

TASMANIA

WORKERS REHABILITATION AND COMPENSATION AMENDMENT BILL 2009

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WORKERS REHABILITATION AND COMPENSATION AMENDMENT BILL 2009

*(Brought in by the Minister for Workplace Relations, the
Honourable Lisa Maria Singh)*

A BILL FOR

**An Act to amend the *Workers Rehabilitation and
Compensation Act 1988***

Be it enacted by His Excellency the Governor of Tasmania, by
and with the advice and consent of the Legislative Council and
House of Assembly, in Parliament assembled, as follows:

1. Short title

This Act may be cited as the *Workers
Rehabilitation and Compensation Amendment
Act 2009*.

2. Commencement

The provisions of this Act commence on a day
or days to be proclaimed.

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3. Principal Act

In this Act, the *Workers Rehabilitation and Compensation Act 1988** is referred to as the Principal Act.

4. Long title amended

The long title of the Principal Act is amended by inserting “**to promote the prevention of injuries in the workplace,**” after “**workers,**”.

5. Section 2A inserted

After section 2 of the Principal Act, the following section is inserted in Part I:

2A. Objects of Act

The objects of this Act are to establish a rehabilitation and compensation scheme for workplace injuries that –

- (a) provides for the prompt and effective management of workplace injuries in a manner that promotes and assists the return to work of injured workers as soon as possible; and
- (b) provides fair and appropriate compensation to workers and

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their dependants for workplace injuries; and

- (c) assists in securing the health, safety and welfare of workers and in reducing the incidence of workplace injuries; and
- (d) provides an effective and economical mechanism for resolving disputes relating to the treatment and management of, and compensation in relation to, workplace injuries; and
- (e) is efficiently and effectively administered; and
- (f) is fair, affordable, efficient and effective.

6. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “practitioner”:

“primary treating medical practitioner”, in relation to a worker, means the medical practitioner referred to in a notice given by the worker in accordance with section 143G(1);

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- (b) by omitting “that place.” from the definition of “working day” and substituting “that place;”;
- (c) by inserting the following definitions after the definition of “working day”:

“workplace injury”, in relation to a worker, means an injury for which the worker’s employer is or may be liable to pay compensation under this Act;

“workplace rehabilitation provider” means a person who is accredited under section 77C to provide workplace rehabilitation services;

“workplace rehabilitation services” means –

- (a) initial workplace rehabilitation assessment;
or
- (b) assessment of the functional capacity of a worker; or
- (c) workplace assessment; or
- (d) job analysis; or
- (e) advice concerning job modification; or
- (f) rehabilitation counselling;
or

- (g) vocational assessment; or
- (h) advice or assistance in relation to job seeking; or
- (i) advice or assistance in arranging vocational re-education or training; or
- (j) any other service that is prescribed by the regulations.

7. Section 10 amended (Functions of Board)

Section 10(f) of the Principal Act is amended by omitting “effective injury management of injured workers” and substituting “purpose and principles of Part XI”.

8. Section 22 amended (Record of Tribunal)

Section 22(1)(d) of the Principal Act is amended by omitting “tape”.

9. Section 33A inserted

After section 33 of the Principal Act, the following section is inserted in Part IV:

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33A. Employer given notice of injury to advise worker of right to claim

An employer who is informed by a worker of an injury to the worker must, within 14 days, serve on the worker the prescribed notice in writing, unless the employer is informed of the injury by the service on the employer of a claim for compensation.

Penalty: Fine not exceeding 10 penalty units.

10. Section 36 amended (Employer to forward accident report and claim)

Section 36 of the Principal Act is amended as follows:

(a) by inserting the following subsection before subsection (1):

(1A) An employer must, within 48 hours of receiving a claim for compensation under section 35, notify the employer's insurer of the claim.

(b) by inserting the following subsections after subsection (3):

(4) If an employer does not comply with subsection (1A) in relation to a worker then, despite any contract of insurance with the

employer in accordance with section 97(1), the employer's insurer is not liable to indemnify the employer for the relevant amount that the employer is liable to pay, or has paid, to the worker by way of weekly payments for the relevant period.

(5) In this section –

- (a) the relevant amount is the weekly payment payable to the worker within the relevant period; and
- (b) the relevant period means the period that –
 - (i) begins on the day, all or part of which occurs after the end of the 48-hour period referred to in subsection (1A); and
 - (ii) ends on, and includes, all of the day on which the employer notifies the insurer of the claim.

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11. Section 38 amended (Effect of failure to make claim)

Section 38(2) of the Principal Act is amended by inserting after paragraph (a) the following paragraph:

- (aa) a failure by the worker's employer to comply with section 33A in relation to the injury to which the worker's claim for compensation relates; and

12. Section 39 substituted

Section 39 of the Principal Act is repealed and the following section is substituted:

39. Employer to give claimant notice of status of claim within 28 days

- (1) If an employer receives a claim for compensation from a worker under section 35, the employer or the employer's insurer, within 28 days –
 - (a) must notify the worker in writing as to whether a decision has been made to accept, or not to accept, liability for the injury to which the claim relates; and
 - (b) if no decision has been made to accept, or not to accept, liability for the injury, must specify in the notice –

(i) the reasons why the decision has not been made; and

(ii) the steps the employer, or the employer's insurer, intends to take before making the decision.

Penalty: Fine not exceeding 10 penalty units.

(2) A person referred to in subsection (1) is not required to comply with that subsection if another person referred to in that subsection complies with the subsection.

13. Section 56 amended (Provisions relating to evidence and production of documents)

Section 56 of the Principal Act is amended as follows:

(a) by omitting from subsection (2) "tape recording" and substituting "recording, by mechanical or electronic or other means,";

(b) by omitting from subsection (3) "tape";

(c) by omitting subsection (4) and substituting the following subsection:

(4) Any recording and notes of a proceeding filed in accordance

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with subsection (3) are to be kept for a period of 12 months from the completion of the proceeding or a longer period determined by the Tribunal.

