviewable decision, other than a decision made by the Authority under section 226, 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 (in writing) 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 224(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.

236B Review by the Tribunal

**S. 236B
inserted by
No. 9/2010
s. 129.**

- (1) A person may apply to the Tribunal for review of—
 - (a) a reviewable decision made by the Authority under section 226; or
 - (b) a decision made, or taken to have been made, by the Authority under section 236A 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 VIII—GENERAL

* * * * *

S. 237
repealed by
No. 83/1987
s. 92.

237A Reciprocal agreements

S. 237A
inserted by
No. 83/1987
s. 93.

- (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 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 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.

S. 237A(1)
amended by
No. 67/1992
s. 64(7)(a).

- (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.

238 Authority may enter into agreements

S. 238(1)
amended by
Nos 64/1989
s. 35(p)(i),
67/1992
s. 64(7)(a),
50/1994
s. 79(1),
81/1998
s. 26(5).

- (1) The Authority may enter into an agreement under this section with a person who provides a relevant service in respect of the payment by the Authority of the reasonable costs specified in section 99 of that person for the provision of the service in Australia because of an injury caused to a worker arising out of or in the course of any employment.

S. 238(2)
amended by
No. 67/1992
s. 64(7)(a).

- (2) An agreement under subsection (1) made by the Authority with a person shall—
- (a) include an agreement by the Authority to make to that person payments in respect of the reasonable costs of that person for providing the service in accordance with a scale of payments specified in the agreement;
 - (b) include an agreement by that person that the person 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) be subject to such other terms and conditions including terms and conditions relating to revocation as the Authority determines and specifies in the agreement.

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- (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 shall be published in the Government Gazette.
- (6) In this section *relevant service* means an ambulance service, hospital service, medical service, nursing service or personal and household service.
- S. 238(3) amended by No. 67/1992 s. 64(7)(a).
- S. 238(4) amended by Nos 64/1989 s. 35(p)(ii), 67/1992 s. 64(7)(a).
- S. 238(6) amended by Nos 64/1989 s. 35(p)(iii), 50/1993 s. 81(i), 50/1994 s. 79(2).

S. 238A
inserted by
No. 95/2003
s. 13.

238A Incentive agreements to improve employer performance

- (1) Without limiting the powers conferred on the Authority, for the purpose of carrying out its functions under section 20(1)(ta), the Authority may—
 - (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 under the **Accident Compensation (WorkCover Insurance) Act 1993**.

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 under the **Accident Compensation (WorkCover Insurance) Act 1993**, but the Authority may make payments in the nature of a refund of premium.

239 Power to obtain information and evidence

(1) For the purposes specified in subsection (1A), the Authority may, by notice in writing, require any person—

- (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—

S. 239(1)
amended by
Nos 83/1987
s. 94, 67/1992
s. 64(7)(a),
50/1994
s. 80(1),
7/1996 s. 39,
107/1997
s. 55(3)(a),
substituted by
No. 102/2004
s. 32.

and may require the person to produce all books in the custody or under the control of the person relating thereto.

(1A) The purposes are—

- (a) in the case of subsection (1)(a), for determining whether any of the provisions of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** are being or have been contravened;
- (b) in the case of subsection (1)(a) or (1)(b), for inquiring into or ascertaining the person's or any other person's liability or entitlement under any of the provisions of this Act, the **Accident Compensation (WorkCover Insurance) Act 1993** or the **Workers Compensation Act 1958**; or
- (c) in the case of subsection (1)(a) or (1)(b), for ascertaining for the purposes of this Act, the **Accident Compensation (WorkCover Insurance) Act 1993** or the **Workers Compensation Act 1958** the identity of any person who—

S. 239(1A)
inserted by
No. 102/2004
s. 32.

s. 239AAA

- (i) may have a liability or entitlement under any of the provisions of this Act, the **Accident Compensation (WorkCover Insurance) Act 1993** 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. 239(2)
amended by
No. 67/1992
s. 64(7)(a).

- (2) The Authority may require the information or evidence to be given on oath, and either orally or in writing, or to be given by statutory declaration and for that purpose the Authority or a person so authorized by the Authority may administer an oath.
- (3) The regulations may prescribe scales of expenses to be allowed to persons required under this section to attend.

S. 239AAA
inserted by
No. 9/2010
s. 17.

239AAA Access to police records

- (1) The Chief Commissioner of Police may furnish to 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 82A, 82B or 82C involving conduct to which the Authority considers the injury may be attributable; or
 - (b) that the Authority considers may comprise serious and wilful misconduct as referred to in section 82(4), 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 furnishing information under subsection (1).
- (3) The use of information furnished 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 standards established by the Commissioner for Law Enforcement Data Security under the **Commissioner for Law Enforcement Data Security Act 2005**."

239AAB Court to provide certificate of conviction

S. 239AAB
inserted by
No. 9/2010
s. 17.

- (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 82(4), being an offence to which the injury may be attributable; or
 - (ii) under the **Road Safety Act 1986** or the **Crimes Act 1958** referred to in section 82A, 82B or 82C; 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

s. 239AAC

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. 239AAC
inserted by
No. 9/2010
s. 17.

239AAC VicRoads may disclose information to Authority

- (1) The Roads Corporation may, at the written request of the Authority, disclose relevant information gained by the Corporation to the Authority for the purpose of the assessment by the Authority of a claim by a person for compensation under this Act, 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 82A, 82B or 82C; or
- (e) conduct comprising serious and wilful misconduct as referred to in section 82(4).

239A Certificate

A certificate purporting to be signed by an officer or employee of the Authority certifying as to any of the prescribed particulars specified in the certificate relating to amounts (including amounts of compensation) paid or payable by the Authority under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** is evidence of the matters stated in the certificate and, in the absence of evidence to the contrary, is proof of those matters.

S. 239A
inserted by
No. 67/1992
s. 52,
substituted by
No. 7/1996
s. 40,
amended by
Nos 81/1998
s. 26(5),
102/2004 s. 33.

239AA Levy

- (1) Unless subsection (2) applies, on the commencement of section 34 of the **Accident Compensation Legislation (Amendment) Act 2004**—
 - (a) the Authority ceases to have the power to determine, collect or recover any levy under this Act;
 - (b) an employer is not required to pay any outstanding or additional levy;
 - (c) an employer is not entitled to the refund of any overpaid levy.
- (2) Despite the repeal of Part VII and the commencement of section 34 of the **Accident Compensation Legislation (Amendment) Act 2004**, this Act as in force before that commencement continues to apply to, or in respect of, the determination, collection and recovery of levy payable in respect of remuneration paid or payable by an employer on or before 1 July 1993 and the imposition and recovery of additional levy in respect thereof, if the Authority considers the payment of that levy was avoided through fraudulent conduct.

S. 239AA
inserted by
No. 102/2004
s. 34.

240 Powers of inspection

S. 240(1)
amended by
Nos 67/1992
s. 64(7)(a),
50/1994
s. 80(2),
7/1996
s. 41(a),
107/1997
s. 55(3)(a).

- (1) A person authorized by the Authority may with an interpreter or such other assistance as the person requires—

S. 240(1)(a)
amended by
No. 7/1996
s. 41(b).

- (a) enter, inspect and examine at any reasonable time any premises;
- (b) require a person in or on those premises to give information and produce books;
- (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 or the **Accident Compensation (WorkCover Insurance) Act 1993** are being or have been contravened or generally of enforcing the provisions of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**.

- (2) If a person exercising powers under subsection (1) uses the assistance of an interpreter, a request for information made on behalf of that person by the interpreter shall be deemed to have been made by that person and any answer given to the interpreter shall be deemed to have been given to that person.

240A Warrants to enter and search

S. 240A
inserted by
No. 7/1996
s. 42.

- (1) If a magistrate is satisfied, by the evidence on oath or by affidavit of the Authority, that there is reasonable ground for suspecting that there are on particular premises any books which are relevant in determining whether any of the provisions of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** are being or have been contravened, the magistrate may issue a warrant authorising any member of the police force together with any other person named in the warrant—
- (a) to enter those premises (using such force as is necessary for the purpose);
 - (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;
 - (c) to take possession of, or secure against interference, any books that appear to be so relevant; and
 - (d) to deliver any books, possession of which is so taken, into the possession of the Authority or a person authorised by the Authority to receive them.
- (2) A warrant under subsection (1) must be in the prescribed form and must not be granted except in accordance with subsection (1).
- (3) 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 (1)(d)—

S. 240A(1)
amended by
No. 60/1996
s. 27.

s. 240A

- (a) may make copies of, or take extracts from, the books;
- (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.

S. 240A(3A)
inserted by
No. 107/1997
s. 54.

- (3A) 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 (3)(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.

S. 240A(3B)
inserted by
No. 107/1997
s. 54.

- (3B) 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 (3A).

S. 240A(3C)
inserted by
No. 107/1997
s. 54.

- (3C) For the purposes of subsections (3A) and (3B), *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;

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- (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;
- (c) whether or not handwriting in any of the books belongs to a particular person.
- (4) 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.
- S. 240A(4) substituted by No. 9/2010 s. 168.**
- Penalty: In the case of a natural person,
60 penalty units;
- In the case of a body corporate,
300 penalty units.
- (5) A person must not refuse to permit a search or seizure authorised by a warrant issued under subsection (1).
- S. 240A(5) inserted by No. 9/2010 s. 168.**
- Penalty: In the case of a natural person,
100 penalty units or 6 months imprisonment or both;
- In the case of a body corporate,
600 penalty units.
- (6) 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.
- S. 240A(6) inserted by No. 9/2010 s. 168.**
- 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.
-

s. 241

S. 241
amended by
No. 64/1989
s. 26,
substituted by
No. 9/2010
s. 169.

**241 Offences relating to a person exercising powers
under section 239 or 240**

- (1) A person must not obstruct or hinder a person exercising powers under section 239 or 240.

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 made by a person exercising powers under section 239 or 240.

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 239 or 240.

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.

S. 242
amended by
No. 67/1992
s. 55(1)(a)(b),
substituted by
No. 50/1994
s. 81.

242 Offences

S. 242(1)
amended by
No. 95/2003
s. 11(b),
repealed by
No. 9/2010
s. 130(3)(c).

* * * *

Accident Compensation Act 1985
No. 10191 of 1985
Part VIII—General

s. 242

*	*	*	*	*	S. 242(2) repealed by No. 9/2010 s. 22.
*	*	*	*	*	S. 242(3) amended by Nos 107/1997 s. 55(3)(b)(i)(ii), 81/1998 s. 26(1), repealed by No. 9/2010 s. 22.
*	*	*	*	*	S. 242(4) amended by No. 7/1996 s. 43, repealed by No. 9/2010 s. 170.
*	*	*	*	*	S. 242(5) repealed by No. 9/2010 s. 130(3)(c).
*	*	*	*	*	S. 242(6) inserted by No. 107/1997 s. 55(1), repealed by No. 9/2010 s. 130(3)(c).
*	*	*	*	*	S. 242(7) inserted by No. 107/1997 s. 55(1), repealed by No. 9/2010 s. 170.
*	*	*	*	*	S. 242(8) inserted by No. 107/1997 s. 55(1), repealed by No. 9/2010 s. 130(3)(c).

s. 242AA

S. 242(9)–(12)
inserted by
No. 34/2007
s. 5,
repealed by
No. 9/2010
s. 170.

S. 242AA
inserted by
No. 9/2010
s. 23.

* * * *

242AA Offence to engage in discriminatory conduct

- (1) An employer or prospective employer must not engage in discriminatory conduct for a prohibited reason.

Penalty: 240 penalty units for a natural person;
1200 penalty units for a body corporate.

- (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

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- (d) has complied with a request made under section 239 or 240.
- (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 request made under section 239 or 240.
- (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—
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- (a) the relevant conduct was necessary to comply with the requirements of this Act 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.

S. 242AB
inserted by
No. 9/2010
s. 23.

242AB Order for damages or reinstatement

- (1) If an employer or prospective employer is convicted or found guilty of an offence against section 242AA 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

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- 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.
- (2) 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.
- (3) Nothing in a proceeding referred to in section 242AA or 242AD gives rise to an issue estoppel in relation to a claim for compensation under this Act or an application or proceedings referred to in section 134AB.

242AC Procedure if prosecution is not brought under section 242AA

S. 242AC
inserted by
No. 9/2010
s. 23.

- (1) If—
- (a) a worker or applicant for employment considers that an offence against section 242AA 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—
 - (a) must investigate the matter; and
 - (b) must 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 consider the matter and advise (in writing) the Authority whether or not the Director considers that a prosecution should be brought.
- (5) The Authority must ensure a copy of the advice is sent to the worker or applicant for employment who made the request and, if the Authority declines to follow advice from the Director of Public Prosecutions to bring proceedings, the Authority must 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 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 242AA.
- (8) For the purposes of subsection (7), *proceedings* includes—
- (a) the inquiry into, hearing and determination of any question or matter under this Act;
 - (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;
 - (c) seeking any order under the **Administrative Law Act 1978**;
 - (d) any other action or proceeding.

242AD Civil proceedings relating to discriminatory conduct

S. 242AD
inserted by
No. 9/2010
s. 23.

- (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.

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- (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 request made under section 239 or 240.
- (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 request made under section 239 or 240.
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- (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 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—
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- (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, the worker was entitled to receive from that employer during the 12 months immediately after the discriminatory conduct was engaged in or, if the worker was so employed for less than 12 months, the amount the worker would have been entitled to receive if the worker had been so employed for that period of 12 months;
 - (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
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- (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.

242AE Effect of orders on other orders under section 242AA, 242AB or 242AD

**S. 242AE
inserted by
No. 9/2010
s. 23.**

- (1) The making of an order in a proceeding under section 242AD does not prevent the bringing of a proceeding for an offence against section 242AA in respect of the same conduct.
- (2) If a court makes an order in a proceeding under section 242AB, a court cannot make an order under section 242AD in respect of the same conduct.
- (3) If a court makes an order in a proceeding under section 242AD, a court cannot make an order under section 242AB in a proceeding for an offence against section 242AA in respect of the same conduct.

242AF Claims under section 242AB or 242AD

**S. 242AF
inserted by
No. 9/2010
s. 23.**

An application for an order under section 242AB or a proceedings under 242AD is not a proceeding in respect of an injury within the meaning of section 134AB(1).

s. 242A

S. 242A
inserted by
No. 50/1994
s. 81,
amended by
No. 60/1996
s. 25(b).

242A Unauthorised use of information

A person must not use information obtained under or pursuant to this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** except as authorised by or in respect of a matter or for a purpose arising under either or both of those Acts.

Penalty: 100 penalty units.

243 Secrecy provisions applying to Act except Parts 6 and 7

S. 243(1)
amended by
Nos 67/1992
s. 64(7)(a),
60/1996
s. 25(c).

(1) Subject to this section, a person who is, or has at any time been—

S. 243(1)(aa)
inserted by
No. 28/2005
s. 11(1).

(aa) a member of the Board;

S. 243(1)(a)
amended by
Nos 67/1992
s. 53(1),
50/1994
s. 82(a).

(a) appointed for the purposes of this Act;

(b) engaged as a member of the staff of the Authority; or

S. 243(1)(c)
amended by
No. 50/1994
s. 82(b).

(c) authorized to perform or exercise any function or power of the Authority or any function or power on behalf of the Authority—

shall not, except to the extent necessary to perform official duties, or to perform or exercise such a function or power, 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 so appointed, engaged or authorized, or make use of any such information, for any purpose other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 100 penalty units.

(2) Nothing in subsection (1) precludes a person from—

(a) producing a document to a court in the course of criminal proceedings or in the course of any proceeding under this Act;

S. 243(2)(a)
amended by
Nos 67/1992
s. 53(2)(a),
50/1994
s. 82(c).

(aa) producing a document or divulging information to a Conciliation Officer, a Medical Panel, the Magistrates' Court, the Tribunal or the County Court with respect to a matter arising under this Act;

S. 243(2)(aa)
inserted by
No. 64/1989
s. 27(a),
amended by
Nos 67/1992
s. 53(2)(b),
52/1998
s. 311(Sch. 1
item 1.11(a)).

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S. 243(2)(ab)
inserted by
No. 60/1996
s. 28,
repealed by
No. 9/2010
s. 51(2)(b).

(b) divulging or communicating to a court in the course of any proceedings 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 subsection;

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No. 10191 of 1985
Part VIII—General

s. 243

(c) producing a document or divulging or communicating information to—

S. 243(2)(c)(i)
amended by
No. 83/1987
s. 95(a),
substituted by
Nos 50/1994
s. 82(d),
46/1998
s. 7(Sch. 1),
amended by
No. 74/2000
s. 3(Sch. 1
item 1.9),
substituted by
No. 28/2005
s. 11(2).

(i) the Secretary to the Department of
Innovation, Industry and Regional
Development;

S. 243(2)(c)(ia)
inserted by
No. 83/1987
s. 95(b),
substituted by
Nos 50/1994
s. 82(d),
46/1998
s. 7(Sch. 1).

(ia) the Secretary to the Department of
Treasury and Finance;

S. 243(2)(c)(ib)
inserted by
No. 64/1989
s. 27(b),
substituted by
No. 77/2008
s. 129(Sch. 2
item 2).

(ib) the Coroners Court;

S. 243(2)(c)(ii)
repealed by
No. 67/1992
s. 53(2)(c),
new
s. 243(2)(c)(ii)
inserted by
No. 7/1996
s. 44(1),
repealed by
No. 52/1998
s. 311(Sch. 1
item 1.11(b)).

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| (iii) the Public Advocate; | S. 243(2)(c)(iii)
repealed by
No. 67/1992
s. 53(2)(c),
new
s. 243(2)(c)(iii)
inserted by
No. 7/1996
s. 44(1). |
| (iiia) the Commissioner of State Revenue; | S. 243(2)
(c)(iiia)
inserted by
No. 7/1996
s. 44(1). |
| (iv) the Transport Accident Commission; | S. 243(2)(c)(iv)
substituted by
No. 83/1987
s. 95(c). |
| (iva) a person who has responsibility for the
administration of a welfare, benefit or
compensation scheme of a State or
Territory or the Commonwealth; | S. 243(2)
(c)(iva)
inserted by
No. 50/1994
s. 82(e). |
| (ivab) a corresponding Authority; | S. 243(2)
(c)(ivab)
inserted by
No. 28/2005
s. 11(3). |
| (ivac) 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; | S. 243(2)
(c)(ivac)
inserted by
No. 28/2005
s. 11(3). |
| (ivb) the National Occupational Health and
Safety Commission; | S. 243(2)
(c)(ivb)
inserted by
No. 50/1994
s. 82(e). |
| (v) the Australian Statistician; or | |
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No. 10191 of 1985
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s. 243

S. 243(2)
(c)(va)
inserted by
No. 83/1987
s. 95(d).

(va) the Board or committee of management
(by whatever name called) of a
statutory superannuation scheme within
the meaning of the **Superannuation
Benefits Act 1977**; or

S. 243(2)(c)(vi)
amended by
No. 67/1992
s. 64(7)(c).

(vi) 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;
- (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; or

S. 243(2)
(c)(vii)
inserted by
No. 18/1988
s. 6(3).

(vii) a committee of the Parliament; or

S. 243(2)
(c)(viii)
inserted by
No. 18/1988
s. 6(3).

(viii) a person or body approved by the
Governor in Council; or

S. 243(2)(d)
substituted by
No. 28/2005
s. 11(4).

(d) producing a document or disclosing
information which is required or permitted to
be produced or disclosed by or under this
Act or any other Act.

S. 243(2A)
inserted by
No. 28/2005
s. 11(5).

(2A) The Minister must cause a report of requests for
the approval of persons or bodies by the Governor
in Council under subsection (2)(c)(viii) to be laid
before each House of the Parliament within
14 sitting days of that House after 30 June in each
year.

- (3) 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.
- (4) Nothing in this section authorises a person to divulge or communicate any information acquired by the person in the performance of a duty or exercise of a power under the **Occupational Health and Safety Act 2004**.

S. 243(3)
inserted by
No. 18/1988
s. 6(4),
substituted by
No. 28/2005
s. 11(5).

S. 243(4)
inserted by
No. 107/2004
s. 177(7).

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S. 244
amended by
Nos 37/1987
s. 10(7),
83/1987 s. 96,
18/1988
s. 6(5)(6),
67/1992 ss 54,
64(7)(a)(c),
100/1995
s. 32(Sch. 2
item 1), 7/1996
s. 44(2),
60/1996
s. 25(d),
46/1998
s. 7(Sch. 1),
28/2005 s. 12,
repealed by
No. 83/2009
s. 39.

244A 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 as amended and in force from time to time.

S. 244A
inserted by
No. 23/1986
s. 11,
amended by
No. 67/1992
s. 64(7)(a).

s. 245

S. 245
amended by
No. 67/1992
s. 64(7)(a).

245 Signature

S. 245(1)
amended by
No. 48/1986
s. 8(3).

(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 of the Authority or a delegate of the Authority or a person authorized by a delegate, shall until the contrary is proved, be deemed to have been duly signed by the person by whom it purports to have been signed.

S. 245(2)
amended by
No. 48/1986
s. 8(3).

(2) Judicial notice shall be taken of every such signature and of the fact that the person whose signature it purports to be holds or has held the office of chief executive of the Authority or is or has been a delegate of the Authority or a person authorized by a delegate, as the case may be.

246 Service of documents by the Authority

S. 246(1)
amended by
Nos 83/1987
s. 97(1),
67/1992
s. 64(7)(a),
50/1994
s. 83(a)(b),
81/1998
s. 26(6).

(1) Any certificate, notice, form or other document required or authorized by this Act, the regulations or the rules or the **Accident Compensation (WorkCover Insurance) Act 1993** or regulations under that Act to be served or given by the Authority or a self-insurer shall be deemed to have been duly served or given—

(a) if delivered personally to, or if left at the last known place of abode or business in or out of the State of the person, whether or not the person is an employer, on or to whom the notice or document is to be served or given or, in the case of an employer, at the address for service shown on the return last furnished by the employer with some person apparently in the employment of the employer; or

- (b) if sent by prepaid letter post, addressed to the person, whether or not the person is an employer, on or to whom the notice or document is to be served or given at the last known place of business or abode in or out of the State or, in the case of an employer, at the address for service shown on the last return furnished by the employer.
- (2) In any case to which subsection (1)(b) applies, unless the contrary is proved, service shall be deemed to have been effected two days from the date of posting.
- (3) The provisions of this section are in addition to and not in derogation of any other provisions of this Act relating to the service of documents or the provisions of sections 528, 529 and 530 of the **Companies (Victoria) Code**.

247 Service of documents on the Authority

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 or the **Accident Compensation (WorkCover Insurance) Act 1993**, the regulations or the rules or the **Accident Compensation (WorkCover Insurance) Act 1993** or regulations under that Act may be served by being lodged at the office of the Authority or, if an authorised agent is acting on behalf of the Authority in the relevant matter, at the office of the authorised agent, with a person employed in the administration of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** and authorized in writing by the Authority to accept service of documents on behalf of the Authority.

S. 247
amended by
Nos 83/1987
s. 97(2),
67/1992
s. 64(7)(a),
50/1994
s. 83(c)–(e),
81/1998
s. 26(7)(a)(b).

S. 248
substituted by
No. 83/1987
s. 98,
amended by
Nos 67/1992
s. 55(2),
50/1994
s. 83(f), 9/2010
s. 172.

248 Fraud

- (1) A person must not obtain or attempt to obtain fraudulently any payment under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**.
- (2) Without limiting the generality of subsection (1), a person must not obtain or attempt to obtain fraudulently any payment under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** for any other person, or knowingly assist any other person to obtain fraudulently any payment under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**.

Penalty: In the case of a natural person,
1000 penalty units or 2 years
imprisonment;
In the case of a body corporate,
5000 penalty units.

S. 248AA
inserted by
No. 67/1992
s. 56,
amended by
No. 9/2010
s. 171(1).

248AA Bribery

S. 248AA(1)
amended by
Nos 50/1994
s. 83(g),
9/2010
s. 171(2).

- (1) A person employed in the administration of this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** 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—

S. 248AA(1)(a)
amended by
No. 50/1994
s. 83(g).

- (a) so that the person employed will forego or neglect his or her functions or duties under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** or in order to influence him or her in the performance of his or her functions or duties

under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**; 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 the **Accident Compensation (WorkCover Insurance) Act 1993**; or

S. 248AA(1)(b)
amended by
No. 50/1994
s. 83(g).

- (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,
1000 penalty units or 2 years
imprisonment;

In the case of a body corporate,
5000 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 the **Accident Compensation (WorkCover Insurance) Act 1993** or any other person any money, property or benefit of any kind—

S. 248AA(2)
amended by
Nos 50/1994
s. 83(g),
9/2010
s. 171(2).

- (a) so that the person employed will forego or neglect his or her functions or duties under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** or in order to influence him or her in the performance of his or her functions or duties under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**; or

S. 248AA(2)(a)
amended by
No. 50/1994
s. 83(g).

s. 248A

S. 248AA(2)(b)
amended by
No. 50/1994
s. 83(g).

- (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 the **Accident Compensation (WorkCover Insurance) Act 1993**; 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,
1000 penalty units or 2 years
imprisonment;

In the case of a body corporate,
5000 penalty units.

S. 248A
inserted by
No. 64/1989
s. 28.

248A False or misleading information

S. 248A(1)
amended by
No. 9/2010
s. 173(1).

- (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 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 if the person knows that the information is false or misleading in a material particular.

S. 248A(2)
amended by
No. 9/2010
s. 173(2).

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.

- (3) In this section, *professional service* means—

- (a) a hospital service, medical service, ambulance service personal and household service or occupational rehabilitation service; or

S. 248A(3)(a)
amended by
No. 50/1993
s. 81(j).

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

S. 248A(3)(b)
amended by
Nos 18/2005
s. 18(Sch. 1
item 1.3),
9/2010
s. 142(a).

- (c) a service, provision of goods or any other matter referred to in section 99 in relation to the costs of which a liability arises, or may arise, under that section.

S. 248A(3)(c)
inserted by
No. 9/2010
s. 142(b).

248AB False or misleading statements

S. 248AB
inserted by
No. 9/2010
s. 97.

- (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 the **Accident Compensation (WorkCover Insurance) Act 1993** and the relevant premiums order for a WorkCover insurance policy.

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 the **Accident Compensation (WorkCover Insurance) Act 1993** and the relevant premiums order, for a WorkCover insurance policy 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.

248B Investigation of fraud

S. 248B
inserted by
No. 64/1989
s. 28,
amended by
No. 67/1992
ss 57, 64(7)(a).

- (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 section 248, 248AA, 248A, 248AB(1), 248AB(2) or 249 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 and investigation under this section.

S. 248B(1)
amended by
No. 9/2010
s. 98.

248BA Liability of premium adviser

S. 248BA
inserted by
No. 9/2010
s. 99.

- (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 the **Accident Compensation (WorkCover Insurance) Act 1993**, the premium adviser is liable to pay the employer the amount of the default penalty or late payment penalty, and that amount 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 the **Accident Compensation (WorkCover Insurance) Act 1993**.

(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 premium for a WorkCover insurance policy and includes a financial adviser, legal practitioner and accountant.

S. 248C
inserted by
No. 64/1989
s. 28,
amended by
No. 67/1992
ss 57, 64(7)(a).

248C Indemnity

If the Authority considers that an offence may have been committed against section 248, 248AA, 248A or 249, the Authority may recommend to the Attorney-General that appropriate indemnities be offered for the purpose of enabling information to be obtained about the alleged offence.

S. 248D
inserted by
No. 9/2010
s. 133.

248D 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 or the regulations 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 to produce.

S. 248E
inserted by
No. 9/2010
s. 133.

248E Legal professional privilege and client legal privilege not affected

Nothing in this Act—

- (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.

249 False information

S. 249
amended by
Nos 83/1987
s. 99(a)(b),
64/1989
s. 35(q),
67/1992
s. 58(1).

- (1) A person must not provide orally or in writing or by electronic transmission any false or misleading information under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**.

S. 249(1)
amended by
No. 50/1994
s. 83(h),
substituted by
No. 107/1997
s. 56(1),
amended by
Nos 102/2004
s. 36, 9/2010
s. 174(1).

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

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

- (1A) Subsection (1) is not limited to information in or in connection with any claim, application, certificate or notice under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**.

S. 249(1A)
inserted by
No. 107/1997
s. 56(1).

- (2) A person must not make a statement knowing that it is false or misleading in a material particular—

S. 249(2)
inserted by
No. 67/1992
s. 58(2),
amended by
No. 9/2010
s. 174(2).

- (a) in a notice given by the person under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993**; or

S. 249(2)(a)
amended by
No. 50/1994
s. 83(h).

- (b) in a claim for compensation made by the person; or

Accident Compensation Act 1985
No. 10191 of 1985
Part VIII—General

s. 249A

S. 249(2)(c)
amended by
No. 107/1997
s. 56(2).

(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

S. 249(2)(d)
amended by
No. 7/1996
s. 45.

(d) in a declaration given under section 111(1).

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.

S. 249A
inserted by
No. 83/1987
s. 100,
amended by
No. 64/1989
s. 29(1),
substituted by
No. 67/1992
s. 59.

249A Refunding money to the Authority etc.

S. 249A(1)
amended by
Nos 50/1994
s. 83(i),
107/1997
s. 57(1),
81/1998
s. 26(8).

(1) If a person is convicted or found guilty of an offence against this Act or of an offence against the **Crimes Act 1958** which occurs in connection with a claim for compensation under this Act 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 or of an offence against the **Crimes Act 1958** which occurs in connection with a claim for compensation under this Act, 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—

S. 249A(2)
amended by
Nos 50/1994
s. 83(i),
107/1997
s. 57(2),
81/1998
s. 26(8).

- (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.

S. 249A(3)
amended by
Nos 50/1993
s. 110(1)(i),
107/1997
s. 57(3).

249AA Suspension of payments for services

S. 249AA
inserted by
No. 9/2010
s. 143.

- (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 249BB, 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.

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- (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 as
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- compensation under this Act 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—
- professional service*** means a professional service as defined in section 248A(3) that is provided to or in respect of a worker in respect of an injury sustained by the worker for which a claim for compensation has been, or may be, given, served or lodged under this Act;
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relevant offence means—

- (a) an offence against this Act; or
- (b) an offence against the **Crimes Act 1958** that occurs in connection with a claim for compensation under this Act.

S. 249AB
inserted by
No. 9/2010
s. 143.

249AB 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 249BB, 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.

professional service has the same meaning as in section 249AA.

249B 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

S. 249B
inserted by
No. 67/1992
s. 60,
substituted by
No. 50/1994
s. 84,
amended by
Nos 7/1996
s. 46, 107/1997
s. 11(7)(c),
81/1998
s. 26(9),
69/2009
s. 54(Sch. Pt 2
item 1),
substituted by
No. 9/2010
s. 143.

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- 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
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(b) the expiry of—

- (i) in the case of a 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 that the person, in providing the relevant service, has acted in an unreasonable or unprofessional manner, the Authority, by notice in writing to the person, may do any one or more of the following—

- (a) suspend the person's approval as a provider of the relevant services for a period specified in the notice;
- (b) determine that the costs of any relevant services provided during the suspension are not payable by the Authority or a self-insurer;
- (c) 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 239 applies in respect of any liability or entitlement under this section.
- (11) In this section—
- relevant body* means has the same meaning as in section 249BA but does not include a court;
 - professional service* has the same meaning as in section 249AA.

249BA Findings of relevant bodies

**S. 249BA
inserted by
No. 9/2010
s. 143.**

- (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 249BB, by notice to that person, determine that the person is a person for the provision of whose professional services the Authority is not liable to pay costs as compensation under this Act, 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 made or, in the case of a self-insurer, after the notice was given.

(4) In this section—

professional service has the same meaning as in section 249AA;

relevant body means—

- (a) a responsible board within the meaning of the **Health Professions Registration Act 2005**;
- (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.

S. 249BB
inserted by
No. 9/2010
s. 143.

249BB Notice to be given before determination made

- (1) The Authority must, before making a determination under section 249AA, 249AB, 249B (except subsection (2)(a), (3)(b) or (6)) or 249BA 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.

249BC Authority may publish list of providers subject to disciplinary action

S. 249BC
inserted by
No. 9/2010
s. 143.

- (1) The Authority may cause to be published the outcome of a determination of the Authority or order of the court under section 249AA, 249AB, 249B or 249BA, together with the name and business address of each person who provides, or has provided, professional services to which the determination or order applies.

- (2) In this section—

professional service has the same meaning as in section 249AA.

249C Victorian Civil and Administrative Tribunal

S. 249C
inserted by
No. 107/1997
s. 11(6).

- (1) A person whose interests are affected by a decision of the Authority under section 249AA, 249AB, 249B, 249BA or 249BC may apply to the Tribunal for review of the decision.

S. 249C(1)
substituted by
No. 52/1998
s. 311(Sch. 1
item 1.12) (as
amended by
Nos 101/1998
s. 22(1)(a)),
9/2010
s. 144(4).

- (1A) A reference in subsection (1) to a decision of the Authority does not include a reference to a decision of the Authority under section 249B(2)(a) to notify a relevant body or to refer the conduct of a person for review.

S. 249C(1A)
inserted by
No. 9/2010
s. 144(5).

- (2) An application for review must be made within 12 months after the person became aware of the decision.

S. 249C(2)
substituted by
No. 52/1998
s. 311(Sch. 1
item 1.12) (as
amended by
No. 101/1998
s. 22(1)(a)).

Accident Compensation Act 1985
No. 10191 of 1985
Part VIII—General

s. 249C

S. 249C(3)
repealed by
No. 52/1998
s. 311(Sch. 1
item 1.13).

* * * *

- (4) The Tribunal may fix a date for the hearing of an application but must not commence any proceedings in relation to the application until the expiration of 28 days after a copy of the application has been served on the Authority.
- (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 the Tribunal 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, the Tribunal may take the failure into account when making an order for costs in respect of the proceedings.

S. 249C(8)
repealed by
No. 52/1998
s. 311(Sch. 1
item 1.13).

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- (9) 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.

- (10) The Authority must give notice in writing to the applicant of a determination to vary or revoke its decision.
- (11) Unless the applicant has withdrawn the application, the Tribunal 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.
- (12) Where the Tribunal exercises jurisdiction under this section—
- (a) the Tribunal may refer a medical question to a Medical Panel for an opinion; and
 - (b) if a party to the proceedings so requests, the Tribunal must refer a medical question to a Medical Panel for an opinion; and
 - (c) the opinion of the Panel on that question shall, subject to this section, be adopted by the Tribunal as the answer to that question.
- (13) If the Tribunal refers a medical question to the Panel, the Tribunal must give the Panel, and each party to the proceedings, copies of all documents in the possession of the Tribunal relating to the medical question.
- (14) If the Tribunal refers a medical question to a Medical Panel, the Tribunal must give a copy of the Panel's opinion to each party to the proceedings.

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S. 249C
(15)(16)
repealed by
No. 52/1998
s. 311(Sch. 1
item 1.13).

- (17) An application for leave to appeal under section 148 of the **Victorian Civil and Administrative Tribunal Act 1998** against an order of the Tribunal under this section by a

S. 249C(17)
substituted by
No. 52/1998
s. 311(Sch. 1
item 1.14).

person other than the Authority does not operate as a stay of the order.

S. 250
amended by
Nos 50/1994
s. 85, 9/2010
s. 175.

250 Obstructing officers

A person shall not obstruct or hinder a person acting in the administration of this Act or the regulations or the **Accident Compensation (WorkCover Insurance) Act 1993** or regulations under that Act.

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

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

S. 250A
inserted by
No. 7/1996
s. 47.

250A Offences by bodies corporate

- (1) If an offence against this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** committed by a body corporate is proved to have been committed with the consent or connivance of, or to have been attributable to any wilful neglect on the part of, an officer of the body corporate or person purporting to act as such an officer, that officer or person is also guilty of that offence and liable to the penalty for that offence.
- (2) If in any proceedings for an offence under this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** it is necessary to establish the intention of a body corporate it is sufficient to show that a servant or agent of the body corporate had that intention.
- (3) In subsection (1) *officer* in relation to a body corporate means—
 - (a) a director, secretary or executive officer of the body corporate; or
 - (b) any person in accordance with whose directions or instructions the directors of the body corporate are accustomed to act; or

- (c) a person concerned in the management of the body corporate.

250B Responsible agency for the Crown

S. 250B
inserted by
No. 28/2005
s. 8.

- (1) If proceedings are brought against the Crown for an offence against this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** or the regulations under those Acts, the responsible agency in respect of the offence may be specified in any document initiating, or relating to, the proceedings.
- (2) 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.
- (3) 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.
- (4) The person prosecuting the offence may change the responsible agency during the proceedings with the court's leave.

250C Proceedings against successors to public bodies

S. 250C
inserted by
No. 28/2005
s. 8.

- (1) 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 1989**); or
 - (d) a public entity (within the meaning of the **Public Administration Act 2004**).
- (2) Proceedings for an offence against this Act or the **Accident Compensation (WorkCover Insurance) Act 1993** or the regulations under those Acts 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.

S. 251
substituted by
No. 9/2010
s. 176.

251 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).

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- (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 or the **Accident Compensation (WorkCover Insurance) Act 1993** 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.

251A Adverse publicity orders

S. 251A
inserted by
No. 9/2010
s. 177.

- (1) If a court convicts a person, or finds a person guilty, of an offence against this Act, the regulations, the **Accident Compensation (WorkCover Insurance) Act 1993** or regulations made under that Act, the court may make an order (an *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.

252 Institution of prosecutions

- (1) A charge-sheet charging an offence against this Act (other than a provision of Division 2 of Part III), or an offence against the **Accident Compensation (WorkCover Insurance) Act 1993** or an offence against the **Crimes Act 1958** which occurs in connection with a claim for compensation under this Act, may be filed by the Authority or by any person authorised by the Authority to file charge-sheets on behalf of the Authority.

S. 252(1)
amended by
Nos 64/1989
s. 35(r),
67/1992
s. 61(1)(a)
(b)(d), 64(7)(a),
50/1994
s. 86(a)(b),
7/1996
s. 48(1),
60/1996 s. 29,
substituted by
No. 107/1997
s. 58,
amended by
No. 68/2009
s. 97(Sch.
item 3.1).
- (1A) A charge-sheet charging an offence against a provision of Division 2 of Part III may be filed by the Senior Conciliation Officer.

S. 252(1A)
inserted by
No. 67/1992
s. 61(2),
substituted by
No. 107/1997
s. 58,
amended by
No. 68/2009
s. 97(Sch.
item 3.2).

Accident Compensation Act 1985
No. 10191 of 1985
Part VIII—General

s. 252

S. 252(1B)
inserted by
No. 107/1997
s. 58.

(1B) An affidavit for use in proceedings relating to a charge specified in subsection (1) may be sworn and taken before a person authorised by the Authority for this purpose.

S. 252(2)
amended by
No. 67/1992
s. 64(7)(a).

(2) Any prosecution instituted in the name of the Authority shall, in the absence of evidence to the contrary, be deemed to have been instituted by the authority of the Authority.

S. 252(3)
amended by
No. 67/1992
s. 64(7)(a).

(3) 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.

S. 252(4)
inserted by
No. 64/1989
s. 29(2),
amended by
No. 67/1992
s. 61(3),
substituted by
No. 7/1996
s. 48(2).

(4) Despite any law to the contrary, proceedings may be instituted for an offence against—

S. 252(4)(a)
amended by
Nos 34/2007
s. 6, 60/2007
s. 29(b),
9/2010 ss 24,
130(3)(d).

(a) section 242(4)(d), 242(9), 242(10), 242AA(1), 248, 248A or 249, within 3 years after the alleged offence occurred;

S. 252(4)(b)
amended by
No. 9/2010
s. 130(3)(e).

(b) section 194(1), 242(3), 242(4)(b) or 242(4)(c) of this Act or section 7 or 57(5) of the **Accident Compensation (WorkCover Insurance) Act 1993** which is alleged to have occurred on or after the commencement of section 48 of the **Accident Compensation (Amendment) Act 1996**, within 3 years after the alleged offence occurred.

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- (4A) Despite any law to the contrary, proceedings for an offence against Part VIIB may, with the authority of the Director of Public Prosecutions, be instituted at any time after the offence is committed. **S. 252(4A) inserted by No. 9/2010 s. 134.**
- (5) The Authority must issue general guidelines for or with respect to the prosecution of offences under this Act. **S. 252(5) inserted by No. 107/1997 s. 59.**
- (6) The Authority must publish guidelines under subsection (5) in the Government Gazette. **S. 252(6) inserted by No. 107/1997 s. 59.**

252AA Procedure if prosecution is not brought

S. 252AA inserted by No. 9/2010 s. 135.

- (1) If—
- (a) a person considers that the occurrence of an act, matter or thing constitutes an offence against Part VIIB; 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 (in writing) the person 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.

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- (4) The Director of Public Prosecutions must consider the matter and advise (in writing) the Authority whether or not the Director considers that a prosecution should be brought.
- (5) The Authority must ensure a copy of the advice is sent to the person who made the request and, if the Authority declines to follow advice from the Director of Public Prosecutions to bring proceedings, the Authority must 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.
- (8) In this section—
- proceedings* includes—
- (a) the inquiry into, hearing and determination of any question or matter under this Act;
 - (b) seeking the grant of any relief or remedy in the nature of certiorari, prohibition, mandamus or
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quo warranto, or the grant of a
declaration of right or an injunction;

- (c) seeking any order under the
Administrative Law Act 1978;
- (d) any other action or proceeding.

252A Evidence

Nothing in this Act renders inadmissible any
evidence, including any photograph, film,
negative, tape or other device, which would
otherwise be admissible in a court proceeding.

S. 252A
inserted by
No. 67/1992
s. 62.

252B Guidelines, forms and advisory practice notes

The Authority must ensure that any guidelines,
forms and advisory practice notes made or
approved by the Authority are published and are
generally available.

S. 252B
inserted by
No. 50/1994
s. 87.

252C Supreme Court—limitation of jurisdiction

It is the intention of sections 39, 134A, 135, 135A,
135AB, 135AC, 135C and 249C, as inserted or
amended by the **Accident Compensation
(Miscellaneous Amendment) Act 1997**, to alter
or vary section 85 of the **Constitution Act 1975**.

S. 252C
inserted by
No. 107/1997
s. 60.

252D Supreme Court—limitation of jurisdiction

It is the intention of sections 134AA, 134AB,
134AC, 134AD, 134AE, 134AG, 134A, 135AC
and 138B as inserted or amended by the **Accident
Compensation (Common Law and Benefits)
Act 2000**, to alter or vary section 85 of the
Constitution Act 1975.

S. 252D
inserted by
No. 26/2000
s. 32.

252E Supreme Court—limitation of jurisdiction

It is the intention of section 138B, as amended by
section 25 of the **Victims of Crime Assistance
(Amendment) Act 2000**, to alter or vary
section 85 of the **Constitution Act 1975**.