14. Section 67 amended (Amount of compensation in case of death)

Section 67 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “369 units” and substituting “415 units”;
- (b) by omitting from subsection (2)(a) “369 units” and substituting “415 units”;
- (c) by omitting from subsection (2)(c) “369 units” and substituting “415 units”;
- (d) by omitting from subsection (3) “369 units” and substituting “415 units”.

15. Section 67A amended (Weekly payments in case of death)

Section 67A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(b) “10%” and substituting “15%”;
- (b) by omitting from subsection (2)(a) “13 weeks” and substituting “26 weeks”;

- (c) by omitting from subsection (2)(b) “85%” and substituting “90%”;
- (d) by omitting from subsection (2)(b) “13 weeks” and substituting “26 weeks”.

16. Section 69 amended (Amount of compensation in case of incapacity)

Section 69(3) of the Principal Act is amended by inserting “in accordance with the worker’s entitlement under the worker’s contract of employment or industrial instrument” after “decreases”.

17. Section 69B amended (Period for which benefits are payable)

Section 69B of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “13 weeks” and substituting “26 weeks”;
- (b) by omitting from subsection (1)(b) “85%” and substituting “90% (or, if subsection (2) applies to the worker, 95%)”;
- (c) by omitting from subsection (1)(b) “13 weeks” and substituting “26 weeks”;

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(d) by omitting paragraph (c) from subsection (1) and substituting the following paragraph:

(c) 80% (or, if subsection (2) applies to the worker, 85%) of the weekly payment for the period of incapacity exceeding 78 weeks but not exceeding –

- (i) 9 years from the date of the initial incapacity, if the worker's permanent impairment (if any), at a percentage of the whole person, is less than 15% or is not assessed; or
- (ii) 12 years from the date of the initial incapacity, if the worker's permanent impairment, assessed at a percentage of the whole person, is 15% or more but less than 20%; or
- (iii) 20 years from the date of the initial incapacity, if the worker's permanent impairment, assessed at a percentage of the whole person, is 20% or more but less than 30%; or
- (iv) the period extending from the date of the initial

incapacity to the day on which the entitlement of the worker ceases in accordance with section 87, if the worker's permanent impairment, assessed at a percentage of the whole person, is 30% or more.

(e) by omitting subsection (2) and substituting the following subsections:

(2) For the purposes of paragraphs (b) and (c) of subsection (1), this subsection applies to a worker in respect of each week or part of a week, within the period referred to in those paragraphs, in respect of which –

(a) there is medical evidence that the worker is unable to perform the worker's usual duties with the employer; and

(b) there is medical evidence that the worker is able to return to perform suitable alternative duties with the employer; and

(c) the employer does not enable the worker to

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undertake suitable
alternative duties as part
of the worker's
employment by the
employer.

(2A) Despite subsection (1), a weekly payment is not reduced by a percentage specified in subsection (1)(b) or (c) in respect of any week in which the worker engages in work, for 50% or more of the worker's normal weekly hours, under the worker's approved return-to-work plan, or approved injury management plan, within the meaning of Part XI.

(2B) For the purposes of subsection (2A), if the worker was employed by the employer for more than 14 days before the date of the worker's initial incapacity, the worker's normal weekly hours are the average number of hours per week for which the worker was employed by the employer.

(2C) For the purposes of subsection (2A), if the worker was employed by the employer for 14 days or less before the date of the initial incapacity, the normal weekly hours of the

worker are taken to be the hours per week –

- (a) for which the worker agreed to work in the pay period in which the worker's incapacity arose; or
- (b) for which the worker was rostered to perform work in the pay period in which the worker's incapacity arose –

whichever is the higher.

(2D) In computing the normal weekly hours of the worker for the purposes of subsections (2B) and (2C), any overtime or excess hours are to be disregarded unless –

- (a) the overtime or excess hours were a requirement of the worker's contract of employment; and
- (b) the worker worked overtime or excess hours in accordance with a regular and established pattern and in accordance with a roster; and

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(c) the pattern was substantially uniform as to the number of overtime or excess hours worked; and

(d) the worker would have continued to work overtime or excess hours in accordance with the established pattern if the worker had not been incapacitated.

(2E) Subject to section 87, a worker –

(a) to whom subsection (1)(c)(i) applies ceases to be entitled to weekly payments under section 69 on the expiration of 9 years after the date of the initial incapacity; and

(b) to whom subsection (1)(c)(ii) applies ceases to be entitled to weekly payments under section 69 on the expiration of 12 years after the date of the initial incapacity; and

(c) to whom subsection (1)(c)(iii)

applies ceases to be entitled to weekly payments under section 69 on the expiration of 20 years after the date of the initial incapacity; and

- (d) to whom subsection (1)(c)(iv) applies ceases to be entitled to weekly payments under section 69 on the expiration of the day on which the entitlement of the worker ceases in accordance with section 87.

18. Section 70 amended (Computation of normal weekly earnings)

Section 70(2)(d) of the Principal Act is amended by omitting “paragraph (c)” and substituting “paragraph (b)”.

19. Section 71 amended (Compensation for permanent impairment)

Section 71 of the Principal Act is amended as follows:

- (a) by omitting the formula from subsection (1)(b) and substituting the following formula:

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$$\{18 + [6.1 \times (\text{WPI} - 5)]\} \times \text{BS}$$

- (b) by omitting from subsection (1)(c) “369 units” and substituting “415 units”;
- (c) by omitting the formula from subsection (2)(b) and substituting the following formula:

$$\{18 + [6.1 \times (\text{WPI} - 5)]\} \times \text{BS}$$

- (d) by omitting from subsection (2)(c) “369 units” and substituting “415 units”;
- (e) by inserting the following subsections after subsection (2):
 - (3) For the purposes of this section and section 138AB(4), a worker who suffers an injury resulting in, or consisting in whole or in part of, the loss of a foetus that the worker has carried for at least 16 weeks since conception is to be taken to have suffered a permanent impairment, in relation to that loss, that has been assessed at a percentage of the whole person equal to 20%.
 - (4) The degree of impairment of a person for the purposes of subsection (3) and section 138AB(4) in respect of a workplace injury is in addition to any other degree of impairment that the person may be assessed

to have suffered as a result of the injury.