S. 252E
inserted by
No. 54/2000
s. 26.

s. 252E

S. 252E
inserted by
No. 84/2000
s. 40.

252E Supreme Court—limitation of jurisdiction

It is the intention of section 134AG as amended by section 39 of the **Transport Accident (Amendment) Act 2000** to alter or vary section 85 of the **Constitution Act 1975**.

S. 252G
inserted by
No. 28/2005
s. 25.

252G Supreme Court—limitation of jurisdiction

It is the intention of section 175 as inserted by section 6 of the **Accident Compensation (Amendment) Act 2005** to alter or vary section 85 of the **Constitution Act 1975**.

S. 252H
inserted by
No. 9/2010
s. 73.

252H Supreme Court—limitation of jurisdiction

It is the intention of section 92D as inserted by section 71 of the **Accident Compensation Amendment Act 2010** to alter or vary section 85 of the **Constitution Act 1975**.

S. 252I
inserted by
No. 9/2010
s. 123.

252I Supreme Court—limitation of jurisdiction

It is the intention of section 138 as amended by section 122 of the **Accident Compensation Amendment Act 2010** to alter or vary section 85 of the **Constitution Act 1975**.

S. 252J
inserted by
No. 9/2010
s. 26.

252J Supreme Court—limitation of jurisdiction

It is the intention of section 242AC (7) as inserted by section 23 of the **Accident Compensation Amendment Act 2010** to alter or vary section 85 of the **Constitution Act 1975**.

S. 252K
inserted by
No. 9/2010
s. 27.

252K Supreme Court—limitation of jurisdiction

It is the intention of section 138B, as amended by section 25 of the **Accident Compensation Amendment Act 2010**, to alter or vary section 85 of the **Constitution Act 1975**.

252L Supreme Court—limitation of jurisdiction

It is the intention of section 109AA as inserted by section 43 of the **Accident Compensation Amendment Act 2010** to alter or vary section 85 of the **Constitution Act 1975**.

S. 252L
inserted by
No. 9/2010
s. 44.

252M Supreme Court—limitation of jurisdiction

It is the intention of sections 114J and 114M as inserted by section 91 of the **Accident Compensation Amendment Act 2010** to alter or vary section 85 of the **Constitution Act 1975**.

S. 252M
inserted by
No. 9/2010
s. 92.

252N Supreme Court—limitation of jurisdiction

It is the intention of section 252AA as inserted by section 135 of the **Accident Compensation Amendment Act 2010** to alter or vary section 85 of the **Constitution Act 1975**.

S. 252N
inserted by
No. 9/2010
s. 136.

253 Regulations

- (1) The Governor in Council may make regulations for or with respect to prescribing—
- (a) forms to be used for the purposes of this Act otherwise than where the rules may make provision for forms;
 - (b) fees for the purposes of this Act otherwise than where the rules may make provision for fees;

S. 253(1)
amended by
No. 67/1992
s. 64(7)(a).

* * * * *

S. 253(1)(c)
repealed by
No. 48/1986
s. 31.

- (d) maximum fees to be paid in relation to burial and cremation;
- (e) fees for ambulance, hospital, medical, nursing or rehabilitation services, other than fees for services prescribed by or under the **Health Services Act 1988**;

S. 253(1)(e)
substituted by
No. 64/1989
s. 35(s).

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- (f) the keeping and form of any records, registers or other documents as may be necessary for the administration of this Act;
 - (g) the manner of making any application to the Authority under Part VII;
 - (h) the signing of returns, applications, notices, statements or forms under Part VII by or on behalf of employers and deeming any return, application, notice, statement or form signed on behalf of employers to have been signed by the employer;
 - (i) the authentication of any certificate, notice or other document issued for the purpose of Part VII or any regulation;
 - (j) the manner of notifying the appointment under Part VII of a public officer of a company; or
 - (k) any matter which is authorized or required to be prescribed for carrying out or giving effect to this Act.
- (2) Regulations made under this Act—
- (a) may be of general or of specially limited application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) 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
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- (ca) 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
- (d) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.
- (3) Regulations under this Act may be disallowed in whole or in part by resolution of either House of the Parliament in accordance with the requirements of section 6(2) of the **Subordinate Legislation Act 1962** which disallowance is deemed disallowance by the Parliament for the purposes of that Act.
- (4) Where, under subsection (3), either House of the Parliament disallows any regulation, or any regulation is deemed to have been disallowed, no regulation, being the same in substance as the regulation so disallowed, or deemed to have been disallowed, shall be made within 6 months after the date of the disallowance, unless—
- (a) in the case of a regulation disallowed by resolution—the resolution has been rescinded by the House of the Parliament by which it was passed; or
- (b) in the case of a regulation deemed to have been disallowed—the House of the Parliament in which notice of the motion to disallow the regulation was given by resolution approves the making of a regulation the same in substance as the regulation deemed to have been disallowed.

S. 253(2)(ca)
inserted by
No. 83/1987
s. 101(1).

S. 253(3)
inserted by
No. 83/1987
s. 101(2).

S. 253(4)
inserted by
No. 64/1989
s. 30.

Accident Compensation Act 1985
No. 10191 of 1985
Part VIII—General

s. 253

S. 253(5)
inserted by
No. 64/1989
s. 30.

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- (5) Any regulation made in contravention of this section shall be void and of no effect.
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**PART IX—SAVINGS AND TRANSITIONAL PROVISIONS—
AMENDING ACTS**

Pt 9
(Heading and
ss 254–276)
repealed by
No. 48/1986
s. 32,
new Pt 9
(Heading and
ss 254–269)
inserted by
No. 95/2003
s. 23.

**Division 1—Accident Compensation (Miscellaneous
Amendment) Act 1997**

254 Definition of amending Act

New s. 254
inserted by
No. 95/2003
s. 23.

In this Division *amending Act* means the
**Accident Compensation (Miscellaneous
Amendment) Act 1997**.

255 Section 91 (Assessment of impairment)

New s. 255
inserted by
No. 95/2003
s. 23.

- (1) Section 91, as amended by section 25 of the
amending Act, applies to all claims for
compensation under section 98C, irrespective of
when the injury occurred or the claim is made.
- (2) Section 91, as in force immediately before
1 September 1998, continues to apply—
 - (a) to claims for compensation under section 98;
 - (b) to applications for determinations under
section 135A(3);
 - (c) to all claims for weekly payments to which
section 93C applies—irrespective of when the injury occurred or the
claim is made.

Note

1 September 1998 is the date of commencement of section 25 of
the **Accident Compensation (Miscellaneous Amendment) Act
1997**.

Division 2—Accident Compensation (Common Law and Benefits) Act 2000

New s. 256
inserted by
No. 95/2003
s. 23.

256 Definition of amending Act

In this Division *amending Act* means the **Accident Compensation (Common Law and Benefits) Act 2000**.

New s. 257
inserted by
No. 95/2003
s. 23.

257 Section 5A (Pre-injury average weekly earnings)

- (1) Section 5A(1A), as amended by section 4 of the amending Act, applies in respect of a claim for weekly payments given, served or lodged—
 - (a) on or after 1 September 2000; but
 - (b) before the date of commencement of section 5 of the **Accident Compensation and Transport Accident Acts (Amendment) Act 2003**.
- (2) Section 5A as in force immediately before 1 September 2000 continues to apply in respect of a claim for weekly payments given, served or lodged before that date.
- (3) Section 5A(4), as amended by section 4 of the amending Act, applies in respect of a claim for weekly payments given, served or lodged on or after 1 September 2000.

Note

1 September 2000 is the date of commencement of section 4 of the **Accident Compensation (Common Law and Benefits) Act 2000**.

**Division 3—Accident Compensation and Transport Accident
Acts (Amendment) Act 2003**

258 Definitions

In this Division—

amending Act means the **Accident
Compensation and Transport Accident
Acts (Amendment) Act 2003**;

commencement date means the day after the day
on which the amending Act receives the
Royal Assent.

New s. 258
inserted by
No. 95/2003
s. 23.

259 Section 5(1) (Definition of *injury*)

The definition of *injury* in section 5(1), as
amended by section 3(1) of the amending Act,
only applies to injuries that occur on or after the
date of commencement of section 3.

New s. 259
inserted by
No. 95/2003
s. 23.

260 Section 5(1) (Definition of *medical service*)

The definition of *medical service* in section 5(1),
as amended by section 4(1) of the amending Act,
only applies to services provided on or after the
date of commencement of section 4.

New s. 260
inserted by
No. 95/2003
s. 23.

261 Section 5A (Pre-injury average weekly earnings)

Section 5A, as amended by section 5 of the
amending Act, applies in respect of a claim for
weekly payments given, served or lodged on or
after the date of commencement of section 5.

New s. 261
inserted by
No. 95/2003
s. 23.

262 Section 82 (Entitlement to compensation)

Section 82, as amended by section 3 of the
amending Act, applies to all injuries that occur on
or after the date of commencement of section 3.

New s. 262
inserted by
No. 95/2003
s. 23.

New s. 263
inserted by
No. 95/2003
s. 23.

263 Section 86 (Compensation for disease due to employment)

Section 86, as amended by section 3(7) of the amending Act, applies to all injuries that occur on or after the date of commencement of section 3.

New s. 264
inserted by
No. 95/2003
s. 23.

264 Section 91 (Assessment of impairment)

- (1) Section 91, as amended by section 7 of the amending Act, applies to all assessments (including assessments made for the purposes of claims and applications referred to in section 255) made on or after the date of commencement of section 7.
- (2) For the purposes of assessments made for the purposes of claims and applications referred to in section 255(2), a reference in sections 91(9) and 91(10) to the A.M.A. Guides is to be read as a reference to the American Medical Association's Guides to the Evaluation of Permanent Impairment (Second Edition).
- (3) Section 91(7), as amended by section 8(3) of the amending Act, only applies in respect of assessments for injuries that are made on or after the date of commencement of section 8.
- (4) Despite the repeal of sections 91(11) and 91(12) by section 9(1) of the amending Act, those sections continue to apply according to their terms in respect of claims for compensation lodged before the date of commencement of section 9(1).

265 Section 98C (Compensation for non-economic loss)

Section 98C, as amended by section 8 of the amending Act, only applies in respect of injuries that occur on or after the date of commencement of section 8.

New s. 265
inserted by
No. 95/2003
s. 23.

Note

The only effective changes made by section 8 are the inclusion of section 98C(2)(b), an increase to the formula amounts in section 98C(2)(c) and the inclusion of associated section 98C(2A). The other amendments made to amounts by section 8 were made for the purposes of consistency and merely reflect the amounts that applied under section 98C on the date of commencement of section 8 as a result of the indexation that occurred under section 100. Therefore nothing in section 265 affects those amounts.

266 Section 99 (Compensation for medical and like services)

- (1) Section 99, as amended by section 4(2) of the amending Act, only applies to claims for compensation under section 99 made after the commencement date.
- (2) This Act continues to apply to a person who was injured before the commencement date for 18 months after the commencement date as if it had not been amended by section 4(2) of the amending Act.

New s. 266
inserted by
No. 95/2003
s. 23.

267 Part IV (Payment of Compensation)

- (1) The amendments made to Part IV by Part 3 of the amending Act do not apply in respect of an injury that occurred before the commencement of Part 3, and Part IV applies in respect of such an injury as if those amendments had not been made.
- (2) If the death of a worker results from both an injury that occurred before the date of commencement of Part 3 of the amending Act and an injury that occurred on or after that date, the worker is, for the purposes of the application of

New s. 267
inserted by
No. 95/2003
s. 23.

the amendments made by Part 3 of that Act to and in respect of the death of the worker, to be treated as having died as a result of the injury that occurred on or after that date.

- (3) If a period of incapacity for work resulted both from an injury that occurred before the date of commencement of Part 3 of the amending Act and an injury that occurred on or after that date, the incapacity is, for the purposes of the application of the amendments made by Part 3 of that Act to and in respect of that incapacity for work, to be treated as having resulted from the injury that occurred on or after that date.
- (4) The amendments made by Part 3 of the amending Act and subsections (2) and (3) do not affect the apportionment of liability in a case where one or more of the injuries concerned occurred before, and one or more occurred on or after, the date of commencement of Part 3.

New s. 268
inserted by
No. 95/2003
s. 23.

268 Sections 155A and 155B (Employer to re-employ worker)

- (1) Sections 155A and 155B, as inserted by section 10 of the amending Act, only apply in respect of injuries that occur on or after the date of commencement of section 10.
- (2) Section 122, despite its repeal by section 11 of the amending Act, continues to apply in respect of injuries that occur before the date of commencement of section 11.
- (3) Sections 160(1)(a)(iii) and 242(1), in the form they were in immediately before the date of commencement of section 11 of the amending Act, continue to apply in respect of injuries that occur before that date.

269 Section 156 (Occupational rehabilitation and risk management programs)

New s. 269
inserted by
No. 95/2003
s. 23.

- (1) Section 156, as amended by section 12 of the amending Act, only applies in respect of injuries that occur on or after the date of commencement of section 12.
- (2) Section 156, in the form it was in immediately before the date of commencement of section 12 of the amending Act, continues to apply in respect of injuries that occur before that date.

**Division 4—Accident Compensation Legislation
(Amendment) Act 2004**

Pt 9 Div. 4
(Heading and
ss 270–283)
inserted by
No. 102/2004
s. 41.

270 Sections 5(1), 88, 89, 91 and 98C—(claims for compensation for further loss of hearing)

New s. 270
inserted by
No. 102/2004
s. 41.

- (1) Subject to subsection (2), sections 5(1), 88, 89, 91 and 98C as amended by sections 15 to 18 of the **Accident Compensation Legislation (Amendment) Act 2004** apply in respect of a claim for compensation lodged under section 98C on or after 18 November 2004 irrespective of whether the further injury, the prior injury or the prior hearing loss occurred before, on or after that date.
- (2) Sections 5(1), 88, 89, 91 and 98C as in force before the commencement of sections 15 to 18 of the **Accident Compensation Legislation (Amendment) Act 2004** continue to apply in respect of a claim for compensation lodged under section 98C before 18 November 2004 in respect of a further injury which occurred after 12 November 1997.

S. 270(2)
amended by
No. 28/2005
s. 20(1).

s. 271

S. 270(3)
inserted by
No. 28/2005
s. 20(2).

- (3) Sections 89 and 91 as in force before the commencement of sections 15 and 16 of the **Accident Compensation Legislation (Amendment) Act 2004** continue to apply in respect of a claim for compensation in respect of a further injury which occurred before 12 November 1997 lodged under section 98 or 98A whether before, on or after that commencement.

New s. 271
inserted by
No. 102/2004
s. 41.

271 Section 39 (Jurisdiction—general)

- (1) Section 39 as amended by section 3 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of proceedings commenced on or after the commencement of section 3 of the **Accident Compensation Legislation (Amendment) Act 2004**.
- (2) Any proceedings commenced before the commencement of section 3 of the **Accident Compensation Legislation (Amendment) Act 2004** may be continued as if that section had not been enacted.

New s. 272
inserted by
No. 102/2004
s. 41.

272 Section 92A (Revised compensation for death of worker)

Section 92A as amended by section 14 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for compensation made on or after the commencement of section 14 of the **Accident Compensation Legislation (Amendment) Act 2004**.

273 Section 93C (Grandfather provision)

Section 93C as amended by section 20 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of an application for a settlement made on or after the commencement of section 20 of the **Accident Compensation Legislation (Amendment) Act 2004**.

New s. 273
inserted by
No. 102/2004
s. 41.

274 Section 93CB (After the first entitlement period and until the expiry of the second entitlement period)

Section 93CB as amended by section 21 of the **Accident Compensation Legislation (Amendment) Act 2004** applies to or in respect of a worker who lodges a claim for weekly payments on or after the commencement of section 21 of the **Accident Compensation Legislation (Amendment) Act 2004**.

New s. 274
inserted by
No. 102/2004
s. 41.

275 Section 93E (Injury after retirement)

Section 93E as amended by section 23 of the **Accident Compensation Legislation (Amendment) Act 2004** applies to or in respect of—

- (a) a worker who as at 18 November 2004 has an entitlement under section 93E in respect of an injury which first arose when the worker had attained the age of 63 years; or
- (b) a worker who is injured on or after 18 November 2004 and has attained the age of 63 years as at the date of injury.

New s. 275
inserted by
No. 102/2004
s. 41.

276 Section 99—occupational rehabilitation services

Section 99 as amended by section 24 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of the provision of occupational rehabilitation services on or after the commencement of section 24 of the

New s. 276
inserted by
No. 102/2004
s. 41.

s. 277

**Accident Compensation Legislation
(Amendment) Act 2004.**

S. 277
inserted by
No. 102/2004
s. 41.

277 Section 102 (Notice of injury)

Section 102 as amended by section 25 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of an injury occurring on or after the commencement of section 25 of the **Accident Compensation Legislation (Amendment) Act 2004**.

S. 278
inserted by
No. 102/2004
s. 41.

278 Sections 103, 106, 108 and 109—(forwarding of claims for weekly payments)

Sections 103, 106, 108 and 109 as amended by section 26 of the **Accident Compensation Legislation (Amendment) Act 2004** apply in respect of claims for weekly payments made on or after the commencement of section 26 of the **Accident Compensation Legislation (Amendment) Act 2004**.

S. 279
inserted by
No. 102/2004
s. 41.

279 Section 104B (Claims for compensation under section 98C)

Section 104B as amended by section 4 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for compensation lodged under section 98C on or after the commencement of section 4 of the **Accident Compensation Legislation (Amendment) Act 2004** irrespective of whether the injury occurred before, on or after that date.

S. 280
inserted by
No. 102/2004
s. 41.

280 Section 119IA (Circumstances in which offer may be withdrawn or settlement avoided)

Section 119IA as inserted by section 19 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of an application for a settlement made on or after the commencement of section 19 of the **Accident**

**Compensation Legislation (Amendment) Act
2004.**

281 Section 134AB (Actions for damages)

S. 281
inserted by
No. 102/2004
s. 41.

- (1) Section 134AB as amended by sections 6 and 7 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of an application made under section 134AB(4) on or after the commencement of sections 6 and 7 of the **Accident Compensation Legislation (Amendment) Act 2004**.
- (2) Section 134AB as amended by section 8(1) of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for damages in respect of which a determination as to whether the injury is a serious injury has not been made or deemed to have been made before the commencement of section 8(1) of the **Accident Compensation Legislation (Amendment) Act 2004**.
- (3) Section 134AB as amended by section 8(2) of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for damages made on or after the commencement of section 8(2) of the **Accident Compensation Legislation (Amendment) Act 2004** in respect of which a determination as to whether the injury is a serious injury has not been made or deemed to have been made before that commencement.

282 Section 135A (Actions for damages)

S. 282
inserted by
No. 102/2004
s. 41.

- (1) Section 135A as amended by section 11(1) of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for damages made on or after the commencement of section 11(1) of the **Accident Compensation Legislation (Amendment) Act**

2004 in respect of which a judgment has not been obtained or a compromise or settlement made before that commencement.

- (2) Section 135A as amended by section 11(2) of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for damages made on or after the commencement of section 11(2) of the **Accident Compensation Legislation (Amendment) Act 2004** in respect of which an application for leave to bring proceedings for the recovery of damages has not been made before that commencement.

S. 283
inserted by
No. 102/2004
s. 41.

283 Section 135BA (Actions by terminally ill workers)

Section 135BA as inserted by section 12 of the **Accident Compensation Legislation (Amendment) Act 2004** applies in respect of a claim for compensation made on or after the commencement of section 12 of the **Accident Compensation Legislation (Amendment) Act 2004**.

Pt 9 Div. 5
(Heading and
ss 284, 285)
inserted by
No. 28/2005
s. 24.

Division 5—Accident Compensation (Amendment) Act 2005

S. 284
inserted by
No. 28/2005
s. 24.

284 Sections 89, 91 and 98C—(claims for compensation for further loss of hearing)

- (1) Subject to subsection (2), sections 89, 91 and 98C as amended by sections 17 to 19 of the **Accident Compensation (Amendment) Act 2005** apply in respect of a claim for compensation lodged under section 98C on or after 18 November 2004 irrespective of whether the further injury, the prior injury or the prior hearing loss occurred before, on or after that date.

- (2) Despite the amendments made to sections 89, 91 and 98C by sections 17 to 19 of the **Accident Compensation (Amendment) Act 2005**, sections 89, 91 and 98C as in force before the commencement of sections 15, 16 and 18 of the **Accident Compensation Legislation (Amendment) Act 2004** continue to apply in respect of a claim for compensation lodged under section 98C on or before 18 November 2004 in respect of a further injury which occurred on or after 12 November 1997.

285 Sections 111, 114 and 114B

Despite section 4A, sections 111, 114 and 114B as in force after the commencement of sections 22 and 23 of the **Accident Compensation (Amendment) Act 2005** apply in respect of the entitlement of a worker to weekly payments irrespective of when that entitlement arose.

S. 285
inserted by
No. 28/2005
s. 24.

Division 6—Treasury Legislation (Repeal) Act 2005

Pt 9 Div. 6
(Heading and
s. 286)
inserted by
No. 73/2005
s. 4(Sch. 2
item 1).

286 Saving of rights under Miners' Phthisis (Treasury Allowances) Act 1938

Despite the repeal of the **Miners' Phthisis (Treasury Allowances) Act 1938** by the **Treasury Legislation (Repeal) Act 2005**, that 1938 Act continues to apply to any person who was in receipt of an allowance under that 1938 Act immediately before its repeal.

S. 286
inserted by
No. 73/2005
s. 4(Sch. 2
item 1).

s. 287

Pt 9 Div. 7
(Heading and
ss 287–295)
inserted by
No. 41/2006
s. 26.

Division 7—Accident Compensation and Other Legislation (Amendment) Act 2006

S. 287
inserted by
No. 41/2006
s. 26.

287 Section 5A

Section 5A as amended by section 3 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies in respect of the calculation of weekly payments of pension in respect of the death of a worker on or after 1 July 2006 resulting from, or materially contributed to, by the relevant injury irrespective of whether the relevant injury occurred before, on or after 1 July 2006.

S. 288
inserted by
No. 41/2006
s. 26.

288 Section 16

- (1) Subject to subsection (3), section 16 as amended by section 4 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies in respect of any claim or proceedings made or lodged on or after 1 June 2006 irrespective of whether the injury occurred before, on or after 1 June 2006.
- (2) Subject to subsection (3), 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 only because of the application of section 16 as in force before the commencement of section 4 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** shall not, in proceedings in respect of the injury be entitled to compensation except in accordance with section 16 as amended by section 4 of the **Accident Compensation and Other Legislation (Amendment) Act 2006**.

- (3) The amendment of section 16 by section 4 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** does not affect the rights of the parties in the proceedings known as *Adrian Whitehead v Carlton Football Club Limited & Ors* (No. 4905 of 2001) in the Supreme Court of Victoria (Court of Appeal).

289 Sections 43, 50, 93C, 93CB and 93E

S. 289
inserted by
No. 41/2006
s. 26.

Despite section 4A, sections 43, 50, 93C, 93CB and 93E as amended by section 5 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** apply only in respect of any claim for weekly payments received by the Authority or a self-insurer on or after 1 January 2005, subject to the worker being otherwise entitled to receive weekly payments in accordance with this Act or would be entitled but for the operation of section 96.

290 Section 91

S. 290
inserted by
No. 41/2006
s. 26.

- (1) Subject to subsection (2)—
- (a) section 91 as in force before the commencement of section 9 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** continues to apply if before that commencement the worker has attended at least one impairment examination for the purposes of assessing the degree of psychiatric impairment, the degree of occupational asthma impairment or the degree of infectious occupational disease impairment;
- (b) if paragraph (a) does not apply, section 91 as amended by section 9 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies for the purposes of assessing the degree of

s. 291

psychiatric impairment, the degree of occupational asthma impairment or the degree of infectious occupational disease impairment in an impairment examination made on or after the commencement of section 9 of the **Accident Compensation and Other Legislation (Amendment) Act 2006**.

- (2) Despite subsection (1)(b), if the first guidelines under section 91 as amended by section 9 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** are not in force on the commencement of section 9 of that Act, section 91 as in force before that commencement continues to apply for the purposes of assessing the degree of psychiatric impairment, the degree of occupational asthma impairment or the degree of infectious occupational disease impairment in an impairment examination made on or after that commencement until the first guidelines are in force.

S. 291
inserted by
No. 41/2006
s. 26.

291 Section 92A

Section 92A as amended by section 11 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies in respect of compensation the entitlement to which arises as a result of the death of a worker on or after 1 July 2006.

S. 292
inserted by
No. 41/2006
s. 26.

292 Sections 93B, 93CB and 93CD

Despite section 4A, sections 93B, 93CB and 93CD as amended by section 13 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** apply in respect of entitlement periods on or after 1 July 2006.

293 Section 93EA

Section 93EA as inserted by section 14 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies in respect of an incapacity for work which arises on or after 1 July 2006.

S. 293
inserted by
No. 41/2006
s. 26.

294 Section 99

Section 99 as amended by section 16 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** applies in respect of a severe injury within the meaning of section 99(1A) which occurs on or after 1 July 2006.

S. 294
inserted by
No. 41/2006
s. 26.

295 Sections 114 and 114B

Sections 114 and 114B as amended by sections 20 and 21 of the **Accident Compensation and Other Legislation (Amendment) Act 2006** apply in respect of any claim for weekly payments received by the Authority or a self-insurer on or after 1 January 2005, subject to the worker being otherwise entitled to receive weekly payments in accordance with this Act.

S. 295
inserted by
No. 41/2006
s. 26.

Division 8—Transport Accident and Accident Compensation Acts Amendment Act 2007

Pt 9 Div. 8
(Heading and
ss 296, 297)
inserted by
No. 60/2007
s. 28.

296 Section 91

- (1) Subject to subsections (2) and (3), section 91, as amended by section 25 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**, applies in respect of any assessment of the degree of impairment resulting from an injury, being an assessment that relates to any claim for compensation made under section 98C, irrespective of when the injury

S. 296
inserted by
No. 60/2007
s. 28.

occurred or when the claim for compensation under section 98C was made.

- (2) Despite subsection (1), the amendment of section 91 by section 25 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007** does not affect the rights of the parties in the proceedings known as *Mountain Pine Furniture Pty Ltd v Taylor* [2007] VSCA 146.
- (3) Despite subsection (1), section 91 as in force immediately before the commencement of section 25 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007** continues to apply if before that commencement a worker has—
 - (a) made a claim for compensation under section 98C; and
 - (b) attended, after the injury has stabilised, at least one independent impairment examination under section 104B(4) for the purposes of assessing the degree of impairment under section 104B(5) conducted in accordance with the decision in the proceedings known as *Mountain Pine Furniture Pty Ltd v Taylor* [2007] VSCA 146.

S. 297
inserted by
No. 60/2007
s. 28.

297 Section 99(1)(aa)

Section 99(1)(aa), as amended by section 26 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**, applies in respect of any claim for compensation made under that section after the commencement of section 26 of the **Transport Accident and Accident Compensation Acts Amendment Act 2007**, irrespective of when the injury or death occurred.

**Division 9—State Taxation and Accident Compensation Acts
Amendment Act 2007**

Pt 9 Div. 9
(Heading and
s. 298)
inserted by
No. 68/2007
s. 24.

298 Section 99

Section 99 as amended by section 22 of the **State Taxation and Accident Compensation Acts Amendment Act 2007**, applies in respect of any claim for compensation made under that section, irrespective of when the injury occurred or when the claim was made.

S. 298
inserted by
No. 68/2007
s. 24.

**Division 10—Compensation and Superannuation Legislation
Amendment Act 2008**

Pt 9 Div. 10
(Heading and
s. 299)
inserted by
No. 65/2008
s. 9.

299 Section 138 (Indemnity by third party)

Section 138, as amended by section 8 of the **Compensation and Superannuation Legislation Amendment Act 2008**, applies in respect of any right of indemnity, regardless of when that right came into existence, unless before the commencement of that section—

- (a) the amount of the indemnity has been determined; or
- (b) judgment for damages has been given or entered; or
- (c) there has been a settlement or compromise of the claim in respect of which the right of indemnity arose.

S. 299
inserted by
No. 65/2008
s. 9.

s. 300

Pt 9 Div. 11
(Heading and
s. 300)
inserted by
No. 69/2008
s. 10.

Division 11—Asbestos Diseases Compensation Act 2008

S. 300
inserted by
No. 69/2008
s. 10.

300 Section 135BB

- (1) Section 135BB as inserted by section 9 of the **Asbestos Diseases Compensation Act 2008** applies in respect of an action for damages made before or after the commencement of that section 9.
- (2) However subsection (1) does not apply to an action commenced before the commencement of section 9 of the **Asbestos Diseases Compensation Act 2008** if—
 - (a) the hearing of the action had commenced before that commencement; or
 - (b) damages were awarded or a settlement was reached (other than for provisional damages) in that action before that commencement.

Pt 9 Div. 12
(Heading and
ss 301–364)
inserted by
No. 9/2010
s. 191.

Division 12—Accident Compensation Amendment Act 2010

S. 301
inserted by
No. 9/2010
s. 191.

301 Definitions

- (1) In this Division—

amending Act means the **Accident Compensation Amendment Act 2010**;

amending provision means a provision of the amending Act specified in a section of this Division;

commencement date means the date on which the amending provision comes into operation.

- (2) Nothing in this Division limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

302 Section 5A

Section 5A, as amended by sections 4, 5, 6, 7 and 8 of the amending Act, applies in respect of a claim first received by the Authority or self-insurer on or after the commencement date.

S. 302
inserted by
No. 9/2010
s. 191.

303 Section 14(3)

Sections 14(3), 14AA and 16A, as inserted by sections 9 and 10 of the amending Act, apply in relation to claim for compensation given, served or lodged on or after the commencement date and premiums under the **Accident Compensation (WorkCover Insurance) Act 1993** payable on or after that date.

S. 303
inserted by
No. 9/2010
s. 191.

304 Section 82

Section 82, as amended by sections 12, 13 and 14 of the amending Act, applies in respect of a claim, first given, served or lodged on or after the commencement date.

S. 304
inserted by
No. 9/2010
s. 191.

305 Sections 82A-82D

Sections 82A, 82B, 82C and 82D of the **Accident Compensation Act 1985**, as inserted by section 15 of the amending Act, apply in respect of a claim first given, served or lodged on or after the commencement date.

S. 305
inserted by
No. 9/2010
s. 191.

306 Section 103

Section 103(1), (2), (3) and (4), as substituted by section 19(1) of the amending Act, applies in respect of a claim, first given, served or lodged on or after the commencement date.

S. 306
inserted by
No. 9/2010
s. 191.

s. 307

S. 307
inserted by
No. 9/2010
s. 191.

307 Sections 105 and 108

Sections 105 and 108, as amended by section 20(1), (2), (3) and (4) of the amending Act, applies in respect of a claim first received on or after the commencement date.

S. 308
inserted by
No. 9/2010
s. 191.

308 Sections 108(4)

Section 108(4), as substituted by section 20(5) of the amending Act, applies in respect of a claim first given to, or served on, an employer on or after the commencement date.

S. 309
inserted by
No. 9/2010
s. 191.

309 Section 109

Section 109, as inserted by section 21 of the amending Act, applies in respect of a claim, first received by the Authority or self-insurer on or after the commencement date.

S. 310
inserted by
No. 9/2010
s. 191.

310 Sections 242AA-242AF

Sections 242AA, 242AB, 242AC, 242AD, 242AE and 242AF, as inserted by section 23 of the amending Act, apply in respect of discriminatory conduct engaged in on or after the commencement date.

S. 311
inserted by
No. 9/2010
s. 191.

311 Section 55AA

Section 55AA, as inserted by section 29 of the amending Act, applies in respect of a medical question arising in a dispute on or after the commencement date.

S. 312
inserted by
No. 9/2010
s. 191.

312 Section 93CA

Section 93CA, as inserted by section 31 of the amending Act, applies in respect of an injury occurring on or after the commencement date.

313 Section 93CD

- (1) Despite section 4A, section 93CD(1), (2) and (3), as substituted by section 34 of the amending Act applies in respect of an injury occurring on or after the commencement date.
- (2) Section 93CD(4) and (5)(a), as substituted by section 34 of the amending Act, applies in respect of a claim relating to an injury occurring on or after the commencement date.

S. 313
inserted by
No. 9/2010
s. 191.

314 Section 93CDA

Section 93CDA, as inserted by section 35 of the amending Act, applies in respect of a claim relating to an injury occurring on or after the commencement date.

S. 314
inserted by
No. 9/2010
s. 191.

315 Section 93CE

Section 93CE, as inserted by section 37 of the amending Act, applies in respect of injuries occurring on or after the commencement date.

S. 315
inserted by
No. 9/2010
s. 191.

316 Section 92B

Section 92B, as inserted by section 39(2) of the amending Act, applies in respect of claims given, served or lodged on or after the commencement date.

S. 316
inserted by
No. 9/2010
s. 191.

317 Sections 96 and 96A

Sections 96 and 96A, as amended by sections 40 and 41 of the amending Act, applies in relation to an injury occurring on or after the commencement date.

S. 317
inserted by
No. 9/2010
s. 191.

318 Section 109AA

Section 109AA, as inserted by section 43 of the amending Act, applies to a decision to accept or reject a claim first received by the Authority on or after the commencement date.

S. 318
inserted by
No. 9/2010
s. 191.

s. 319

S. 319
inserted by
No. 9/2010
s. 191.

319 Section 114

Section 114(2)(c)(ii), (2A), (2B) and (2C), as substituted or inserted by section 45 of the amending Act, applies to a claim whether made before , on or after the commencement date.

S. 320
inserted by
No. 9/2010
s. 191.

320 Section 91

Section 91, as amended by section 53 of the amending Act, applies in respect of a claim under section 98C or 98E whether made before, on or after the commencement date if the worker attends the first impairment assessment for the purposes of section 104B(2)(b) on or after the commencement date.

S. 321
inserted by
No. 9/2010
s. 191.

321 Section 98C

Section 98C, as amended by section 54 of the amending Act, applies in respect of a claim under section 98C whether made before, on or after the commencement date if the worker attends the first impairment assessment for the purposes of section 104B(2)(b) on or after the commencement date.

S. 322
inserted by
No. 9/2010
s. 191.

322 Section 43 (Jurisdiction of Magistrates' Court)

Section 43, as amended by section 75 of the amending Act, applies in respect of proceedings commenced under this Act on or after the commencement date.

S. 323
inserted by
No. 9/2010
s. 191.

323 Section 45 (Medical questions)

Section 45, as amended by section 76 of the amending Act, applies only in respect of proceedings commenced on or after the commencement date.

324 Section 49 (Certain proceedings referred for conciliation)

Section 49, as amended by section 78 of the amending Act, applies in respect of proceedings commenced on or after the commencement date.

S. 324
inserted by
No. 9/2010
s. 191.

325 Section 134AB (Actions for damages)

- (1) Section 134AB, as amended by sections 57(4) and (5) of the amending Act, applies in respect of any proceedings to recover damages in section 134AB where the initiating serious injury application was served on or after the commencement date.
- (2) Section 134AB, as amended by section 57(7) of the amending Act, applies in respect of a serious injury application which is to be determined or resolved on or after the commencement date.
- (3) Section 134AB, as amended by section 57(8) of the amending Act, applies in respect of serious injury application which is to be determined or resolved on or after the commencement date.

S. 325
inserted by
No. 9/2010
s. 191.

326 Section 134ABAA (Determination of serious injury application following death of worker)

Section 134ABAA, as inserted by section 58 of the amending Act, applies to applications made under section 134AB(4) that have not been resolved or determined immediately before the commencement date.

S. 326
inserted by
No. 9/2010
s. 191.

327 Section 135A (Actions for damages)

Section 135A, as amended by section 61 of the amending Act, applies in respect of a claim for damages in respect of which a determination as to whether the injury is a serious injury has not been made or deemed to have been made immediately before the commencement date.

S. 327
inserted by
No. 9/2010
s. 191.

s. 328

S. 328
inserted by
No. 9/2010
s. 191.

328 Section 135BBA (Actions by terminally ill workers continued after death of worker)

Section 135BBA, as inserted by section 62 of the amending Act, applies in respect of proceedings to recover damages in accordance with section 134AB in reliance on section 135BA that have not been determined or resolved immediately before the commencement date.

S. 329
inserted by
No. 9/2010
s. 191.

329 Section 92 (Compensation for death of a worker)

Section 92, as amended by section 67 of the amending Act, applies in respect of—

- (a) a claim for compensation made on or after the commencement date;
- (b) claims for compensation that have not been determined by a court immediately before the commencement date.

S. 330
inserted by
No. 9/2010
s. 191.

330 Section 92A (Revised compensation for death of worker)

- (1) Section 92A as amended by section 68(1) of the amending Act applies in respect of—

- (a) a claim for compensation made on or after the commencement date;
- (b) a claim for compensation that has not been determined by a Court immediately before the commencement date.

- (2) The definition of *dependent child* in section 92A, as amended by section 68(2) of the amending Act, applies to claims for compensation to which sections 92A and 92B apply, made on or after the commencement date.

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- (3) Section 92A, as amended by section 68(3) of the amending Act, applies in respect of claims for compensation to which section 92A applies that have not been determined by the Court immediately before the commencement date.
 - (4) Section 92A, as amended by section 68(4) of the amending Act, applies in respect of a claim for compensation that has not been determined by a court immediately before the commencement date.
 - (5) Section 92A, as amended by section 68(5), (6), (7), (8), (9) and (10) of the amending Act, applies in respect of a claim for compensation that has not been determined by a Court immediately before the commencement date.
 - (6) If subsection (5) applies to a claim, the interest to which a claimant is entitled on the amount of compensation payable under that claim is to be determined as follows—
 - (a) interest at the prescribed rate on the relevant maximum sum set out in section 92A(4), (5), (6), (7), (8), (8A), (8B) or (9) immediately before the commencement date of section 68(5), (6), (7), (8), (9) and (10) of the amending Act, for the period beginning on the date the claim for compensation was made to immediately before the commencement date; and
 - (b) interest at the prescribed rate on the relevant maximum sum set out in section 92A as amended by section 68(5), (6), (7), (8), (9) and (10) of the amending Act, for the period beginning on the commencement date to the date the claim is determined by the court or the Authority or self-insurer (as appropriate).
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s. 331

S. 331
inserted by
No. 9/2010
s. 191.

331 Section 92AA (Re-imbursement of expenses incurred by non-dependant family members of a deceased worker)

Section 92AA, as inserted by section 69 of the amending Act, applies in respect of deaths that occur on and from the commencement date.

S. 332
inserted by
No. 9/2010
s. 191.

332 Section 92B (Weekly pension for dependants of worker who dies)

Section 92B, as amended by section 70 of the amending Act, applies in respect of—

- (a) a claim for compensation under section 92B made on or after the commencement date;
- (b) a claim for compensation under section 92B that exists immediately before the commencement date.

S. 333
inserted by
No. 9/2010
s. 191.

333 Section 92D (Provisional payment)

Section 92D, as inserted by section 71 of the amending Act, applies in respect of deaths that occur on and from the commencement date.

S. 334
inserted by
No. 9/2010
s. 191.

334 Section 5 (Definition of medical question)

The definition of *medical question* in section 5(1), as amended by section 74(2) of the amending Act, applies only to a referral of a medical question to a Medical Panel made on or after the commencement date.

S. 335
inserted by
No. 9/2010
s. 191.

335 Section 52D (Appointment of Conciliation Officers)

Section 52D, as amended by section 79 of the amending Act, only applies in respect of appointments of a person as a Conciliation Officer made on or after the commencement date.

336 Sections 52F and 52FA (Senior Conciliation Officer and data to be collected by Senior Conciliation Officer)

S. 336
inserted by
No. 9/2010
s. 191.

Sections 52F and 52FA, as inserted by section 80 of the amending Act, apply to a Senior Conciliation Officer on and after the commencement date.

337 Section 52I (Removal from office)

S. 337
inserted by
No. 9/2010
s. 191.

Section 52I, as amended by section 81 of the amending Act, applies to the removal or suspension of a Conciliation Officer on and after the commencement date.

338 Section 55AB (Production and disclosure of information)

S. 338
inserted by
No. 9/2010
s. 191.

Section 55AB, as inserted by section 82 of the amending Act, applies in respect of disputes referred to conciliation on and after the commencement date.

339 Section 56 (Procedures before Conciliation Officers)

S. 339
inserted by
No. 9/2010
s. 191.

Section 56, as amended by section 83 of the amending Act, applies in respect of disputes referred to conciliation on and after the commencement date.

340 Section 57 (Conciliation of disputes)

S. 340
inserted by
No. 9/2010
s. 191.

Section 57, as amended by section 84 of the amending Act, applies in respect of disputes referred to conciliation on and after the commencement date.

341 Section 59 (Disputes relating to weekly payments)

S. 341
inserted by
No. 9/2010
s. 191.

Section 59, as amended by section 85 of the amending Act, applies in respect of—

- (a) disputes that have been referred to conciliation and that have not been the subject of a general direction under section

s. 342

59(9) immediately before the
commencement date;

(b) disputes referred to conciliation on and after
the commencement date.

S. 342
inserted by
No. 9/2010
s. 191.

342 Section 62 (Costs)

Section 62, as amended by section 87 of the
amending Act, applies in respect of disputes that
have been referred to conciliation on and after the
commencement date.

S. 343
inserted by
No. 9/2010
s. 191.

343 Section 63 (Establishment and constitution)

Section 63, as amended by section 88 of the
amending Act, applies in respect of referrals made
to a Medical Panel on and after the
commencement date.

S. 344
inserted by
No. 9/2010
s. 191.

344 Section 65 (Procedures and powers)

Section 65, as amended by section 89 of the
amending Act, applies in respect of any medical
question referred to a Medical Panel on and after
the commencement date.

S. 345
inserted by
No. 9/2010
s. 191.

345 Section 68 (Opinions)

Section 68, as amended by section 90 of the
amending Act, applies in respect of any opinion
given by a Medical Panel under section 68 on and
after the commencement date.

S. 346
inserted by
No. 9/2010
s. 191.

346 Division 3AA of Part IV (Employer obligations)

Division 3AA of Part IV, as inserted by section 91
of the amending Act, applies in respect of a claim
for compensation in respect of an injury or death
under this Act that is accepted by the Authority on
and after the commencement date.

**347 Sections 5(9A) and (10) and 5C to 5E
(Remuneration)**

Sections 5(9A), 5(10), 5C, 5D and 5E, as amended by sections 94 and 95 of the amending Act, apply in respect of the calculation of premium on or after the commencement date.

S. 347
inserted by
No. 9/2010
s. 191.

348 Section 138 (Indemnity by third party)

Section 138(4A), as inserted by section 121 of the amending Act, applies only to contracts entered into on or after the commencement date.