20. Section 72 amended (Assessment of degree of impairment)

Section 72(2)(d) of the Principal Act is amended by omitting “is to be disregarded” and substituting “is not to be taken into account in assessing the degree of the impairment resulting from the injury”.

21. Section 74 amended (Interpretation of Division 2 of Part VI)

Section 74 of the Principal Act is amended as follows:

- (a) by inserting the following definition after the definition of “hospital services”:

“household services” means a service provided to a worker, other than by a member of the family of the worker, that is a service –

- (a) of a domestic nature, including, but not limited to, cooking, cleaning, and laundry or gardening services; and
- (b) required for the proper running and maintenance

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of the worker's residential
premises;

(b) by omitting "motor vehicle." from paragraph (c) of the definition of "rehabilitation services" and substituting "motor vehicle –";

(c) by inserting the following after paragraph (c) in the definition of "rehabilitation services":

"and includes workplace
rehabilitation services;"

(d) by inserting the following definition after the definition of "rehabilitation services":

"road accident rescue services"
means services provided for the
purpose of extricating a worker
from a vehicle in which the
worker has been injured.

22. Section 75 amended (Additional compensation for medical and other services)

Section 75 of the Principal Act is amended as follows:

(a) by inserting the following subsection before subsection (1):

(1A) Subsection (1) applies to an
employer of a worker if –

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- (a) the employer has accepted, or is to be taken under section 81AB to have accepted, liability to pay compensation in accordance with this Act for an injury to the worker; or
 - (b) the employer has been determined by the Tribunal or a court to be liable to pay compensation in accordance with this Act for an injury to the worker; or
 - (c) section 77AB applies to the worker.
- (b) by omitting from subsection (1) “Where an employer of a worker is, pursuant to section 25, liable to pay compensation in accordance with this Act,” and substituting “If this subsection applies to an employer of a worker,”;
 - (c) by inserting in subsection (1)(a) “household services, road accident rescue services” after “rehabilitation services,”;
 - (d) by omitting paragraph (b) from subsection (1) and substituting the following paragraph:

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- (b) if the worker dies as a result of the worker's injury –
 - (i) the reasonable expenses, not being more than the amount prescribed by regulations, of the worker's burial or cremation; and
 - (ii) the reasonable costs of counselling services provided to members of the family by counselling professionals, up to a total amount of all such costs that is not more than the amount prescribed by regulations.
- (e) by omitting subsection (2) and substituting the following subsections:
 - (2) If a worker was entitled to weekly payments in respect of an injury, the worker's entitlement to compensation under subsection (1)(a) for a service in relation to the injury ceases 52 weeks after the lawful termination of the weekly payments, unless the Tribunal makes a determination in relation to the service under subsection (2AB).

(2AA) If a worker is not entitled to weekly payments in respect of an injury in relation to which a claim for compensation has been made, the worker's entitlement to compensation under subsection (1)(a) for a service in relation to the injury ceases 52 weeks after the date the claim is made, unless the Tribunal makes a determination in relation to the service under subsection (2AB).

(2AB) If a worker's entitlement to compensation for an expense, referred to in subsection (1)(a), for a service provided to the worker has ceased in accordance with subsection (2) or (2AA), the Tribunal may order that, despite those subsections, the worker is entitled to compensation for –

(a) the expense; or

(b) expenses for services, specified in the determination, that are services referred to in subsection (1)(a) that have been or may be provided to a worker.

(2AC) The Tribunal may only make a determination under subsection (2AB) in relation to a

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service provided, or to be provided, to a worker, if –

- (a) the worker has returned to work and the worker requires surgery or cannot reasonably be expected to remain at work unless the service is provided; or
 - (b) the service consists of, or relates to, a modification, replacement or maintenance of a prosthesis of the worker; or
 - (c) the service is essential to ensure that the worker's health, or ability to undertake the necessary activities of daily life, does not significantly deteriorate.
- (f) by inserting in subsection (3) “or household services” after “attendance services”;
- (g) by omitting subsection (10) and substituting the following subsection:
- (10) In this section –
- “counselling professionals”**
means –

- (a) medical practitioners, registered psychologists or social workers; or
- (b) counsellors who are members of, or who have qualifications recognised by, the Australian Counselling Association;

“counselling services” means services provided to a person to assist the person to cope with the psychological impact of the death of a worker;

“medical treatment”, in relation to a worker, includes any attendance, examination, treatment, test or analysis provided to or carried out on the worker.

23. Section 76 amended (Additional compensation for travelling expenses)

Section 76(3) of the Principal Act is amended by omitting “General Conditions of Service Award

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made by the Tasmanian Industrial Commission.”
and substituting “Tasmanian State Service
Award or any industrial award, agreement or
determination that replaces that award.”.

24. Section 76A inserted

After section 76 of the Principal Act, the
following section is inserted in Division 2:

**76A. Account to be forwarded to employers and
insurers**

- (1) A worker who receives an account for
payment of an expense under this
Division for which the worker’s
employer is or may be liable to pay is to
take reasonable steps to ensure that the
account is forwarded to the employer
within 7 days.
- (2) An employer who receives an account
for payment of an expense under this
Division for which the employer is or
may be liable to pay is to take reasonable
steps to ensure that within 7 days the
account is forwarded to the employer’s
insurer.

**25. Section 77AA amended (Employer to pay claim or
refer it to Tribunal)**

Section 77AA of the Principal Act is amended as
follows:

- (a) by inserting the following subsection before subsection (1):

(1AA) Subsection (1) applies to an employer of a worker if –

- (a) the employer has accepted, or is to be taken under section 81AB to have accepted, liability to pay compensation in accordance with this Act for an injury to the worker; or

- (b) the employer has been determined by the Tribunal or a court to be liable to pay compensation in accordance with this Act for an injury to the worker.

- (b) by omitting from subsection (1) “Division 2 of Part VI, an employer” and substituting “this Division, an employer to whom this section applies”;

- (c) by omitting from subsection (4) “Division 2 of Part VI” and substituting “this Division”.

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26. Sections 77AB and 77AC inserted

After section 77AA of the Principal Act, the following sections are inserted in Division 2:

77AB. Employer's liability for expenses less than \$5 000 if liability not accepted or determined

(1) This section applies to an employer of a worker who has made a claim for compensation if –

(a) either –

(i) the employer has not accepted, or is not to be taken under section 81AB to have accepted, liability to pay compensation for an injury to the worker; or

(ii) the employer has not been determined by the Tribunal or a court to be liable to pay compensation for an injury to the worker; and

(b) the Tribunal has not made orders under either section 81A(3)(c) or (d) in relation to the injury to the worker; and

(c) the employer receives from an injured worker a claim for payment of an expense under this Division; and

- (d) the amount of the expense, when combined with amounts for expenses under this Division that the employer has already paid in relation to the worker's injury, is not more than \$5 000.
- (2) If this section applies to an employer, the employer, within 28 days of receiving a claim for payment of an expense referred to in subsection (1)(c) –
 - (a) must pay the expense; or
 - (b) if the employer is of the opinion that the expense is unreasonable or unnecessary, must –
 - (i) serve the worker with a notice specifying why the expense is unreasonable or unnecessary; and
 - (ii) notify in writing the service provider who rendered the account that liability for the expense is disputed because the expense is unreasonable or unnecessary and give the reasons why the expense is unreasonable or unnecessary; and
 - (iii) refer the dispute to the Tribunal under this section.

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- (3) If an employer pays an expense in accordance with subsection (2), the payment is not, in any subsequent proceedings under this Act, to be construed as an admission of liability.
- (4) If an employer who receives from a worker a claim for payment of an expense under this Division pays the expense under this section –
 - (a) the payment is not recoverable from the worker by the employer, unless an order is made in relation to the amount under section 77AC(5); and
 - (b) the payment, except for the amount payable by the employer under section 97(1A) and (1B) and any amount that the employer is entitled to recover from the worker by virtue of an order under section 77AC(5), is recoverable by the employer from the employer's insurer.

77AC. Proceedings before Tribunal under section 77AB

- (1) The referral of a dispute to the Tribunal under section 77AB is to be accompanied by –
 - (a) the prescribed fee; and

- (b) all evidentiary material on which the employer intends to rely at the hearing of the matter.
- (2) An employer who fails to lodge evidentiary material under subsection (1)(b) may not rely on that material unless the Tribunal otherwise allows.
- (3) The Tribunal must –
 - (a) if the Tribunal is not satisfied that it is reasonably arguable that an expense is unreasonable or unnecessary, order the employer to pay the expense; or
 - (b) if the Tribunal is satisfied that it is reasonably arguable that an expense, type of expense or any treatment is unreasonable or unnecessary, order that the employer is not liable to pay the expense, such expenses or such treatment.
- (4) If a dispute is referred to the Tribunal under section 77AB, the onus of proving that the expense is unreasonable or unnecessary lies on the employer.
- (5) The Tribunal may order that an employer is entitled to recover from a worker a payment for an expense that the employer has paid as required by section 77AB, if the Tribunal is satisfied

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that the worker's claim for payment of
the expense was fraudulent.

27. Section 77A amended (Provision of certain services)

Section 77A of the Principal Act is amended by inserting after subsection (3) the following subsections:

- (4) A person (in this section referred to as a "provider") is not to provide workplace rehabilitation services to another person for the purposes of this Act (including by reason only of supplying to the other person the services of a person employed or engaged by the provider) unless the provider has been accredited by the Board as a workplace rehabilitation provider.
- (5) Subsection (4) does not apply to a person, employed or engaged by the provider, who provides services to another person on behalf of the provider, if the provider is accredited by the Board.

28. Section 77B amended (Application for accreditation)

Section 77B(2) of the Principal Act is amended by omitting "section 77A(2) or (3)" and substituting "section 77A(3) or (4)".

29. Section 77C amended (Grant, &c., of accreditation)

Section 77C of the Principal Act is amended as follows:

- (a) by inserting the following paragraph after paragraph (a) in subsection (2):
 - (ab) has fulfilled the prescribed requirements, if any; and
- (b) by inserting the following subsection after subsection (2):
 - (3) The Board may grant accreditation subject to the conditions or restrictions it thinks fit.

30. Section 77D substituted

Section 77D of the Principal Act is repealed and the following section is substituted:

77D. Duration of accreditation

- (1) Except in a case to which subsection (2) applies, an accreditation remains in force for the period that the Board determines, unless it is sooner revoked or suspended in accordance with section 77F.
- (2) The accreditation of a person as a workplace rehabilitation provider remains in force for –

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(a) 3 years; or

(b) a shorter period specified on the grant of accreditation –

unless it is sooner revoked or suspended in accordance with section 77F.

31. Section 77F amended (Revocation or suspension of accreditations)

Section 77F(1) of the Principal Act is amended by inserting after paragraph (b) the following paragraph:

(ba) that the accredited medical practitioner or accredited person has failed to comply with the principles set out in section 139(2); or

32. Section 81AA amended (Payments not admission of liability)

Section 81AA(1)(d) of the Principal Act is amended by inserting “or an amount referred to in section 36(4)” after “(1B)”.