S. 348
inserted by
No. 9/2010
s. 191.

349 Section 138 (Indemnity by third party)

Sections 138(7), 138(8) and 138(9), as inserted by section 122 of the amending Act, apply in respect of any right of indemnity that the Authority, self-insurer or employer has, regardless of when that right came into existence, unless before the commencement date—

S. 349
inserted by
No. 9/2010
s. 191.

- (a) judgment for indemnity under section 138 has been given or entered; or
- (b) there has been a settlement or compromise of the claim for indemnity.

350 Part VIIB (Return to Work)

- (1) If, immediately before the commencement date of section 129 of the amending Act, an employer is complying with the employer's obligations under Part VI, on and after the commencement date until 31 March 2011, the employer is deemed to be complying with Part VIIB provided the employer continues to comply with the employer's obligations under Part VI as it was before its repeal.
- (2) Sections 200 to 204, as inserted by section 129 of the amending Act, apply to a worker on and from the commencement date, whether or not the

S. 350
inserted by
No. 9/2010
s. 191.

employer of the worker is required to comply with Part VIIB from that date.

- (3) Section 194(1) in Part VIIB, as inserted by section 129 of the amending Act, applies to—
 - (a) claims given, served or lodged on and after the commencement date;
 - (b) section 105 medical certificates given, served or lodged after the commencement date.
- (4) Sections 194(2), 195 and 196 in Part VIIB, as inserted by section 129 of the amending Act, apply in respect of a claim given, served or lodged—
 - (a) on or after the commencement date; or
 - (b) before the commencement date if the claim was accepted before the commencement date; or
 - (c) before the commencement date if the claim was neither accepted nor rejected before the commencement date; or
 - (d) before the commencement date if the claim was rejected before the commencement date but subsequently accepted after the commencement date.
- (5) If, immediately before the commencement date, an employer is complying with sections 156(2)(a)(i) and 160, on and from the commencement date, the employer is deemed to be complying with section 195 in Part VIIB, as inserted by section 129 of the amending Act, until 31 March 2011.
- (6) Sections 194(2), 195 and 196 in Part VIIB, as inserted by section 129 of the amending Act, apply to section 105 medical certificates given,

served or lodged on or after the commencement date

- (7) If, immediately before the commencement date, an employer is complying with section 160, on and from the commencement date, the employer is deemed to be complying with section 196 in Part VIIB, as inserted by section 129 of the amending Act, until 31 March 2011.
- (8) If, immediately before the commencement date, an employer has nominated a return to work co-ordinator under sections 156(2) and 158(1), on and from the commencement date the employer is deemed to be complying with section 197(1), (2), (3) and (4) in Part VIIB, as inserted by section 129 of the amending Act, until 31 March 2011.
- (9) If, immediately before the commencement date, an employer maintains an occupational rehabilitation program under sections 156, on and from the commencement date, the employer is deemed to be complying with section 198 in Part VIIB, as inserted by section 129 of the amending Act, until 31 March 2011.
- (10) Despite the repeal of section 155A by section 131 of the amending Act, subsections (1) and (2) of section 155A continue to apply to claims lodged before the commencement date as if in section 115A(2) for "period specified in subsection (3)" were substituted "employment obligation period within the meaning of section 194(1)".

351 Section 20E (Power to give advice on compliance)

Section 20E, as inserted by section 132 of the amending Act, applies in respect of a person's obligations arising under this Act on and after the commencement date.

S. 351
inserted by
No. 9/2010
s. 191.

S. 352
inserted by
No. 9/2010
s. 191.

352 Retrospective operation of certain instruments of delegation

- (1) This section applies to the following instruments—
- (a) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Royal Automobile Club of Victoria (RACV) Limited (ACN 004 060 833) purporting to take effect from 4.00 p.m. on 16 December 1994;
 - (b) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Hanson Australia (Holdings) Proprietary Limited (ACN 090 994 657) purporting to take effect from midnight on 30 November 2000;
 - (c) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Burns, Philp & Company Pty Limited (ACN 000 000 359) purporting to take effect from 4.00 p.m. on 9 July 2004;
 - (d) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Goodman Fielder Limited (ACN 116 399 430) purporting to take effect from 4.00 p.m. on 23 December 2005;
 - (e) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Transfield Services Limited (ACN 000 484 417) purporting to take effect from 4.00 p.m. on 1 March 2007;
 - (f) the instrument of delegation executed by the Authority on 17 November 2009 in respect of Crown Limited (ACN 125 709 953) purporting to take effect from midnight on 9 December 2007.

- (2) Each instrument of delegation has effect from the purported date by virtue of this section.

353 Section 23

Sections 23(4) and 23(5) as amended by section 150 of the amending Act apply only in respect of a contravention of, or a failure to comply with, terms and conditions occurring on or after the commencement date.

S. 353
inserted by
No. 9/2010
s. 191.

354 Application for approval as self-insurer

If, on the commencement date of section 126 of the amending Act, an application for approval as a self-insurer is yet to be determined by the Authority, sections 141, 142(1), 142(2), 142(4)(b)(ii) and 144 as in force immediately before that date apply to that application.

S. 354
inserted by
No. 9/2010
s. 191.

355 Terms and conditions of approval

Section 142A of Part V, as substituted by section 126 of the amending Act, applies to all self-insurers on and from the commencement date regardless of when their approval as a self-insurer took effect.

S. 355
inserted by
No. 9/2010
s. 191.

356 Period of approval and review of approval as self-insurer

Sections 144 and 145 of Part V, as substituted by section 126 of the amending Act, apply to all self-insurers on and from the commencement date regardless of when their approval as a self-insurer took effect.

S. 356
inserted by
No. 9/2010
s. 191.

357 Revocation of approval [sections 145A and 145B]

Sections 145A and 145B of Part V, as substituted by section 126 of the amending Act, apply to all self-insurers on and from the commencement date regardless of when their approval as a self-insurer took effect.

S. 357
inserted by
No. 9/2010
s. 191.

s. 358

S. 358
inserted by
No. 9/2010
s. 191.

358 Payment of contributions and submission of or return by self-insurer

Sections 146 and 146A of Part V, as substituted by section 126 of the amending Act, apply to all self-insurers on and from the commencement date regardless of when their approval as a self-insurer took effect.

S. 359
inserted by
No. 9/2010
s. 191.

359 Liability to pay compensation

Section 147 of Part V, as substituted by section 126 of the amending Act, applies to all self-insurers on and from the commencement date regardless of when their approval as a self-insurer took effect.

S. 360
inserted by
No. 9/2010
s. 191.

360 Guarantee of liabilities

Section 148 of Part V, as substituted by section 126 of the amending Act, applies to all self-insurers whose liabilities are assessed on or from the commencement date.

S. 361
inserted by
No. 9/2010
s. 191.

361 Movement from scheme insurance to self-insurance

Section 150 of Part V, as substituted by section 126 of the amending Act, applies to any employer approved as a self-insurer on and from the commencement date.

S. 362
inserted by
No. 9/2010
s. 191.

362 Acquisition of scheme-insured body corporate by self-insurer

Section 150A of Part V, as substituted by section 126 of the amending Act, applies in respect of any acquisition of a scheme-insured by a body corporate occurring on or from the commencement date.

363 Employer ceases to be a self-insurer

S. 363
inserted by
No. 9/2010
s. 191.

- (1) Section 151 of Part V, as substituted by section 126 of the amending Act, applies to any employer that ceases to be a self-insurer on or from the commencement date.
- (2) Sections 151A, 151B, 151C, 151D and 151E of Part V, as substituted by section 126 of the amending Act, apply in respect of the assessment of tail claim liabilities of an employer to which subsection (1) applies.

364 Sections 249AA, 249AB, 249B and 249BA

S. 364
inserted by
No. 9/2010
s. 191.

Sections 249AA, 249AB, 249B and 249BA, as inserted or substituted by section 143 of the amending Act, apply in relation to services provided, or that may be provided, to a worker on or after the commencement date.

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Sch. 1

SCHEDULES

SCHEDULE 1

Sch. 1
amended by
Nos 57/1989
s. 3(Sch. item
3.5(a)–(c)),
67/1992
s. 64(7)(d)
(i)(ii),
repealed by
No. 107/1997
s. 61, new
Sch. 1
inserted by
No. 82/2001
s. 7.

**TABLE TO BE USED TO DETERMINE SETTLEMENT
AMOUNTS UNDER SECTIONS 115B AND 117B**

Column 1	Column 2	Column 3	Column 1	Column 2	Column 3
18	427	75	42	267	74
19	422	75	43	258	74
20	416	75	44	249	74
21	411	75	45	240	73
22	406	75	46	231	73
23	400	75	47	222	72
24	394	75	48	212	72
25	388	75	49	202	71
26	383	75	50	192	70
27	376	75	51	182	70
28	370	75	52	172	69
29	364	75	53	161	68
30	357	75	54	150	68
31	351	75	55	139	68
32	344	75	56	128	67
33	337	75	57	117	65
34	330	75	58	105	61
35	322	75	59	93	56
36	315	75	60	81	50
37	307	75	61	68	43
38	299	75	62	55	35
39	292	74	63	42	27
40	283	74	64	29	19
41	275	74	65	0	0

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Sch. 2

SCHEDULE 2

**MODIFICATION TO DEGREES OF IMPAIRMENT FOR THE
PURPOSES OF SECTION 98C**

Sch. 2
repealed by
No. 48/1986
s. 32,
new Sch. 2
inserted by
No. 95/2003
s. 14.

<i>Column 1</i>	<i>Column 2</i>
Whole person impairment as assessed in accordance with Chapter 3 of the A.M.A.	
Guides	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

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Sch. 2

<i>Column 1</i>	<i>Column 2</i>
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

SCHEDULE 3

Sch. 3
inserted by
No. 95/2003
s. 22.

ADJACENT AREAS

1 Definitions

In this Schedule—

continental shelf has the same meaning as in the Seas and Submerged Lands Act 1973 of the Commonwealth;

territorial sea has the same meaning as in the Seas and Submerged Lands Act 1973 of the Commonwealth.

2 Adjacent areas

- (1) The *adjacent area* for Victoria, New South Wales, South Australia or Tasmania is so much of the area described in Schedule 2 to the Petroleum (Submerged Lands) Act 1967 of the Commonwealth in relation to that State as is within the outer limits of the continental shelf and includes the space above and below that area.
- (2) The *adjacent area* for Queensland is—
 - (a) so much of the area described in Schedule 2 to the Petroleum (Submerged Lands) Act 1967 of the Commonwealth in relation to Queensland as is within the outer limits of the continental shelf; and
 - (b) the Coral Sea area (within the meaning of subsection (7) of section 5A of the Petroleum (Submerged Lands) Act 1967 of the Commonwealth) other than the territorial sea within the Coral Sea area; and

Sch. 3

-
- (c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation of 4 February 1983 under section 7 of the Seas and Submerged Lands Act 1973 of the Commonwealth; and
 - (d) the space above and below the areas described in paragraphs (a), (b) and (c).
- (3) The **adjacent area** for Western Australia is so much of the area described in Schedule 2 to the Petroleum (Submerged Lands) Act 1967 of the Commonwealth in relation to Western Australia as—
- (a) is within the outer limits of the continental shelf; and
 - (b) is not within Area A of the Zone of Cooperation—
- and includes the space above and below that area.
- (4) The **adjacent area** for the Northern Territory is—
- (a) so much of the area described in Schedule 2 to the Petroleum (Submerged Lands) Act 1967 of the Commonwealth in relation to the Northern Territory as—
 - (i) is within the outer limits of the continental shelf; and
 - (ii) is not within Area A of the Zone of Cooperation;
 - (b) the adjacent area for the Territory of Ashmore and Cartier Islands (within the meaning of subsection (3) of section 5A of the Petroleum (Submerged Lands) Act 1967 of the Commonwealth) other than the territorial sea within that area; and
-

-
- (c) the space above and below the areas described in paragraphs (a) and (b).
- (5) However, the adjacent area for a State does not include any area inside the limits of any State or Territory.

SCHEDULE 4

Section 140

SELF-INSURERS—PRE-APPLICATION ELIGIBILITY FEE

1 Pre-application eligibility fee

- (1) The fee that must accompany an application under section 140(1) is \$780 (or \$858 inclusive of GST) as varied in accordance with subclause (2).
- (2) The amount of \$780 referred to in subclause (1) must be varied, in respect of the financial year beginning on 1 July 2011 and each subsequent financial year, in accordance with the formula—

$$F \times \frac{C_y}{C_{y-1}}$$

where—

F is the amount of \$780 or that amount as last varied in accordance with this subsection;

C_y is the all groups consumer price index for Melbourne as at 15 June in the preceding financial year last published by the Australian Statistician in respect of the December quarter of that financial year;

C_{y-1} is the all groups consumer price index for Melbourne as at 15 June in the year preceding the preceding financial year published by the Australian Statistician in respect of the December quarter preceding that 15 June.

SCHEDULE 5

Section 141(4)

Sch. 5
inserted by
No. 9/2010
s. 127.

APPLICATION FEE FOR APPROVAL AS SELF-INSURER

1 Application fee

For the purposes of section 141(4) and subject to section 141B, 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 (3), *assessment remuneration* of an employer means the sum of—

$$\frac{X}{N} \times 12$$

where—

X is the total rateable remuneration which was paid or payable during the preceding year to workers employed by the employer;

N is the number of months in the preceding year during which the remuneration referred to in the definition of X was paid or payable by the employer.

- (2) If the employer has paid no remuneration during the preceding year, the *assessment remuneration* means the rateable remuneration estimated by the Authority under section 141A as payable by the employer 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;

rateable remuneration has the same meaning it has in section 139.

3 Fee limit

- (1) For the purposes of clause 1(b), the fee limit for an application for approval as a self-insurer is \$47 570 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 2010 and each subsequent financial year, in accordance with the formula—

$$A \times \frac{B}{C}$$

where—

A is the amount of \$47 570 or that amount as last varied in accordance with this subsection;

B is the latest average weekly earnings as at 30 May in the preceding financial year of all employees for Victoria published by the Australian Statistician in respect of the December quarter of that financial year or, if that is not available, the latest available quarter;

C is the average weekly earnings of all employees for Victoria as at 30 May in the year preceding the preceding financial year published by the Australian Statistician in respect of the quarter preceding that 30 May corresponding to the quarter referred to above.

- (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 subsection; 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.

ENDNOTES

1. General Information

The **Accident Compensation Act 1985** was assented to on 30 July 1985 and came into operation as follows:

Parts 1, 2, 6, sections 272, 275 on 30 July 1985: section 2(5); section 264(4) on 30 June 1985: section 2(4); item in Schedule 2 which amends section 95 of the **Stamps Act 1958** on 1 January 1985: section 2(6); item in Schedule 2 which amends section 97 of the **Stamps Act 1958** on 1 August 1985: section 2(7); items in Schedule 2 which amend sections 98, 99 of the **Stamps Act 1958** on 30 June 1985: section 2(8); Part 7 on 1 September 1985; rest of Act (*except* section 91) on 31 August 1985 at 4 p.m.: Government Gazette 30 August 1985 page 3401; section 91 repealed unproclaimed by No. 50/1994 section 36.

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Endnotes

2. Table of Amendments

This Version incorporates amendments made to the **Accident Compensation Act 1985** by Acts and subordinate instruments.

Employment and Training (Rebates) Act 1985, No. 10255/1985

Assent Date: 10.12.85
Commencement Date: Ss 1, 2, 8(3) on 10.12.85: s. 2(4); s. 8(2) on 31.8.85:
s. 2(3); s. 4(2) on 22.12.81: s. 2(2); rest of Act on
1.1.86: s. 2(1)
Current State: All of Act in operation

Taxation Acts (Reciprocal Assistance) Act 1986, No. 23/1986

Assent Date: 22.4.86
Commencement Date: 22.4.86
Current State: All of Act in operation

Accident Compensation (Amendment) Act 1986, No. 48/1986 (as amended by No. 64/1989)

Assent Date: 27.5.86
Commencement Date: Ss 3–6, 14, 16, 23, 35, 37, 38 on 31.8.85 (4 p.m.):
s. 2(1); s. 27 on 1.7.86: s. 2(2); rest of Act on 27.5.86:
s. 2(3)
Current State: All of Act in operation

Transport Accident Act 1986, No. 111/1986

Assent Date: 16.12.86
Commencement Date: S. 180(3) (Sch. 2 item 3) on 1.1.87: Government
Gazette 23.12.86 p. 4777
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Taxation (Reciprocal Powers) Act 1987, No. 37/1987

Assent Date: 12.5.87
Commencement Date: 11.6.87: Special Gazette (No. 24) 11.6.87 p. 1
Current State: All of Act in operation

State Concessions (Amendment) Act 1987, No. 48/1987

Assent Date: 15.9.87
Commencement Date: 1.12.87: Government Gazette 18.11.87 p. 3072
Current State: All of Act in operation

Accident Compensation (Amendment) Act 1987, No. 83/1987 (as amended by No. 64/1989)

Assent Date: 1.12.87
Commencement Date: S. 6(2) on 30.7.85: s. 2(2); s. 45(1) on 1.1.88: s. 2(3);
rest of Act on 1.12.87: s. 2(1)
Current State: All of Act in operation

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Accident Compensation (Further Amendment) Act 1988, No. 13/1988

Assent Date: 11.5.88
Commencement Date: 11.5.88
Current State: All of Act in operation

Accident Compensation (Disclosure of Information) Act 1988, No. 18/1988

Assent Date: 17.5.88
Commencement Date: 1.12.87: s. 2
Current State: All of Act in operation

State Superannuation Act 1988, No. 50/1988

Assent Date: 24.5.88
Commencement Date: S. 93(3) on 1.7.87: s. 2(1); s. 93(4) on 27.11.87: s. 2(2); Pt 1, Div. 2 of Pt 6, s. 91 on 1.1.88: s. 2(3); rest of Act on 1.7.88: Government Gazette 1.6.88 p. 1487
Current State: All of Act in operation

County Court (Amendment) Act 1989, No. 19/1989

Assent Date: 16.5.89
Commencement Date: 1.8.89: Government Gazette 26.7.89 p. 1858
Current State: All of Act in operation

Fire Authorities Act 1989, No. 50/1989 (as amended by No. 91/1989)

Assent Date: 14.6.89
Commencement Date: S. 52(2) on 31.7.90: Special Gazette (No. 38) 31.7.90 p. 1
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Magistrates' Court (Consequential Amendments) Act 1989, No. 57/1989

Assent Date: 14.6.89
Commencement Date: S. 4(1)(a)–(e)(2) on 1.9.89: Government Gazette 30.8.89 p. 2210; rest of Act on 1.9.90: Government Gazette 25.7.90 p. 2217
Current State: All of Act in operation

Accident Compensation (General Amendment) Act 1989, No. 64/1989

(as amended by No. 18/1991)

Assent Date: 29.9.89
Commencement Date: Ss 11, 16 on 1.1.90: s. 2(3); s. 37(2) on 27.5.86: s. 2(4); s. 37(3) on 1.12.87: s. 2(5); ss 1–4, 9, 12–15, 17–19, 21–26, 27(b), 28, 29, 37(1), 38 on 1.10.89: Special Gazette (No. 55) 29.9.89 p. 1; ss 5–8, 10, 20, 27(a), 30–35 on 5.3.90: Government Gazette 21.2.90 p. 518; s. 36 on 1.7.90: Government Gazette 21.2.90 p. 518
Current State: All of Act in operation

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Courts (Children's and Magistrates') Act 1990, No. 34/1990

Assent Date: 13.6.90
Commencement Date: Ss 3–6, 7(1) on 1.9.90: Government Gazette 25.7.90 p. 2216; s. 7(2) on 16.5.89: s. 2(b); s. 7(4)(5) on 6.6.89: s. 2(c); s. 7(6)(7) on 14.6.89: s. 2(d); rest of Act on 13.6.90: s. 2(e)
Current State: All of Act in operation

Vocational Education and Training Act 1990, No. 45/1990

Assent Date: 19.6.90
Commencement Date: S. 109 on 1.7.91: Government Gazette 19.12.90 p. 3745 and Special Gazette (No. 9) 31.1.91 p. 3
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation (Amendment) Act 1991, No. 18/1991

Assent Date: 30.4.91
Commencement Date: S. 4 on 30.6.89: s. 2(1); s. 12(3) on 29.9.89: s. 2(2); s. 12(2) on 5.3.90: s. 2(3); s. 10(1)(2) on 1.7.90: s. 2(4); Pt 1 (ss 1–3), ss 8, 10(3), 12(1) on 30.4.91: s. 2(5); rest of Act on 1.7.91: Government Gazette 26.6.91 p. 1659
Current State: All of Act in operation

Accident Compensation (Further Amendment) Act 1992, No. 37/1992

Assent Date: 16.6.92
Commencement Date: 16.6.92
Current State: All of Act in operation

Accident Compensation (WorkCover) Act 1992, No. 67/1992 (as amended by No. 50/1993)

Assent Date: 19.11.92
Commencement Date: Ss 1–3 on 19.11.92: s. 2(2); ss 26, 49 on 1.7.93: s. 2(3); s. 63(2) on 29.10.92: s. 2(4); rest of Act (*except* s. 36(1)) on 1.12.92: s. 2(1); s. 36(1) repealed by No. 50/1993 s. 111(1)(a); s. 42 repealed by No. 50/1993 s. 111(1)(b)
Current State: All of Act in operation

Employee Relations Act 1992, No. 83/1992

Assent Date: 24.11.92
Commencement Date: S. 184(Sch. 6 item 1) on 1.3.93: Special Gazette (No. 63) 27.11.92 p. 1
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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Accident Compensation (WorkCover Insurance) Act 1993, No. 50/1993