33. Section 81AC inserted

After section 81AB of the Principal Act, the following section is inserted in Division 1:

81AC. Tribunal may order compensation to be paid if employer taken to have accepted liability

If, under section 81AB, an employer is taken to have accepted liability in respect of a claim for compensation in relation to an injury to a worker, the Tribunal may make one or more of the following orders in relation to the employer:

- (a) order the employer to make weekly payments in respect of the worker from the date determined by the Tribunal;
- (b) order the employer to pay the costs of an expense payable under Division 2 of Part VI in respect of the injury.

34. Section 85 repealed

Section 85 of the Principal Act is repealed.

35. Section 86 amended (Cases in which employer may terminate or reduce payments)

Section 86(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “injury;” and substituting “injury; or”;
- (b) by omitting paragraph (d);

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- (c) by omitting from paragraph (e) “section 69B(2)” and substituting “section 69B(2E)”.

36. Section 89 repealed

Section 89 of the Principal Act is repealed.

37. Part VII, Division 1A inserted

After section 90 of the Principal Act, the following Division is inserted in Part VII:

Division 1A – Medical examinations and independent medical reviews

90A. Workers may be required to submit to independent medical reviews

- (1) For the purposes of this Act, an independent medical review of a worker is a review, conducted by a single medical practitioner (other than a medical practitioner chosen by the worker) who has expertise in a field, or a part of a field, relevant to the worker’s injury, and may include –
 - (a) one or more examinations of the worker; and
 - (b) a review of any diagnostic test results, or other medical records, in respect of the worker.

- (2) If a worker claims compensation or is receiving weekly payments, the worker's employer, or the employer's insurer, may require the worker to submit to an independent medical review of the worker by a medical practitioner.
- (3) A worker may only be required under subsection (2) to submit to an independent medical review if the employer or the employer's insurer –
 - (a) has discussed with the worker's primary treating medical practitioner the reasons why it is intended to have the review conducted; and
 - (b) has informed the worker, in writing, of the reasons why it is intended to have the review conducted.
- (4) A worker who is required under subsection (2) to submit to an independent medical review by a medical practitioner –
 - (a) is to –
 - (i) submit, at a reasonable time, and at a reasonable place, of which the worker has been given reasonable notice in writing, to the review, including any

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examination conducted by
the medical practitioner as
part of the review; and

- (ii) be taken to have given
consent to the provision,
to a medical practitioner
nominated by the
worker's employer, of any
medical reports or records
that relate to the injury to
which the worker's claim
for compensation relates;
or

- (b) is to, within 30 days, refer the
matter under section 90C(2) to
the Tribunal.

- (5) Subject to subsection (6), a worker is not
required to submit to more than one
independent medical review in any 3-
month period.

- (6) Despite subsection (5), a worker is
required to submit to an independent
medical review if –

- (a) the worker has suffered multiple
injuries or the worker's injury
requires the consideration of
medical practitioners who are
specialists in different fields or
aspects of the injury; and

- (b) the review is conducted by a
medical practitioner specialising

in a different injury, or a different field or different aspect of the injury, to the previous practitioner who conducted a review in the 3-month period.

- (7) If a medical practitioner conducting an independent medical review reports that any medical or surgical treatment specified by the practitioner will terminate or shorten the period of incapacity of the worker to whom the report relates, the following provisions apply:
- (a) subject to paragraph (b), the worker must submit to that treatment;
 - (b) if the worker notifies the employer, not later than 14 days after the date on which a copy of the practitioner's report has been provided to the worker in accordance with section 90B(4), that the worker, after consulting with the worker's primary treating medical practitioner, is not satisfied with the report, the worker must submit to an examination by another medical practitioner selected by the worker who may be, but is not required to be, the worker's primary treating medical practitioner;

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- (c) the employer or the employer's insurer is to pay for the examination referred to in paragraph (b);
- (d) if the report, provided in accordance with section 90B(2), of the medical practitioner who makes an examination in accordance with paragraph (b) is in agreement with the report provided under section 90B(1) by the medical practitioner conducting the independent medical review, the worker must as soon as practicable submit to the treatment specified in the last-mentioned report.

90B. Reports in relation to reviews

- (1) After an independent medical review of a worker is conducted under section 90A by a medical practitioner, the medical practitioner –
 - (a) must prepare a report in respect of the review; and
 - (b) must provide the report to the person who required the worker to submit to the review; and
 - (c) must not provide the report to the worker.

- (2) After an examination is conducted under section 90A(7)(b) by a medical practitioner, the medical practitioner –
 - (a) must prepare a report in respect of the examination; and
 - (b) must provide the report to the person who required the worker to submit to the review as a result of which the examination was conducted; and
 - (c) must not provide the report to the worker, unless the medical practitioner is the worker's primary treating medical practitioner.
- (3) A person to whom a report of a review or examination is provided under subsection (1) or (2) must, within 7 days, serve a copy of the report on –
 - (a) the worker's primary treating medical practitioner, unless the person conducting the examination was the primary treating medical practitioner; and
 - (b) the injury management co-ordinator to whom the worker has been assigned under section 143B.

Penalty: Fine not exceeding 10 penalty units.

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- (4) If a report is served on a primary treating medical practitioner under this section or relates to an examination conducted by that practitioner under section 90A(7)(b) or otherwise, the primary treating medical practitioner must provide the report to the worker.

90C. Disagreements &c. about reviews

- (1) Subsections (2) and (3) apply in relation to a worker if the worker –
 - (a) refuses without reasonable excuse to submit to an independent medical review or examination when required under section 90A to do so; or
 - (b) in any way obstructs such a review or examination; or
 - (c) refuses to submit to, or undertake, any treatment required in accordance with section 90A(7).
- (2) If this subsection applies to a worker, the worker, the worker's employer or the employer's insurer may refer the matter of the worker's refusal or obstruction to the Tribunal.
- (3) If this subsection applies to a worker, the worker's right to compensation and to take any proceedings under this Act in

relation to compensation is, except if the treatment to which the worker has refused to submit is surgical treatment, suspended until the matter has been determined by the Tribunal.