Assent Date: 1.6.93
Commencement Date: Pt 1 (ss 1–6), ss 19, 94(1), 102, 110(1), 111(1) on 1.6.93: s. 2(1); ss 111(2), 112(1) on 19.11.92: s. 2(2)(a); ss 84(1), 92, 94(2), 95, 100, 110(2) on 1.12.92: s. 2(2)(b); s. 93 on 1.4.93: s. 2(2)(c); ss 87, 88 on 29.4.93: s. 2(2)(d); Pt 3 (ss 27–42), ss 7–11, 15–17, 72, 78(1)(b), 79, 80(1)(a)–(e), 85, 86, 89, 90, 98, 103–108, 109(1)(2), 112(2), 113 on 16.6.93; ss 12–14, 18, 20–26, 55, 57–71, 73, 75, 78(1)(c)–(h) (2), 83, 101 on 30.6.93; Pt 4 (ss 43–54), ss 56, 74, 76, 78(1)(a), 80(1)(b)–(d)(2), 81, 84(2), 91, 99, 109(3) on 1.7.93; ss 96, 97 on 1.8.93: Special Gazette (No. 39) 16.6.93 p. 1; ss 77, 82 were never proclaimed, repealed by No. 50/1994 s. 104
Current State: All of Act in operation

Medical Practice Act 1994, No. 23/1994

Assent Date: 17.5.94
Commencement Date: S. 118(Sch. 1 item 1.1) on 1.7.94: Government Gazette 23.6.94 p. 1672
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Financial Management (Consequential Amendments) Act 1994, No. 31/1994

Assent Date: 31.5.94
Commencement Date: S. 4(Sch. 2 item 1) on 1.1.95: Government Gazette 28.7.94 p. 2055
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation (Amendment) Act 1994, No. 50/1994 (as amended by No. 74/2000)

Assent Date: 15.6.94
Commencement Date: Ss 13, 15–19, 30, 35, 36, 48, 49, 64(2) (4)–(11) on 15.6.94: s. 2(1); s. 64 (1)(3) on 30.11.92: s. 2(2)(a); ss 5(10)(11), 32(1), 33(1), 42, 60, 67 on 1.12.92: s. 2(2)(b); ss 5(1)(7)(12), 9(a)(b), 52, 57, 61, 62(1)–(9), 92(3) on 30.6.93 at 4 p.m.: s. 2(2)(d); ss 41(1)(2) (4) on 1.4.94: s. 2(2)(e); ss 76, 77 on 1.7.94: s. 2(3); ss 3, 4, 5(3)(4)(6)(a), 10–12, 14, 21–25, 28, 31, 32(2), 33(2)(3), 38(1)(b)(d)(e)(3)(a)(d)(f), 44, 46, 47, 54(1)(2), 55, 56, 59, 66, 68–75, 79, 80, 83–87, 92(4)(5) on 24.6.94: Special Gazette (No. 37) 24.6.94 p. 2—see **Interpretation of Legislation Act 1984**; ss 5(2)(5)(6)(b)(8)(9), 6–8, 9(c)–(e), 20, 26, 27, 29, 37, 38(1) (a)(c)(2)(3)(b)(c)(e)(4), 39, 40, 41(3)(5), 43, 45, 50, 51, 53, 54(3), 58, 62(10), 63, 78, 81, 82 on 1.7.94: Special Gazette (No. 37) 24.6.94 p. 2
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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Vocational Education and Training (Amendment) Act 1994, No. 62/1994

Assent Date: 15.6.94
Commencement Date: S. 68 on 1.12.94: Government Gazette 23.6.94 p. 1671
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Transport Accident (General Amendment) Act 1994, No. 84/1994

Assent Date: 29.11.94
Commencement Date: S. 63 on 1.1.95: Special Gazette (No. 96) 13.12.94 pp 1, 2
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Constitution (Court of Appeal) Act 1994, No. 109/1994

Assent Date: 20.12.94
Commencement Date: S. 34(1) on 7.6.95: Special Gazette (No. 41) 23.5.95 p. 1
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Equal Opportunity Act 1995, No. 42/1995

Assent Date: 14.6.95
Commencement Date: S. 224 on 5.10.95: Government Gazette 28.9.95 p. 2731; Sch. 2 item 1 on 1.1.96: Government Gazette 21.12.95 p. 3571
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Vocational Education and Training (Amendment) Act 1995, No. 85/1995

Assent Date: 28.11.95
Commencement Date: 28.11.95
Current State: All of Act in operation

Mental Health (Amendment) Act 1995, No. 98/1995

Assent Date: 5.12.95
Commencement Date: S. 65(Sch. 1 item 1) on 1.7.96: Government Gazette 27.6.96 p. 1593
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Miscellaneous Acts (Omnibus Amendments) Act 1995, No. 100/1995

Assent Date: 5.12.95
Commencement Date: S. 10(1)(Sch. 1 items 1.1, 1.2) on 30.4.96: Special Gazette (No. 45) 30.4.96 p. 1; s. 32(Sch. 2 item 1) on 5.12.95: s. 2(1)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

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Accident Compensation (Amendment) Act 1996, No. 7/1996

Assent Date: 25.6.96
Commencement Date: S. 32 on 25.6.96: s. 2(1); s. 33 on 1.12.92: s. 2(2); s. 4 on 1.7.95: s. 2(3); ss 3(1)(4)(5), 5–18, 22, 25, 26, 28, 30, 34–37, 39, 41, 43–46, 48, 49 on 25.6.96; ss 20, 21, 24, 29, 31, 38, 47 on 1.7.96; s. 19 on 1.8.96: Special Gazette (No. 71) 25.6.96 p. 2; s. 40 on 19.12.96: Government Gazette 19.12.96 p. 3251; ss 3(2)(3), 23, 27, 42 on 25.12.96: s. 2(5)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation (Occupational Health and Safety) Act 1996, No. 13/1996
(as amended by No. 60/1996)

Assent Date: 28.6.96
Commencement Date: Ss 1, 2, 9 on 28.6.96: s. 2(1); rest of Act on 2.7.96: s. 2(4)
Current State: All of Act in operation

Legal Practice Act 1996, No. 35/1996

Assent Date: 6.11.96
Commencement Date: S. 453(Sch. 1 items 1.1–1.3) on 1.1.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Education (Amendment) Act 1996, No. 47/1996

Assent Date: 26.11.96
Commencement Date: Pt 4 (ss 15–24) on 1.1.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation (Further Amendment) Act 1996, No. 60/1996
(as amended by Nos 45/1997, 107/1997, 81/1998)

Assent Date: 17.12.96
Commencement Date: Ss 9, 11 on 14.11.96: s. 2(3); ss 3, 4(2), 5, 7, 8, 13, 16, 20, 22, 24 on 17.12.96: s. 2(1); s. 27 on 25.12.96: s. 2(3A); ss 10, 12, 15, 25, 26, 29 on 23.1.97: Government Gazette 23.1.97 p. 146, ss 4(1), 6, 17, 18, 28 on 1.7.97: s. 2(6); s. 21 on 1.7.98: Government Gazette 25.6.98 p. 1561; s. 23 on 13.7.98: Government Gazette 9.7.98 p. 1852
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Chiropractors Registration Act 1996, No. 63/1996

Assent Date: 17.12.96
Commencement Date: S. 98(Sch. item 1) on 1.7.97: s. 2(3)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation Act 1985
No. 10191 of 1985

Endnotes

Co-operatives Act 1996, No. 84/1996

Assent Date: 23.12.96
Commencement Date: S. 467(Sch. 6 item 1.1) on 1.10.97: Special Gazette (No. 122) 1.10.97 p. 1
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Miscellaneous Acts (Omnibus No. 3) Act 1997, No. 45/1997

Assent Date: 11.6.97
Commencement Date: S. 3 on 11.6.97: s. 2(1)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Podiatrists Registration Act 1997, No. 78/1997

Assent Date: 25.11.97
Commencement Date: S. 97(Sch. item 1) on 1.12.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Vocational Education and Training (Training Framework) Act 1997, No. 80/1997

Assent Date: 25.11.97
Commencement Date: S. 50 on 1.1.98: Government Gazette 18.12.97 p. 3614
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation (Miscellaneous Amendment) Act 1997, No. 107/1997

Assent Date: 23.12.97
Commencement Date: Ss 3, 11(1), 15, 22, 24, 26–30, 33–37, 43, 45–51 on 12.11.97: s. 2(2); ss 4, 7–10, 12, 14, 16(2), 19–21, 31, 32, 39(2), 60, 61 on 23.12.97: s. 2(1); s. 5 on 1.1.98: s. 2(3), ss 13, 16(1)(3), 17, 18, 39(1), 40, 41, 44, 53–58 on 1.2.98: Government Gazette 22.1.98 p. 101; ss 23, 42 on 29.6.98: Government Gazette 22.1.98 p. 101; ss 11(2)–(7), 52, 59 on 1.7.98: s. 2(7); s. 25 on 1.9.98: s. 2(5)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

State Trustees (Amendment) Act 1998, No. 15/1998

Assent Date: 28.4.98
Commencement Date: S. 4 on 1.8.98: s. 2(3)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998

Assent Date: 26.5.98
Commencement Date: S. 7(Sch. 1) on 1.7.98: s. 2(2)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation Act 1985
No. 10191 of 1985

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**Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998,
No. 52/1998** (as amended by No. 101/1998)

Assent Date: 2.6.98
Commencement Date: S. 311(Sch. 1 item 1) on 1.7.98: Government Gazette 18.6.98 p. 1512
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation (Amendment) Act 1998, No. 81/1998

Assent Date: 17.11.98
Commencement Date: Ss 20(5), 27–29(1), 30, 31 on 17.11.98: s. 2(1); ss 19, 20(1)–(4), 21–26 at 4 p.m. on 30.6.99: s. 2(4); s. 29(2) on 30.12.00: Government Gazette 21.12.00 p. 2980
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

**National Taxation Reform (Further Consequential Provisions) Act 2000,
No. 24/2000**

Assent Date: 16.5.00
Commencement Date: S. 3 on 1.7.00: s. 2(2)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation (Common Law and Benefits) Act 2000, No. 26/2000
(as amended by No. 84/2000)

Assent Date: 30.5.00
Commencement Date: S. 23(1) on 15.6.94: s. 2(2); s. 14 on 12.11.97: s. 2(4); ss 18, 20, 21 on 20.10.99: s. 2(5); s. 26 on 13.4.00: s. 2(6); ss 3, 5–13, 16, 22, 23(2), 32 on 31.5.00: s. 2(1); s. 15 on 1.7.00: s. 2(7); s. 25(1)–(4) on 1.7.00: Special Gazette (No. 92) 27.6.00 p. 1; s. 4 on 1.9.00: Government Gazette 31.8.00 p. 2214; s. 17 on 20.10.00: Government Gazette 19.10.00 p. 2521; s. 19 on 29.11.00: s. 2(7A); s. 24 on 1.1.01: s. 2(9)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Psychologists Registration Act 2000, No. 41/2000

Assent Date: 6.6.00
Commencement Date: S. 102(Sch. item 1) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Victims of Crime Assistance (Amendment) Act 2000, No. 54/2000

Assent Date: 12.9.00
Commencement Date: Ss 25(3)(4), 26 on 1.1.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation Act 1985
No. 10191 of 1985

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Statute Law Revision Act 2000, No. 74/2000

Assent Date: 21.11.00
Commencement Date: S. 3(Sch. 1 item 1.3) on 1.7.97: s. 2(2)(a); s. 3(Sch. 1 items 1.1, 1.2, 1.4–1.9) on 22.11.00: s. 2(1)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Transport Accident (Amendment) Act 2000, No. 84/2000

Assent Date: 28.11.00
Commencement Date: Ss 37, 40 on 29.11.00: s. 2(1); s. 38 on 1.1.01: Government Gazette 7.12.00 p. 2865
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Victorian Qualifications Authority Act 2000, No. 97/2000

Assent Date: 5.12.00
Commencement Date: S. 41(Sch. 2 item 1) on 1.3.01: Government Gazette 1.3.01 p. 304
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Statute Law Amendment (Authorised Deposit-taking Institutions) Act 2001, No. 11/2001

Assent Date: 8.5.01
Commencement Date: S. 3(Sch. item 2) on 1.6.01: s. 2(2)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Statute Law Amendment (Relationships) Act 2001, No. 27/2001

Assent Date: 12.6.01
Commencement Date: S. 4(Sch. 2 item 1) on 23.8.01: Government Gazette 23.8.01 p. 1927
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Racing (Racing Victoria Ltd) Act 2001, No. 35/2001

Assent Date: 19.6.01
Commencement Date: S. 8 on 19.12.01: Special Gazette (No. 233) 19.12.01 p. 1
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation (Amendment) Act 2001, No. 82/2001

Assent Date: 11.12.01
Commencement Date: S. 25 on 20.10.99: s. 2(4); s. 24 on 30.5.00: s. 2(3); Pt 2 (ss 3–7), ss 13–15, 20–23 on 12.12.01: s. 2(1); s. 12 on 1.7.02: s. 2(2); ss 8–11, 16–19 on 1.7.02: s. 2(6)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation Act 1985
No. 10191 of 1985

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Statute Law (Further Revision) Act 2002, No. 11/2002

Assent Date: 23.4.02
Commencement Date: S. 3(Sch. 1 item 4) on 24.4.02: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

**Wrongs and Limitation of Actions Acts (Insurance Reform) Act 2003,
No. 60/2003**

Assent Date: 16.6.03
Commencement Date: S. 19 on 21.5.03: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Road Safety (Amendment) Act 2003, No. 94/2003

Assent Date: 25.11.03
Commencement Date: S. 40 on 26.11.03: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

**Accident Compensation and Transport Accident Acts (Amendment) Act 2003,
No. 95/2003**

Assent Date: 2.12.03
Commencement Date: Ss 3, 4, 7, 8, 14, 23 on 3.12.03: s. 2(1); s. 5 on 1.2.04:
Government Gazette 29.1.04 p. 179; ss 10–12 on
1.3.04: Government Gazette 26.2.04 p. 392; ss 6, 13,
15–22 on 1.9.04: Government Gazette 26.8.04
p. 2363; s. 9 was never proclaimed, repealed by
No. 65/2008 s. 10 on 2.12.08
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Treasury and Finance Legislation (Amendment) Act 2004, No. 40/2004

Assent Date: 8.6.04
Commencement Date: S. 3 on 9.6.04: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

State Taxation Acts (Amendment) Act 2004, No. 71/2004

Assent Date: 19.10.04
Commencement Date: S. 3 on 1.7.94: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Transport Accident (Amendment) Act 2004, No. 94/2004

Assent Date: 7.12.04
Commencement Date: S. 38 on 8.12.04: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Accident Compensation Act 1985
No. 10191 of 1985

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Accident Compensation Legislation (Amendment) Act 2004, No. 102/2004

Assent Date: 21.12.04
Commencement Date: Ss 5, 15–18, 23 on 18.11.04: s. 2(2); ss 3, 4, 6–14, 19, 20, 22, 32–34, 35(1)–(3), 36, 38–41 on 21.12.04: s. 2(1); ss 21, 24–31 on 1.7.05: s. 2(4)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Occupational Health and Safety Act 2004, No. 107/2004

Assent Date: 21.12.04
Commencement Date: S. 177 on 1.7.05: s. 3(1)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Public Administration Act 2004, No. 108/2004

Assent Date: 21.12.04
Commencement Date: S. 117(1)(Sch. 3 item 1) on 5.4.05: Government Gazette 31.3.05 p. 602
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 1) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation (Amendment) Act 2005, No. 28/2005

Assent Date: 21.6.05
Commencement Date: Pt 2 Div. 5 (ss 17–20) on 18.11.04: s. 2(3); Pt 2 Div. 1 (ss 3–6) on 19.5.05: s. 2(4); Pt 2 Divs 2 (ss 7, 8), 4 (ss 13–16), 6 (ss 21–23), 7 (s. 24), 8 (s. 25) on 22.6.05: s. 2(1); Pt 2 Div. 3 (ss 9–12) on 1.7.05: s. 2(5)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Dangerous Goods and Equipment (Public Safety) Acts (Amendment) Act 2005, No. 31/2005

Assent Date: 21.6.05
Commencement Date: S. 35 on 1.7.05: s. 2
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation and Transport Accident Acts (Ombudsman) Act 2005, No. 46/2005

Assent Date: 24.8.05
Commencement Date: S. 5 on 25.8.05: s. 2(1); ss 3, 4, 6 on 1.10.05: s. 2(2)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation Act 1985
No. 10191 of 1985

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Treasury Legislation (Repeal) Act 2005, No. 73/2005

Assent Date: 25.10.05
Commencement Date: S. 4(Sch. 2 item 1) on 26.10.05: s. 2
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Health Professions Registration Act 2005, No. 97/2005

Assent Date: 7.12.05
Commencement Date: S. 182(Sch. 4 item 1) on 1.7.07: s. 2(3)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Education and Training Reform Act 2006, No. 24/2006

Assent Date: 16.5.06
Commencement Date: S. 6.1.2(Sch. 7 item 1) on 1.7.07: Government Gazette 28.6.07 p. 1304
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation and Other Legislation (Amendment) Act 2006, No. 41/2006

Assent Date: 25.7.06
Commencement Date: S. 17(1) on 20.10.99: s. 2(2); ss 4, 18, 24 on 1.6.06: s. 2(3); ss 3, 5, 10–16, 17(2), 19–23 on 1.7.06: s. 2(4); ss 6–9, 26 on 26.7.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Owners Corporations Act 2006, No. 69/2006

Assent Date: 19.9.06
Commencement Date: S. 224(Sch. 3 item 1) on 31.12.07: s. 2(2)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 1) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation Amendment Act 2007, No. 34/2007

Assent Date: 14.8.07
Commencement Date: Ss 3–6 on 15.8.07: s. 2
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Transport Accident and Accident Compensation Acts Amendment Act 2007, No. 60/2007

Assent Date: 27.11.07
Commencement Date: Ss 22–25, 28 on 19.9.07: s. 2(4); ss 26, 27, 29 on 28.11.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation Act 1985
No. 10191 of 1985

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**State Taxation and Accident Compensation Acts Amendment Act 2007,
No. 68/2007**

Assent Date: 11.12.07
Commencement Date: Ss 21–24 on 12.12.07: s. 2
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Relationships Act 2008, No. 12/2008

Assent Date: 15.4.08
Commencement Date: S. 73(1)(Sch. 1 item 1) on 1.12.08: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Courts Legislation Amendment (Associate Judges) Act 2008, No. 24/2008

Assent Date: 3.6.08
Commencement Date: S. 74 on 17.12.08: Special Gazette (No. 377) 16.12.08
p. 1
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

**Compensation and Superannuation Legislation Amendment Act 2008,
No. 65/2008**

Assent Date: 18.11.08
Commencement Date: Ss 8, 9 on 19.11.08: s. 2(1)
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Dangerous Goods Amendment (Transport) Act 2008, No. 66/2008

Assent Date: 18.11.08
Commencement Date: S. 30 on 1.1.09: Government Gazette 18.12.08 p. 2998
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Asbestos Diseases Compensation Act 2008, No. 69/2008

Assent Date: 25.11.08
Commencement Date: Ss 9, 10 on 26.11.08: s. 2
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Coroners Act 2008, No. 77/2008

Assent Date: 11.12.08
Commencement Date: S. 129(Sch. 2 item 2) on 1.11.09: s. 2
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Relationships Amendment (Caring Relationships) Act 2009, No. 4/2009

Assent Date: 10.2.09
Commencement Date: S. 37(Sch. 1 item 1) on 1.12.09: s. 2(2)
Current State: This information relates only to the provision/s
amending the **Accident Compensation Act 1985**

Accident Compensation Act 1985
No. 10191 of 1985

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Criminal Procedure Amendment (Consequential and Transitional Provisions) Act 2009, No. 68/2009

Assent Date: 24.11.09
Commencement Date: S. 97(Sch. item 3) on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 1), (Sch. Pt 2 item 1) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

State Taxation Acts Further Amendment Act 2009, No. 83/2009

Assent Date: 8.12.09
Commencement Date: S. 39 on 1.3.10: Government Gazette 18.2.10 p. 288
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Transport Legislation Amendment (Hoon Boating and Other Amendments) Act 2009, No. 93/2009

Assent Date: 15.12.09
Commencement Date: S. 49(5) on 17.12.09: Government Gazette 17.12.09 p. 3339
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Accident Compensation Amendment Act 2010, No. 9/2010

Assent Date: 23.3.10
Commencement Date: S. 52 on 3.12.03: s. 2(2); s. 49(1) on 12.12.07: s. 2(3); s. 57(4)(5) on 17.6.09: s. 2(4); ss 53–54(5), 54(7)(8), 55, 57(2)(3), 60, 67, 68(1)(3)–(10)(13), 70(1) on 10.12.09: s. 2(5); ss 42, 45(3) on 1.1.10: s. 2(6); ss 59, 63, 191 on 24.3.10: s. 2(1); ss 3–8, 12–17, 19–21, 28–41, 43–45(2), 45(4)–48, 49(2)–51, 54(6), 56, 57(1), 57(6)–58, 61, 62, 64–66, 68(2)(11)(12), 69, 70(2)–74(2), 75–90, 121–123, 142–177 on 5.4.10: s. 2(7); ss 9–11, 22–27, 74(3)(4), 91, 92, 94–99, 124–136 on 1.7.10: s. 2(8)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 2) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Accident Compensation Act 1985**

3. Explanatory Details

¹ S. 5(1) def. of *medical service*: Section 3(3) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

3 Amendment of definitions

- (3) The **Accident Compensation Act 1985** as amended by section 3(2) applies to the repair, adjustment or replacement of hearing aids provided before the commencement of section 3(2) and to the provision, repair, adjustment or replacement of all hearing aids provided after that commencement.