(4) If –

(a) a copy of a report is served under this Division on a worker's primary treating medical practitioner, the worker's employer, or the employer's insurer; and

(b) the worker, employer or employer's insurer are unable to agree as to –

(i) whether, or to what extent, the worker's incapacity is due to the injury in respect of which the worker is claiming or receiving compensation; or

(ii) the worker's condition or fitness for employment –

the worker, the employer or the employer's insurer may refer the matter to the Tribunal.

(5) In determining whether an independent medical review, or an examination of a worker, ought to be conducted, the

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Tribunal must have regard to the following matters:

- (a) whether the reviewer has the appropriate expertise to properly assess the worker's injury;
- (b) whether, in the circumstances, an excessive number of reviews or examinations have been conducted in respect of the worker;
- (c) whether the worker has previously made a complaint, on reasonable grounds, to the worker's employer or the employer's insurer about the conduct of the medical practitioner who it is proposed will conduct the review;
- (d) the location and timing of the review –

and may have regard to any other matter that the Tribunal thinks fit.

- (6) In determining any matter referred to it under subsection (2), the Tribunal may, if the payment of compensation has been suspended under subsection (3), specify –
 - (a) whether compensation may be paid to the worker in respect of that period of suspension; and

- (b) the period of that suspension in respect of which the worker is entitled to be paid compensation.

90D. Reliance on medical reports

- (1) If a worker has submitted to an independent medical review under section 90A by a medical practitioner, a report in relation to the review, and any evidence of the medical practitioner, cannot be used as evidence in respect of a claim for compensation unless the report is served on the worker.
- (2) If a worker has been examined under section 90A(7)(b) by a medical practitioner chosen by the worker, a report in relation to the examination, and any evidence of the medical practitioner, cannot be used as evidence in respect of a claim for compensation unless the report is served on the worker's employer.
- (3) If a worker has been examined, otherwise than under section 90A(7)(b), by a medical practitioner chosen by the worker, a report in relation to the examination, and any evidence of the medical practitioner, cannot be used as evidence in respect of a claim for compensation unless the report is served on the worker's employer.

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38. Section 97 amended (Obligation of employers to insure)

Section 97 of the Principal Act is amended by inserting after subsection (6) the following subsection:

- (6A) If an employer of more than 50 persons at a workplace accepts or renews an insurance policy referred to in this Act, the employer, within 60 days, must identify, and provide to the insurer, a list of duties, if any, at the workplace that may be suitable for the purposes of section 143M in relation to a worker to whom that section may apply.

Penalty: Fine not exceeding 5 penalty units.

39. Section 101 amended (Granting, &c., of licences)

Section 101(2) of the Principal Act is amended by inserting after paragraph (f) the following paragraph:

- (fa) the insurer is capable of complying with Part XI and any regulations or guidelines for the purposes of that Part; and

40. Section 105 amended (Granting, &c., of permits)

Section 105(2)(bb) of the Principal Act is amended by omitting “provide high-quality

injury management to injured workers” and substituting “comply with Part XI and any regulations or guidelines for the purposes of that Part”.

41. Section 127A amended (Nominal Insurer Fund)

Section 127A(3) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (b) “this Act.” and substituting “this Act; and”;
- (b) by inserting the following paragraph after paragraph (b):
 - (c) all amounts required to be paid from the Nominal Insurer Fund in accordance with a direction under section 127C.

42. Section 127B amended (Nominal Insurer Special Account)

Section 127B(2) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (c) “paragraph (a).” and substituting “paragraph (a); and”;
- (b) by inserting the following paragraph after paragraph (c):

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- (d) all amounts required to be paid from the Special Account in accordance with a direction under section 127C.

43. Section 127C inserted

After section 127B of the Principal Act, the following section is inserted in Division 5:

127C. Minister may give directions in relation to Nominal Insurer Fund and Special Account

- (1) The Nominal Insurer may, in writing, request the Minister for directions in relation to an amount that –
 - (a) is in the Nominal Insurer Fund established under section 127A or the Special Account established under section 127B; and
 - (b) is, in the opinion of the Nominal Insurer, in excess of the amount required for the purposes for which the Nominal Insurer Fund, or the Special Account, as the case may be, is established.
- (2) The Minister may, in writing, after receiving under subsection (1) a request in relation to an amount, direct the Nominal Insurer as to how the Nominal Insurer is to deal with the amount.

- (3) A direction under subsection (2) in relation to an amount referred to in a request under subsection (1) may require the Nominal Insurer to –
 - (a) retain in the Nominal Insurer Fund, or the Special Account, as the case may be, the amount or a part of the amount; or
 - (b) pay the amount, or part of the amount, for –
 - (i) a purpose related to the provision of rehabilitation or compensation for injured workers; or
 - (ii) the promotion of workplace safety; or
 - (iii) purposes that are, in the opinion of the Minister, related to the objects of this Act.
- (4) The Nominal Insurer is to publish in its next annual report under section 131AA a copy of a direction given to the Nominal Insurer under subsection (2).
- (5) The Minister must cause a copy of a direction given under subsection (2) to be laid before each House of Parliament within 10 sitting-days after making the direction.

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- (6) The Nominal Insurer must comply with a direction given to it under subsection (2).

44. Section 132A inserted

After section 132 of the Principal Act, the following section is inserted in Division 1:

132A. Settlement by agreement

- (1) A worker's outstanding entitlements to compensation under this Act in respect of an injury may only be settled by an agreement to settle by which the worker agrees that all further claims to compensation are extinguished.
- (2) An agreement to settle that does not comply with this section is void.
- (3) A settlement by agreement of all a worker's outstanding entitlements to compensation may only be entered into, before the end of the period of 2 years beginning on the day on which a claim for compensation is first made in relation to the worker, if the agreement has been approved by the Tribunal under this section.
- (4) A worker, the employer or the employer's insurer may, in a form approved by the Tribunal, refer to the Tribunal for its approval a proposed

agreement to settle, which may be in the form the parties think fit.

- (5) The Tribunal may approve, or refuse to approve, a proposed agreement to settle that is referred to it under subsection (4).
- (6) The Tribunal may only approve under subsection (5) a proposed agreement to settle –
 - (a) if the Tribunal is satisfied that –
 - (i) all reasonable steps have been taken to enable the worker to whom the proposed agreement relates to be rehabilitated or retrained or to return to work; or
 - (ii) the worker has returned to work; or
 - (b) where the Tribunal has, on a reference to the Tribunal under section 81A, determined that there is a reasonably arguable case for disputing liability to pay compensation under this Act, if the Tribunal is satisfied that the proposed agreement is in the best interests of the worker; or
 - (c) if the Tribunal is satisfied that –

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- (i) special circumstances in relation to the worker make the worker's rehabilitation, retraining or return to work impracticable; and
 - (ii) the proposed agreement is in the best interests of the worker.
- (7) The Tribunal may only approve under subsection (5) a proposed agreement to settle if the Tribunal is satisfied that –
 - (a) the worker has received advice (which may be legal or financial advice or both) about the implications of settling the claim, which advice has been paid by the employer or the employer's insurer and is appropriate in the circumstances of the worker; and
 - (b) the entitlement, if any, of the worker under section 71 has been considered.
- (8) If the Tribunal refuses to approve under subsection (5) a proposed agreement to settle –
 - (a) the Tribunal is not to make any order as to the amount of the settlement; and

- (b) a party to the claim may refer to the Tribunal under subsection (4) another proposed agreement to settle.
- (9) If a worker's outstanding entitlements to compensation are settled by agreement between the parties after the end of the period of 2 years beginning on the day on which a claim for compensation is first made in relation to the worker, the worker, the employer or the employer's insurer may refer the agreement to settle to the Tribunal for review.
- (10) A referral under subsection (9) of an agreement to settle –
 - (a) must be made within 3 months of the date of the agreement; and
 - (b) is to be in a form approved by the Tribunal.
- (11) The Tribunal may set aside an agreement to settle referred to the Tribunal under subsection (9) if the Tribunal is of the opinion that –
 - (a) a party entered the agreement under duress; or
 - (b) the worker has not received advice (which may be legal or financial advice, or both) about the implications of settling the claim, which advice has been

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paid by the employer or the employer's insurer and is appropriate in the circumstances of the worker; or

- (c) a party was induced to enter the agreement by a misrepresentation, made by another party to, or the agent of a party to, the agreement, as to a fact material to the agreement, whether the misrepresentation was innocent, fraudulent or reckless.

- (12) If the Tribunal sets aside an agreement to settle under subsection (11) –

- (a) the Tribunal is not to make any order as to the amount of the settlement; and
- (b) the Tribunal must make the order it considers appropriate in respect of the repayment of any money paid under the agreement or the application of the money towards any entitlements of the worker; and
- (c) the parties may enter into another agreement to settle the claim.

- (13) The Tribunal is to order that the costs reasonably incurred by a worker of and incidental to a referral under this section to the Tribunal of an agreement to settle,

or a proposed agreement to settle, are to be paid by the worker's employer, unless –

- (a) the worker referred the agreement; and
- (b) the Tribunal is satisfied the referral was frivolous or vexatious.

45. Sections 138AB, 138ABA and 138AC substituted

Sections 138AB, 138ABA and 138AC of the Principal Act are repealed and the following section is substituted:

138AB. Claims for damages

- (1) A settlement by agreement of a claim for damages in respect of an injury to a worker for which compensation is payable under this Act is void unless the threshold requirement is met in relation to the injury.
- (2) A person may not commence proceedings for an award of damages in respect of an injury to a worker for which compensation is payable under this Act, unless the threshold requirement is met in relation to the injury.
- (3) The threshold requirement is met in relation to an injury if –

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- (a) there has been provided to the Tribunal a statement in writing, signed by a medical practitioner, certifying that, in the opinion of the practitioner, the degree of permanent impairment of the worker resulting from the injury is not less than 20% of the whole person; and
 - (b) the Tribunal has determined that the degree of permanent impairment of the worker resulting from the injury is not less than 20% of the whole person.
- (4) The threshold requirement is met in relation to an injury suffered by a worker if –
 - (a) the injury is an injury to which section 71(3) applies; and
 - (b) there has been provided to the Tribunal a statement in writing, signed by a medical practitioner, certifying that the injury is an injury to which section 71(3) applies.
- (5) An assessment of the degree of the worker's impairment for the purposes of this section is to be carried out in accordance with section 72 or 73.

- (6) The Tribunal may refer the question of the degree of impairment to a medical panel in accordance with Part V.
- (7) The Tribunal is to keep a record of –
 - (a) a statement provided to the Tribunal in accordance with subsection (3)(a); and
 - (b) a determination of the Tribunal of the kind referred to in subsection (3)(b); and
 - (c) a statement provided to the Tribunal in accordance with subsection (4)(b); and
 - (d) any other prescribed matter.

46. Section 138AD amended (No damages if claim settled by agreement)

Section 138AD of the Principal Act is amended by omitting “the claim has been settled by agreement under section 39” and substituting “the worker has settled in accordance with section 132A the worker’s outstanding entitlements to compensation”.