² S. 5(1) def of *occupational rehabilitation service*: Section 26(5) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

26 Amendment of section 99—reasonable costs

- (5) The **Accident Compensation Act 1985** as in force on the commencement of this section applies to services or provisions rendered on or after that commencement.

³ S. 8(1): The proposed amendments by section 82 of the **Accident Compensation (WorkCover) Act 1993**, No. 50/1993 are not included in this publication.

Section 82 was never proclaimed and was repealed by section 104 of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994.

⁴ Pt 2: Section 64(1)–(6) of the **Accident Compensation (WorkCover) Act 1992**, No. 67/1992 reads as follows:

64 Former bodies

- (1) On the commencement of this section—
- (a) the following bodies established under the Principal Act cease to exist—
- (i) the Accident Compensation Commission;
- (ii) the Victorian Accident Rehabilitation Council;

- (iii) the Accident Compensation Tribunal;
 - (iv) the WorkCare Appeals Board; and
 - (b) the office of member of the Accident Compensation Tribunal is abolished and the appointments and commissions of members are revoked; and
 - (c) all property, rights and assets of the Accident Compensation Commission, the WorkCare Appeals Board or the Victorian Accident Rehabilitation Council vest in the Victorian WorkCover Authority; and
 - (d) all liabilities of the Accident Compensation Commission, the WorkCare Appeals Board or the Victorian Accident Rehabilitation Council become liabilities of the Victorian WorkCover Authority; and
 - (e) the Victorian WorkCover Authority is the successor in law of the Accident Compensation Commission and the Victorian Accident Rehabilitation Council.
- (2) On and after the commencement of this section—
- (a) any money invested by the Registrar under section 65(4), 71L(4) or 72H(4) of the Principal Act as in force immediately before the commencement of this section; and
 - (b) any real or personal property held by the Registrar under any of those sections as so in force—
- vests by force of this section in the Victorian WorkCover Authority.
- (3) The person who, immediately before the commencement of this section was the Registrar of the Accident Compensation Tribunal is entitled to be indemnified from the WorkCover Authority
-

Fund against any liability or claim arising under section 65(4), 71L(4) or 72H(4) of the Principal Act as in force immediately before the commencement of this section.

- (4) On and after the commencement of this section, any reference in any Act, regulation, subordinate instrument or other document whatsoever to the Accident Compensation Commission or the Victorian Accident Rehabilitation Council is to be construed as a reference to the Victorian WorkCover Authority, unless the contrary intention appears.
- (5) Except as expressly provided in this Act, a proceeding, matter or inquiry shall not in any way be abated or affected by reason of the repeal of any provision of the Principal Act by this Act.
- (6) On the commencement of this section, the Victorian WorkCover Authority is substituted as a party to any proceedings pending in the Accident Compensation Tribunal or any court to which the Accident Compensation Commission or the Victorian Accident Rehabilitation Council was a party immediately before that commencement.

⁵ S. 22: Sections 9–11 of the **Accident Compensation (Occupational Health and Safety) Act 1996**, No. 13/1996 read as follows:

9 Determination of staff to be transferred

The Minister administering the Principal Act must designate in writing the officers and employees of the public service who are employed in the administration and enforcement of the **Occupational Health and Safety Act 1985**, the **Dangerous Goods Act 1985** or the **Equipment (Public Safety) Act 1994** who are to become officers and employees of the Authority under section 10.

10 Transfer of staff

- (1) On and from the commencement of this section, any officer or employee designated under section 9—
 - (a) is deemed to have been appointed by the Authority under section 22 of the Principal Act; and
 - (b) is entitled to remuneration, terms and conditions determined by the Minister administering the Principal Act to be no less favourable than those which he or she received or was entitled to receive immediately before that commencement as such an officer or employee; and
 - (c) retains any entitlement to long service leave, annual leave, sick leave or maternity leave accrued or accruing to that person immediately before that commencement; and
 - (d) ceases to be an officer or employee of the public service.
- (2) Section 22(3) of the Principal Act applies to a person deemed under subsection (1) to have been appointed by the Authority.
- (3) A person is not entitled to any compensation as a result of the person ceasing to be an officer or employee of the public service by virtue of this section.

11 Supreme Court—limitation of jurisdiction

It is the intention of section 10(3) to alter or vary section 85 of the **Constitution Act 1975**.

⁶ Pt 3: See note 4.

⁷ S. 39(1): Section 63(1) of the **Accident Compensation (WorkCover) Act 1992**, No. 67/1992 (as amended by section 65(1) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994, section 50(1) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996, section 30(1) of the **Accident Compensation (Further Amendment) Act 1996**, No. 60/1996 and section 62 of the **Accident Compensation (Miscellaneous Amendment) Act 1997**, No. 107/1997) reads as follows:

63 Supreme Court—limitation of jurisdiction

- (1) It is the intention of this section to alter or vary section 85 of the **Constitution Act 1975** to the extent necessary to prevent—
 - (a) the Supreme Court exercising jurisdiction conferred on, or excluded from the jurisdiction of, the County Court under section 39(1) or 40(1)(a) or (c) of the Principal Act as amended by this Act and as amended by section 11 of the **Accident Compensation (Miscellaneous Amendment) Act 1997**;
 - (b) the Supreme Court exercising jurisdiction conferred on the Magistrates' Court under section 43(1) of the Principal Act as amended by this Act;
 - (c) an appeal on the merits to the Supreme Court from an opinion of a Medical Panel under section 45(1)(c) or section 99AB(1)(c) or a determination under section 98(2B) by a person and in the manner approved by a Medical Panel under section 98(2A) of the Principal Act as amended by this Act or the Authority or a self-insurer under section 115 or 115A(8) of the Principal Act as so amended but not to alter or vary section 85 of the **Constitution Act 1975** so as to affect the jurisdiction of the Supreme Court to grant any other relief or remedy;

- (d) the Supreme Court making a judgment or order for damages or approving a settlement or compromise in an amount exceeding the limits or without the reductions referred to in section 135 of the Principal Act as inserted by section 46(1) of this Act and as amended by section 64 of the **Accident Compensation (Amendment) Act 1994** and as amended by section 46 of the **Accident Compensation (Miscellaneous Amendment) Act 1997** or in section 135A of the Principal Act as inserted by section 46(3) of this Act and as amended by section 64 of the **Accident Compensation (Amendment) Act 1994** and as amended by sections 32 and 33 of the **Accident Compensation (Amendment) Act 1996** and as amended by section 11 of the **Accident Compensation (Further Amendment) Act 1996** and as amended by section 47 of the **Accident Compensation (Miscellaneous Amendment) Act 1997**;
- (e) the Supreme Court making a judgment or Order for damages or approving a settlement or compromise in respect of an injury arising before 1 December 1992, except in the circumstances specified in section 135B of the Principal Act as inserted by section 46(3) of this Act and as amended by section 64 of the **Accident Compensation (Amendment) Act 1994**.

⁸ S. 40(1)(a): See note 7.

⁹ S. 40(1)(c): See note 7.

¹⁰ S. 43(1): See note 7.

¹¹ S. 43(1): Section 8(3) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

8 Amendment of section 43—Magistrates' Court jurisdiction

(3) The **Accident Compensation Act 1985** as amended by this section applies to and in respect of any proceedings commenced on or after this Act receives the Royal Assent.

¹² S. 50(2B): Section 10(2) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

10 Amendment of section 50—costs where direction revoked

(2) Section 50 of the **Accident Compensation Act 1985** as amended by this section applies in respect of the revocation of a direction made on or after the commencement of this section, whether or not the application was made before, on or after that commencement.

¹³ S. 50(4): Section 11(2) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

11 Amendment of section 50—costs on settlement or compromise

(2) Section 50 of the **Accident Compensation Act 1985** as amended by this section applies in respect of any settlement or compromise made on or after the commencement of this section.

¹⁴ S. 50(5): See note 13.

¹⁵ S. 50(6): See note 13.

¹⁶ S. 92(1): Section 37(2) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

37 County Court to determine compensation for death

- (2) The Principal Act as amended by subsection (1) applies to determinations made after the commencement of this section.

¹⁷ S. 92(3): See note 16.

¹⁸ S. 92(4): See note 16.

¹⁹ S. 92(6): See note 16.

²⁰ S. 92(7): See note 16.

²¹ S. 93B(3): Section 16(8) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

16 Weekly payments

- (8) Despite section 4A of the **Accident Compensation Act 1985**—

- (a) the **Accident Compensation Act 1985** as in force after the commencement of this section applies in respect of the entitlement of a worker to weekly payments unless paragraph (b) applies; and
- (b) the **Accident Compensation Act 1985** as in force before the commencement of this section continues to apply in respect of the entitlement of a worker to weekly payments where the period of 104 weeks of incapacity has expired before the commencement of this section.

²² S. 98(1) Table: Section 41(4) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

41 Industrial deafness

- (4) Section 98 of the Principal Act as amended by subsections (1) and (2) applies in respect of claims for compensation made on or after 1 April 1994.

²³ S. 98(2AA): Section 41(2) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

41 Industrial deafness

(2) After section 98(2) of the Principal Act **insert**—

"(2AA) Compensation is not payable under this section for a loss of hearing unless the percentage of the diminution of hearing is at least 7.".

Section 41(4) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

41 Industrial deafness

(4) Section 98 of the Principal Act as amended by subsections (1) and (2) applies in respect of claims for compensation made on or after 1 April 1994.

Subsection (2AA) inserted by section 41(2) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 was in force from 1 April to 1 July 1994.

²⁴ S. 98(2AA): Section 41(5) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

41 Industrial deafness

(5) Section 98 of the Principal Act as amended by subsection (3) applies in respect of claims for compensation made on or after commencement of this subsection.

Section 41(5) came into operation on 1 July 1994.

²⁵ S. 98(2A): See note 7.

²⁶ S. 98(2A): See note 24.

²⁷ S. 98(2AB): See note 24.

²⁸ S. 98(2AB)(a): Section 23(3) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

23 Amendment of section 98—loss of hearing

(3) Section 98 of the **Accident Compensation Act 1985** as amended by this section applies in respect of all determinations made on or after the commencement of this section.

²⁹ S. 98(2AC): See note 28.

³⁰ S. 98(2B): See note 7.

³¹ S. 99B (*repealed*): See note 2.

³² S. 100(1): Government Gazette of 24 June 2010 pages 1292–1302 reads as follows:

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**NOTICE OF INDEXED BENEFIT LEVELS AND OTHER AMOUNTS IN
ACCORDANCE WITH SECTION 100 OF THE ACCIDENT
COMPENSATION ACT 1985**

Section 100(1) of the **Accident Compensation Act 1985** stipulates that certain amounts in Part IV and in section 5A of the Act are varied on 1 July each year in line with the movement in the average weekly earnings for all employees in Victoria between the two previous December quarters, using the latest figures published by the Australian Statistician as at 30 May following the previous December quarter. Weekly payments are indexed on the anniversary of the entitlement to weekly payments as detailed in section 100(2) of the Act.

The average weekly earnings for all employees in Victoria between the December quarter of 2008 and the December quarter 2009 increased from \$880.30 to \$902.60 which is an increase of 2.53%.

Following legislative changes in December 1997, some amounts are indexed by the rise in Consumer Price Index. The Consumer Price Index between the December quarter of 2008 and the December quarter of 2009 increased from 163.5 to 166.4 which is an increase of 1.77%.

On 11 November 2008 the Australian Bureau of Statistics (ABS) announced a change to the method of calculating average weekly earnings to exclude all amounts that were salary sacrificed. This change has meant a small adjustment by the ABS to the average weekly earnings for the December 2007 quarter. However section 100 of the **Accident Compensation Act 1958** requires use of the average weekly earnings as

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published by the ABS in the December quarter of the relevant financial year. Accordingly WorkSafe has utilised this figure.

On 10 December 2009, a number of legislative changes to the Act commenced. The changes included:

- an increase in the no-fault maximum lump sum entitlement for a permanent impairment from \$409,200 to \$503,000;
- an increase in the no-fault lump sum entitlements to workers with a permanent psychiatric impairment assessed at the existing 30% whole person impairment threshold from \$13,650 to \$68,240;
- an increase in the maximum lump sum payment for dependants following a workplace death from \$273,970 to \$503,000.

On 5 April 2010, a number of further legislative changes to the Act commenced. The changes included:

- an increase in the statutory maximum for weekly payments from \$1,300 to twice Victoria's average weekly earnings, currently \$1760;
- the introduction of reimbursement of worker's transport costs to attend a conciliation up to a maximum of \$50 per conference;
- the introduction of compensation for non-dependants (where a worker leaves no dependants) who suffer hardship as a result of a worker's death up to a maximum \$30,000.

The cap on the monetary value of weekly payments for claims made on or after 5 April 2010 under section 93B and pensions for dependants of deceased workers for claims made on or after 5 April 2010 under section 92B has been substituted by an amount representing twice the state average weekly earnings. For claims made under 93B and 92B made before 12 November 1997 or on or after 12 November 1997 and before 5 April 2010, the cap on weekly payments and pensions for dependants of deceased workers remains unchanged.

Section	Provision	Rate before 1 July 10	Rate from 1 July 10
DISPUTE RESOLUTION (CPI)			
Costs			
62(3)	Maximum payment for worker's reasonable transportation expenses	\$50	\$51
62(4)	Maximum payment for worker's loss of income	\$350	\$356

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
COMPENSATION FOR DEATH OF A WORKER (CPI)			
	Revised compensation for death of worker		
92A(4)	For a dependent partner or partners in equal shares	\$503,000	\$511,920
92A(5)	For an orphan child or orphan children in equal shares	\$503,000	\$511,920
92A(6)(a)	For a dependent partner(s) where there is one dependent child	\$452,700	\$460,730
92A(6)(b)	For the dependent child	\$50,300	\$51,190
92A(7)	For a dependent partner(s) where there is more than one dependent child but not more than 5 dependent children payable in the following shares:		
	total amount of	\$503,000	\$511,920
92A(7)(a)	To each dependent child	\$25,150	\$25,600
92A(7)(b)	To partner/partners	Balance	Balance
92A(8)	For a dependent partner(s) where there are more than 5 dependent children payable in the following shares:		
	total amount of	\$503,000	\$511,920
92A(8)(a)	To partner or partners in equal shares	\$377,250	\$383,940
92A(8)(b)	To the dependent children in equal shares	\$125,750	\$127,980
92A(8A)	Maximum lump sum for dependent children if no dependent partner	\$503,000	\$511,920
92A(8B)	Maximum lump sum for a partially dependent partner(s), and dependent partner(s) or dependent children	\$503,000	\$511,920

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
92A(9)	Maximum lump sum for any other dependants if no dependent partner or dependent child	\$503,000	\$511,920
92AA	Maximum amount for reimbursement of expenses incurred by non-dependent family members	\$30,000	\$30,530
WEEKLY PENSIONS FOR DEPENDANTS OF WORKER WHO DIES (AWE)			
During the first 13 weeks			
92B(3)(a)(ii)	Maximum weekly pension for a dependent partner for claims made before 5 April 2010	\$1,300	\$1,330
	Maximum weekly pension for a dependent partner for claims made on or after 5 April 2010	\$1,760	\$1,800
92B(4)(a)(ii)	Maximum weekly pension for 2 or more dependent partners in equal shares for claims made before 5 April 2010	\$1,300	\$1,330
	Maximum weekly pension for 2 or more dependent partners in equal shares for claims made on or after 5 April 2010	\$1,760	\$1,800
92B(5)(a)(ii)	Maximum weekly pension for one orphan child for claims made before 5 April 2010	\$1,300	\$1,330
	Maximum weekly pension for one orphan child for claims made on or after 5 April 2010	\$1,760	\$1,800
92B(6)(a)(ii)	Maximum weekly pension for 2 or more orphan children in equal shares for claims made before 5 April 2010	\$1,300	\$1,330
	Maximum weekly pension for 2 or more orphan children in equal shares for claims made on or after 5 April 2010	\$1,760	\$1,800

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
	After first 13 weeks until the end of 3 years		
92B(3)(b)(i)	Maximum weekly pension for a dependent partner for claims made before 5 April 2010	\$1,300	\$1,330
	Maximum weekly pension for a dependent partner for claims made on or after 5 April 2010	\$1,760	\$1,800
92B(3)(b)(ii)	Weekly pension calculation for a dependent partner where there are not more than 5 dependent children who are entitled to a pension and overall cap applies for claims made before 5 April 2010	\$1,300	\$1,330
	Weekly pension calculation for a dependent partner where there are not more than 5 dependent children who are entitled to a pension and overall cap applies for claims made on or after 5 April 2010	\$1,760	\$1,800
92B(3)(b)(iii)	Weekly pension for a dependent partner where there are more than 5 dependent children who are entitled to a pension and overall cap applies for claims made before 5 April 2010	\$865	\$887
	Weekly pension for a dependent partner where there are more than 5 dependent children who are entitled to a pension and overall cap applies for claims made on or after 5 April 2010	\$1,170	\$1,200
92B(4)(b)(i)	Maximum weekly pension for 2 or more dependent partners in equal shares for claims made before 5 April 2010	\$1,300	\$1,330

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
92B(4)(b)(ii)	Maximum weekly pension for 2 or more dependent partners in equal shares for claims made on or after 5 April 2010	\$1,760	\$1,800
	Weekly pension calculation for 2 or more dependent partners, where there are not more than 5 dependent children and overall cap applies for claims made before 5 April 2010	\$1,300	\$1,330
92B(4)(b)(iii)	Weekly pension calculation for 2 or more dependent partners, where there are not more than 5 dependent children and overall cap applies for claims made on or after 5 April 2010	\$1,760	\$1,800
	Weekly pension for 2 or more dependent partners, where there are more than 5 dependent children and overall cap applies in equal shares before 5 April 2010	\$865	\$887
	Weekly pension for 2 or more dependent partners, where there are more than 5 dependent children and overall cap applies in equal shares on or after 5 April 2010	\$1,170	\$1,200
92B(5)(b)(ii)	After first 13 weeks until child ceases to be eligible		
	Maximum weekly pension for one orphan child for claims made before 5 April 2010	\$1,300	\$1,330
	Maximum weekly pension for one orphan child for claims made on or after 5 April 2010	\$1,760	\$1,800

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
92B(6)(b)(ii)	Maximum weekly pension for 2 or more orphan children in equal shares for claims made before 5 April 2010	\$1,300	\$1,330
	Maximum weekly pension for 2 or more orphan children in equal shares for claims made on or after 5 April 2010	\$1,760	\$1,800
92B(7)(b)	Weekly pension calculation for each dependent child where there are not more than 5 dependent children and overall cap applies for claims made before 5 April 2010	\$1,300	\$1,330
	Weekly pension calculation for each dependent child where there are not more than 5 dependent children and overall cap applies for claims made on or after 5 April 2010	\$1,760	\$1,800
92B(8)(b)	Weekly pension for dependent children where there are more than 5 dependent children and overall cap applies in equal shares for claims made before 5 April 2010	\$430	\$441
	Weekly pension for dependent children where there are more than 5 dependent children and overall cap applies in equal shares for claims made before 5 April 2010	\$587	\$602
92B(11)	Total amount of weekly pensions for claims made before 5 April 2010	\$1,300	\$1,330
	Total amount of weekly pensions for claims made on or after 5 April 2010	\$1,760	\$1,800

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
PROVISIONAL PAYMENTS (CPI)			
92D(1)(b)	Maximum amount for medical and other costs	\$7,500	\$7,630
WEEKLY PAYMENTS (AWE)			
Weekly payments for First Entitlement Period			
Where worker has no current work capacity			
93A(1)(a)(ii)	Maximum weekly payment for claims made before 12 November 1997	\$1,040	\$1,070
93A(2)(a)(ii)	Maximum weekly payment for claims made on or after 12 November 1997 and before 5 April 2010	\$1,300	\$1,330
93A(3)(a)(ii)	Maximum weekly payment for claims made on or after 5 April 2010	\$1,760	\$1,800
Where worker has a current work capacity			
93A(1)(b)(ii)	Maximum weekly payment for claims made before 12 November 1997 — less worker's current weekly earnings	\$1,040	\$1,070
93A(2)(b)(ii)	Maximum weekly payment for claims made on or after 12 November 1997 and before 5 April 2010 — less worker's current weekly earnings	\$1,300	\$1,330
93A(3)(b)(ii)	Maximum weekly payment for claims made on or after 5 April 2010 — less worker's current weekly earnings	\$1,760	\$1,800

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
	Weekly payments for Second Entitlement Period		
	Where worker has no current work capacity		
93B(1)(a)(ii)	Maximum weekly payment for claims made before 12 November 1997 where worker has a serious injury — less 90% of the worker's current weekly earnings	\$1,040	\$1,070
93B(1)(b)(ii)	Maximum weekly payment for claims made before 12 November 1997 where worker does not have a serious injury	\$1,040	\$1,070
93B(2)(a)(ii)	Maximum weekly payment for claims made on or after 12 November 1997 and before 5 April 2010	\$1,300	\$1,330
93B(3)(a)(ii)	Maximum weekly payment for claims made on or after 5 April 2010	\$1,760	\$1,800
	Where worker has a current work capacity		
93B(1)(c)(ii)	Maximum weekly payment for claims made before 12 November 1997 where worker does not have a serious injury — less 80% of the worker's current weekly earnings	\$1,040	\$1,070
93B(2)(b)(ii)	Maximum weekly payment for claims made on or after 12 November 1997 and before 5 April 2010 — less 80% of the worker's current weekly earnings	\$1,300	\$1,330

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
93B(3)(b)(ii)	Maximum weekly payment for claims made on or after 5 April 2010 — less 80% of the worker's current weekly earnings	\$1,760	\$1,800
	Weekly payments after second entitlement period		
	Where worker has no current work capacity		
93C(2)(a)(ii)	Maximum weekly payment for claims made before 12 November 1997 where worker has a serious injury — less 90% of the worker's current weekly earnings	\$1,040	\$1,070
93C(2)(b)(ii)	Maximum weekly payment for claims made before 12 November 1997 where worker does not have a serious injury	\$1,040	\$1,070
93C(2)(c)(ii)	Maximum weekly payment for claims made on or after 12 November 1997 and before 5 April 2010	\$1,300	\$1,330
93C(2)(d)(ii)	Maximum weekly payment for claims made on or after 5 April 2010	\$1,760	\$1,800
	Continuation of weekly payments after second entitlement period		
	Compensation for incapacity arising from surgery		
93CA(1)(c)	Minimum current weekly earnings	\$151	\$155
	Where worker has a current work capacity		
93CD(4)(a)	Minimum weekly earnings for approval of an application for a worker who has returned to work	\$151	\$155

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
93CD(5)(a)(ii)	Maximum weekly payment for claims made before 12 November 1997 where an application under s. 92CD(1) has been approved — less 80% of worker's current weekly earnings	\$1,040	\$1,070
93CD(5)(b)(ii)	Maximum weekly payment for claims made on or after 12 November 1997 and before 5 April 2010 where an application under s. 92CD(1) has been approved — less 80% of worker's current weekly earnings	\$1,300	\$1,330
93CD(5)(c)(ii)	Maximum weekly payment for claims made on or after 5 April 2010 where an application under s. 92CD(1) has been approved — less 80% of worker's current weekly earnings	\$1,760	\$1,800
COMPENSATION FOR NON-ECONOMIC LOSS (CPI)			
Permanent Impairment — Calculations of Amounts of Non-economic Loss			
98C(2)(b)(i)	Where worker's impairment benefit rating is a modified whole person impairment of not less than 10% and less than 11%	\$10,570 \$9,010	\$10,760 \$9,170
98C(2)(b)(ii)	Where worker's impairment benefit rating is a modified spinal impairment of not less than 10% and less than 11%	\$10,570 \$9,010	\$10,760 \$9,170
98C(2)(c)(i)	Where worker's impairment benefit rating is not less than 10% and not more than 30%	\$17,040 \$2,560	\$17,340 \$2,610

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
98C(2)(c)(ii) (A)	Where worker's impairment benefit rating is a spinal impairment	\$17,040	\$17,340
	and is not less than 10% and not more than 30%	\$2,560	\$2,610
98C(2)(c)(ii) (B)	Maximum amount where worker's impairment benefit rating is a spinal impairment and is not less than 10% and not more than 30%	\$68,240	\$69,450
98C(2)(d)	Where worker's impairment benefit rating is more than 30% and	\$68,160	\$69,370
	not more than 70%	\$4,250	\$4,330
98C(2)(e)(i)	Where worker's impairment benefit rating is more than 70% and not	\$237,370	\$241,580
	more than 80%	\$26,570	\$27,040
98C(2)(e)(ii)	Maximum amount where worker's impairment benefit rating is more than		
	70% and not more than 80%	\$503,000	\$511,920
98C(2)(f)	Where worker's impairment benefit rating is more than 80%	\$503,200	\$511,920
	Psychiatric Impairment — Calculations of Amounts of Non-economic Loss		
98C(3)(b)	Where worker's degree of impairment is 30%	\$17,040	\$17,340
		\$2,560	\$2,610
98C(3)(c)	Where worker's degree of impairment is more than 30% and	\$68,160	\$69,370
	not more than 70%	\$4,250	\$4,330

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
98C(3)(d)(i)	Where worker's degree of impairment is more than 70% and	\$237,370	\$241,580
	not more than 80%	\$26,570	\$27,040
98C(3)(d)(ii)	Maximum amount where worker's degree of impairment is more than 70% and not more than 80%	\$503,000	\$511,920
98C(3)(e)	Where worker's degree of impairment is more than 80%	\$503,000	\$511,920
	Permanent Impairment — Calculation of Amounts of Non-economic Loss for Further Injury Industrial Deafness		
98C(3A)(a)	Where "T" is not less than 10% and not more than 30% and "P" is less than 10%	\$2,560 \$1,690	\$2,610 \$1,720
98C(3A)(b)	Where "T" is not less than 10% and not more than 30% and "P" is not less than 10%	\$2,560	\$2,610
98C(3A)(c)	Where "T" is more than 30% and "P" is less than 10%	\$4,250 \$2,560 \$1,690	\$4,330 \$2,610 \$1,720
98C(3A)(d)	Where "T" is more than 30% and "P" is not less than 10% and is less than 30%	\$4,250 \$2,560	\$4,330 \$2,610
98C(3A)(e)	Where "T" is more than 30% and "P" is not less than 30%	\$4,250	\$4,330
	Other non-economic loss		
98C(4)	Loss of a foetus or loss of more than one foetus	\$61,280	\$62,370
98C(7)	Maximum amount of compensation for more than one injury suffered on the same occasion	\$503,000	\$511,920

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
98C(8)	Maximum amount of compensation for more than one kind of non-economic loss for the same injury	\$503,000	\$511,920
NO DISADVANTAGE — COMPENSATION TABLE (AWE)			
98E	Total loss of the sight of both eyes	\$246,020	\$252,250
	Total loss of the sight of an only eye	\$246,020	\$252,250
	Loss of both hands	\$246,020	\$252,250
	Loss of both feet	\$246,020	\$252,250
	Loss of a hand and a foot	\$246,020	\$252,250
	Total loss of the right arm or of the greater part of the right arm	\$196,810	\$201,800
	Total loss of the left arm or of the greater part of the left arm	\$184,510	\$189,180
	Total loss of the right hand or of five fingers of the right hand, or of the lower part of the right arm	\$172,190	\$176,550
	Total loss of the left hand or of five fingers of the left hand, or of the lower part of the left arm	\$159,930	\$163,980
	Total loss of a leg	\$184,510	\$189,180
	Total loss of a foot	\$159,930	\$163,980
	Total loss of the lower part of the leg	\$172,190	\$176,550
	Total loss of the sight of one eye, together with the serious diminution of the sight of the other eye	\$184,510	\$189,180
	Total loss of hearing	\$159,930	\$163,980
	Total loss of the sight of one eye	\$98,390	\$100,880
	Loss of binocular vision	\$98,390	\$100,880

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
	Loss of eyeball (in addition to compensation for loss of sight of an eye)	\$54,130	\$55,500
	Total loss of power of speech	\$147,610	\$151,350
	Total loss of sense of taste or smell	\$41,830	\$42,890
	Total loss of senses of both taste and smell	\$83,650	\$85,770
	Total loss of male sexual organs	\$115,640	\$118,570
	Total loss of penis	\$115,640	\$118,570
	Total loss of one testicle	\$24,580	\$25,200
	Total loss of two testicles or an only testicle	\$115,640	\$118,570
	Total loss of female sexual organs	\$115,640	\$118,570
	Total loss of both breasts	\$115,640	\$118,570
	Total loss of one breast	\$73,790	\$75,660
	Total loss of the thumb of the right hand	\$73,790	\$75,660
	Total loss of the thumb of the left hand	\$63,970	\$65,590
	Total loss of the forefinger of the right hand	\$51,690	\$53,000
	Total loss of the forefinger of the left hand	\$44,270	\$45,390
	Total loss of two joints of the forefinger of the right hand	\$39,350	\$40,350
	Total loss of two joints of the forefinger of the left hand	\$29,510	\$30,260
	Total loss of a joint of the thumb	\$39,350	\$40,350
	Total loss of the first joint of the forefinger of the right hand	\$24,580	\$25,200
	Total loss of the first joint of the forefinger of the left hand	\$22,150	\$22,710

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
	Total loss of the first joint of the middle or little or ring finger of either hand	\$14,750	\$15,120
	Total loss of the middle finger of either hand	\$29,510	\$30,260
	Total loss of the little or ring finger of either hand	\$27,080	\$27,770
	Total loss of two joints of the middle finger of either hand	\$24,580	\$25,200
	Total loss of two joints of the little or ring finger of either hand	\$22,150	\$22,710
	Total loss of the great toe of either foot	\$54,130	\$55,500
	Total loss of a joint of the great toe of either foot	\$24,580	\$25,200
	Total loss of any other toe	\$14,750	\$15,120
	Total loss of a joint of any other toe	\$4,930	\$5,050
	Quadriplegia	\$246,020	\$252,250
	Paraplegia	\$246,020	\$252,250
	Total impairment of the spine	\$246,020	\$252,250
98E(5)	Maximum total amount of compensation allowable under 98E Table	\$246,020	\$252,250
MEDICAL AND LIKE SERVICES (CPI)			
99(1)(aa)	Maximum Family Counselling expenses	\$5,320	\$5,410
99(5)	Employer's Liability	\$582	\$592
125(1)(a)(iii)	Employer's initial liability for medical and like services	\$582	\$592
125A(3)(c)	Employer's initial liability for medical and like services	\$582	\$592
LIABILITY OF PRIOR INSURER (AWE)			
129B(7)	Minimum payments for contribution injury	\$12,890	\$13,220

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Section	Provision	Rate before 1 July 10	Rate from 1 July 10
ACTIONS FOR DAMAGES			
	Pecuniary Loss (CPI)		
134AB(22)(a)(i)	Threshold	\$51,310	\$52,220
134AB(22)(a)(ii)	Maximum	\$1,155,330	\$1,175,820
	Pain and Suffering (CPI)		
134AB(22)(b)(i)	Threshold	\$49,560	\$50,440
134AB(22)(b)(ii)	Maximum	\$503,000	\$511,920
	Pecuniary Loss (AWE)		
135A(7)(a)(i)	Threshold	\$51,310	\$52,610
135A(7)(a)(ii)	Maximum	\$1,155,330	\$1,184,600
	Pain and Suffering (CPI)		
135A(7)(b)(i)	Threshold	\$45,910	\$46,720
135A(7)(b)(ii)	Maximum	\$465,880	\$474,140
	Damages under Part III of the Wrongs Act 1958 (AWE)		
135C(2)	Death of a person	\$762,170	\$781,480
SELF-INSURERS			
Schedule 5	Application fee for approval as self-insurer (AWE)		
3(1) & 3(2)	Fee limit	\$47,570	\$48,780
PRE-INJURY AVERAGE WEEKLY EARNINGS (AWE)			
5A(8)	Where no rate applicable	\$1,760	\$1,800
5A(9)(b)	Deemed Pre-injury Average Weekly Earnings for a full- time student at time of completion of course	\$1,760	\$1,800
5A(11)(b)	Deemed Pre-injury Average Weekly Earnings for a full- time student at a primary or secondary school at time of completion of secondary school	\$1,040	\$1,070

³³ S. 112(1): The amendment proposed by section 98(Sch. 1 item 1.3) of the **Chiropractors Registration Act 1996**, No. 63/1996 is not included in this publication because the words "registered chiropractor and osteopath" appear in s. 112(5).

³⁴ S. 114(9): See note 21.

³⁵ S. 114B(2): See note 21.

³⁶ S. 114B(3): See note 21.

³⁷ S. 114B(4): See note 21.

³⁸ S. 114B(5): See note 21.

³⁹ Pt 4 Div. 7: Section 63(2) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

63 Administration by State Trust Corporation of Victoria

- (2) The Principal Act as amended by subsection (1) applies in respect of payments of compensation to which section 130 of the Principal Act applies which are paid after the commencement of subsection (1).

⁴⁰ S. 130: Section 63(3)(4) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

63 Administration by State Trust Corporation of Victoria

- (3) Subject to subsection (4), payments of compensation to which section 130 of the Principal Act applies which have been paid to the Authority in accordance with the Principal Act as in force before the commencement of subsection (1) are to continue to be administered by the Authority in accordance with the Principal Act as in force before that commencement.

- (4) On the appointed day—
- (a) the administration of payments of compensation to which subsection (3) applies is transferred to the State Trust Corporation of Victoria; and
 - (b) the Authority must transfer to the State Trust Corporation of Victoria such assets (including any money) as the Authority determines to be equivalent in value to the value of payments of compensation administered by the Authority.

⁴¹ S. 135: See note 7.

⁴² S. 135: Section 64(11) of the **Accident Compensation (Amendment) Act 1994**, No. 50/1994 reads as follows:

64 Amendment of sections 135, 135A and 135B

- (11) The amendments made to the Principal Act by this section—
- (a) do not affect the rights of the parties in the proceeding known as *Jim Isaac Robart v. Matchplan Pty. Ltd. (In Liquidation)* (No. 7267 of 1993) in the Supreme Court of Victoria; and
 - (b) do not affect any order or liability to pay costs, or payment of costs, made before the date on which the **Accident Compensation (Amendment) Act 1994** receives the Royal Assent.

⁴³ S. 135A: See note 7.

⁴⁴ S. 135A: See note 42.

⁴⁵ S. 135A(2A): Section 32(2) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

32 Amendment of section 135A

(2) Section 135A of the **Accident Compensation Act 1985** as amended by this section applies in respect of any proceedings brought on or after the commencement of this section.

⁴⁶ S. 135A(2B): See note 45.

⁴⁷ S. 135A(2C): See note 45.

⁴⁸ S. 135A(3A): Section 33(3) of the **Accident Compensation (Amendment) Act 1996**, No. 7/1996 reads as follows:

33 Amendment of section 135A—"serious injury"

(3) This section does not affect the rights of the parties in any proceedings commenced and determined before 16 May 1996.

⁴⁹ S. 135B: See note 7.

⁵⁰ S. 135B: See note 42.

⁵¹ Pt 5 (Heading and ss 139–155) amended by Nos 48/1986 ss 24, 25, 83/1987 s. 76, 64/1989 ss 21, 22, 37(1)(d), 18/1991 s. 12(1)(k)–(m), 67/1992 s. 64(7)(a)(8)(c)(10), 83/1992 s. 184(Sch. 6 item 1), 50/1993 ss 103–108, 109(1)(2), 50/1994 ss 68–70, 71(1)(2), 72–75, 7/1996 ss 34–38, 47/1996 s. 22, 60/1996 ss 23, 24(1), 25(a), 46/1998 s. 7(Sch. 1), 52/1998 s. 311(Sch. 1 item 1.8), 81/1998 s. 31, 26/2000 s. 25(4), 11/2001 s. 3(Sch. item 2.3), 28/2005 ss 3–5, 10, 46/2005 s. 6, 34/2007 s. 3, substituted by No. 9/2010 s. 126.

⁵² Pt 6 (Heading and ss 156–178) amended by Nos 48/1986 s. 26, 83/1987 ss 77–82(6) (as amended by No. 64/1989 s. 37(3)(c))(7), 83–86, 18/1988 ss 5, 6(1)(2), 64/1989 ss 16(1), 17–19, 35(k)–(m), 18/1991 ss 8(a)(b), 12(1)(n)(o), repealed by No. 67/1992 s. 48, new Pt 6 (Heading and s. 156) inserted by No. 67/1992 s. 49, amended by No. 50/1993 ss 81(h), 92(3)(b), 109(3), substituted as Pt 6 (Heading and ss 156–164) by No. 50/1994 s. 76, amended by Nos 47/1996 s. 23, 107/1997 ss 30(11)(w)(x), 52, 55(2), 81/1998 s. 26(1), 95/2003 ss 10, 11(b), 12, 102/2004 s. 24(2), 24/2006 s. 6.1.2(Sch. 7 item 1.2), 69/2006 s. 224(Sch. 3 item 1), repealed by No. 9/2010 s. 131.

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**GROUNDINGS FOR TERMINATION OF WEEKLY AND MEDICAL
AND LIKE BENEFITS (AS AN AID TO UNDERSTANDING)**

This table is intended for reference purposes only and, in accordance with section 36 of the **Interpretation of Legislation Act 1984**, does not form part of the **Accident Compensation Act 1985**. For more specific detail on the operation of the provisions referenced in the table, refer to relevant sections of the Act.

Grounds for Termination	AC Act section as at 1 July 2010
Worker is no longer entitled to weekly payments. This includes where worker is no longer incapacitated for pre-injury employment.	14(2)(b)
Worker obtained payments fraudulently.	114(3)
Worker returns to work full time within first or second entitlement period.	114(2)(c)(i)
Worker leaves Victoria, has their employment terminated for misconduct, resigns or reduces the hours worked for reasons unrelated to their capacity and in circumstances that do not invoke the exception that operates in s.93CDA.	114(2A)
Weekly payments have been paid or are payable for a claimed injury for a total of {104/130} weeks (whether consecutive or not) and the worker is assessed by the Authority or self-insurer as: <ul style="list-style-type: none">• having a current work capacity; or• having no current work capacity but this is not likely to continue indefinitely; or• where the worker is a pre-12 November 1997 claimant, not to have sustained a serious injury.	93C(1)
Worker ceases to reside in Australia and cannot provide evidence that they have no work capacity and will continue to do so indefinitely	97(2)
Worker injured within 130 weeks of retirement age or after retirement age and has received payments for 130 weeks.	93E

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Worker is beyond retirement age (and who doesn't have an entitlement under section 93E) and has received weekly payments for 13 weeks due to incapacity which resulted from in patient hospital treatment. ¹	93EA(1), 93EA(3)
Worker receiving weekly payments for an incapacity arising from surgery after the second entitlement period. ²	93CA and 114(9A)
Worker reaches retirement age, unless the injury was sustained within 130 weeks of retirement age or after retirement age (s.93E).	93F
Worker did not make reasonable efforts to actively participate and co-operate in planning for the worker's return to work in co-operation with the employer, Authority or self-insurer.	205* and 200
Worker did not use an occupational rehabilitation service provided in accordance with sections 99 and 99A (Division 2C) and co-operate with the provider of that service.	205* and 201
Worker did not, when requested to do so by the employer, Authority or self-insurer, actively participate and co-operate in any assessment of— (a) capacity for work, (b) rehabilitation progress, (c) future employment prospects.	205* and 202
Worker did not make reasonable efforts to return to work in suitable employment or pre-injury employment at the worker's place of employment or at another place of employment, in co-operation with the employer, Authority or self-insurer.	205* and 203
Worker did not participate in an interview with the representative of the Authority or self-insurer for the purpose of enhancing the worker's opportunities to return to work, and actively participate and co-operate in the interview to comply with his or her obligations under Division 3 of Part VIIB, and as required by the Authority or self-insurer.	205* and 204
Judgment is obtained, or a compromise or settlement made in respect of common law proceedings and pecuniary loss damages are awarded. ³	134AB(36)/135(18)

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Grounds to Reduce, Suspend or Vary Entitlement	AC Act Section as at 1 July 2010
<i>Reduction of weekly payment amount</i>	
Worker returns to work full time within first or second entitlement period.	114(2)(c)(i)
Worker who does not have capacity for pre injury employment but has returned to work in some capacity and changes their hours of work (subject to 114(2A)).	114(2)(c)(ii)
Payments for regular overtime or shift allowances are no longer included in PIAWE.	114(2)(c)(iii)
<i>Non-entitlement period</i>	
Worker temporarily absent from Australia for more than 28 days. ⁴	97(2A)
Worker imprisoned.	97(7)
Worker is in receipt of any disability, retirement or superannuation pension or receives income from superannuation or retirement benefit lump sum amount that has not been deposited with a complying superannuation fund or a complying approved deposit fund. ⁵	96
<i>Suspension of weekly payments</i>	
Worker unreasonably refuses to submit to or unreasonably obstructs a medical examination.	s 67(4) & 67(5), s 112(2) & (4)
Grounds to Terminate Entitlement to Medical and Like Expenses	AC Act Section as at 1 July 2010
Expenses claimed are not reasonable and/or necessary.	99(1), 99(2)
Services claimed are not for an injury which creates an entitlement to compensation under the Act.	99(1)
52 weeks after entitlement to weekly payments has ceased unless: <ul style="list-style-type: none"> • Worker has received a common law settlement or award of pecuniary loss damages under this act or section 93 of the Transport Accident Act 1986 or accepts a voluntary settlement of weekly payments; 	

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<ul style="list-style-type: none">• The worker has returned to work and could not remain at work unless the medical and like service was provided, the worker requires surgery or the worker is assessed as having a serious injury under s.91E of the Act;• The worker requires modification of a prosthesis;• The medical and like services is essential to ensuring the worker's health or ability to undertake necessary tasks of daily living does not significantly deteriorate.	99(11), 99(12), 99(13)
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¹ Not technically a ground for termination as section 93EA(3) makes it clear a worker is entitled to a limited period of payments only (13 weeks) if this section applies. No termination is required however a worker's entitlement ceases after the period specified.

² As above, not a ground for termination but this section limits the period of payments and a worker's entitlement ceases after the period specified.

* Section 205 establishes a multi stage process where a worker does not comply with their return to work obligations imposed under sections 200, 201, 202, 203 and 204 (Division 3). The procedure is designed to encourage workers to return to work and section 205 provides the Authority or self insurer may either suspend or terminate weekly payments or cease and determine entitlement. See section 205 for details on the operation of this provision.

³ Entitlement ceases but no notice of termination is required.

⁴ Non entitlement period applies after 28 days.

⁵ Section 96(2) relates to a lump sum and section 96(6) relates to a pension. These sections may also apply to reduce weekly payment amount.

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