47. Part XI substituted

Part XI of the Principal Act is repealed and the following Part is substituted:

PART XI – INJURY MANAGEMENT
Division 1 – Application, purpose and interpretation

139. Purpose and principles of Part

- (1) The purpose of this Part is to establish a system that ensures that, as far as practicable, workers –
 - (a) recover as soon as possible from workplace injuries; and
 - (b) are able, as soon as practicable, to return to and remain in work that is safe for them to perform without aggravating the injury or impeding its healing.
- (2) This Part is based on the following principles:
 - (a) the primary aim of persons, including the injured worker, involved in injury management should be –
 - (i) the recovery of the worker from the injury; and
 - (ii) that the worker return to work –

and, to this end, all such persons should co-operate, collaborate and consult together;

- (b) it is essential to ensure that injury management begins as soon as possible after a worker suffers a workplace injury;
- (c) wherever possible, injury management is to enable an injured worker to continue to be employed by the employer who was the worker's employer when the worker was injured;
- (d) injury management should be transparent, effective and cost-efficient;
- (e) all parties to injury management, in particular injured workers, their employers and their medical practitioners, should have access to information and assistance relating to their roles, rights and responsibilities;
- (f) injury management should be of a high standard so as to maintain the dignity and integrity of injured workers and should ensure that injured workers are active participants in the management of their injuries;
- (g) issues relating to injury management should be resolved as soon as practicable, and with such assistance as may be

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necessary, so as to ensure effective injury management;

- (h) all decisions relating to injury management should be made in the best interests of the worker.

140. Application of Part

- (1) This Part applies in relation to a worker who has made a claim for compensation, even if there is a dispute as to whether the employer is liable for the claim, but ceases to apply –
 - (a) after an agreement to settle the claim is made in accordance with section 132A; or
 - (b) after an agreement to settle a claim for damages is made in accordance with this Act; or
 - (c) if the Tribunal makes orders under either section 81A(3)(c) or (d); or
 - (d) if the Tribunal or a court determines that the employer is not liable for the claim.
- (2) Despite subsection (1), if –
 - (a) this Part ceases, in accordance with subsection (1)(a), to apply in relation to a worker because an

agreement to settle is made in
accordance with section 132A;
and

- (b) the agreement is set aside by the
Tribunal under
section 132A(11) –

this Part applies in relation to the worker,
from the date on which the agreement is
set aside, as if subsection (1)(a) did not
apply, until a further agreement to settle,
if any, is made in accordance with
section 132A.

- (3) Despite subsection (1), if –

- (a) this Part ceases, in accordance
with subsection (1)(d), to apply in
relation to a worker because the
Tribunal or a court determines
that the employer is not liable for
the claim; and
- (b) the Tribunal or a court
subsequently determines that the
employer is so liable –

this Part applies in relation to the worker
from the date of the determination, as if
subsection (1)(d) did not apply.

141. Interpretation

- (1) In this Part, unless the contrary intention
appears –

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“Agency” has the same meaning as in the *State Service Act 2000*;

“approved injury management plan”, in relation to a worker, means the injury management plan to which the worker and the worker’s employer have consented under section 143E;

“approved injury management program”, in relation to a worker –

(a) means the injury management program that is in force and that was approved under section 143(7) in respect of the worker’s employer; or

(b) if the worker is employed for the purposes of an Agency and there is in force an injury management program that was approved under section 143(7) in respect of that Agency, means that program –

and includes any amendments to the program that are submitted to the Board under section 143(10)

and are not disallowed under section 143(11);

“approved return-to-work plan”, in relation to a worker, means the return-to-work plan to which the worker and the worker’s employer have consented under section 143E and that is in force;

“employer’s insurer”, in relation to an employer, means a licensed insurer with whom the employer has entered into a contract pursuant to section 97(1);

“Head of an Agency” has the same meaning as in the *State Service Act 2000*;

“injured worker” means a worker suffering from a workplace injury;

“injury management co-ordinator”, in relation to a worker, means the injury management co-ordinator to whom the worker is assigned under section 143B;

“injury management plan” means a comprehensive plan for injury management in respect of an injured worker who is, or is likely to be, totally or partially incapacitated for work for 28 working days or more;

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“injury management program”
means a program for injury management in respect of workers who may suffer workplace injuries;

“return-to-work co-ordinator”, in relation to a worker, means the return-to-work co-ordinator to whom the worker is assigned under section 143D;

“return-to-work plan” means a plan, which need not be comprehensive, for injury management in respect of an injured worker who is, or is likely to be, totally or partially incapacitated for work for more than 5 working days but less than 28 working days;

“significant injury”, in relation to a worker, means a workplace injury suffered by the worker that is likely to result in the worker being totally or partially incapacitated for more than 5 working days;

“treating medical practitioner”, in relation to a worker, means a medical practitioner treating the injured worker for the worker’s workplace injury and includes the

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worker's primary treating
medical practitioner.

- (2) In this Part, a reference to an employer in relation to a worker means the employer who is or may be liable to pay compensation under this Act in respect of a workplace injury suffered by the worker.
- (3) For the purposes of this Part, the injury management program in respect of an employer who is not a self-insurer, a Minister or the Crown –
 - (a) is, if there is in force an injury management program that was submitted by the employer to the employer's insurer under section 143(4), that program; or
 - (b) is, if –
 - (i) there is in force an injury management program that was submitted to the Board under section 143(1) by the employer's insurer; and
 - (ii) the employer's insurer has notified the employer under section 143(3) that the program applies to the employer; and

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(iii) paragraph (a) does not
apply –

that program –

and includes any amendments to the
program that are submitted to the Board
under section 143(10) and are not
disallowed under section 143(11).

(4) For the purposes of this Part, the injury
management program in respect of an
employer who is a self-insurer and who
is not a Minister or the Crown is the
injury management program that –

(a) was submitted by the employer to
the Board under section 143(5);
and

(b) is approved by the Board under
section 143(7); and

(c) is in force –

and includes any amendments to the
program that are submitted to the Board
under section 143(10) and are not
disallowed under section 143(11).

(5) For the purposes of this Part, an injury
management program is in force in
relation to an Agency if the program –

(a) was submitted by the Head of the
Agency to the Board under
section 143(6); and

(b) is approved by the Board under section 143(7); and

(c) is in force –

and a reference to such a program includes a reference to any amendments to the program that are submitted to the Board under section 143(10) and are not disallowed under section 143(11).

Division 2 – Injury management programs

142. Injury management programs to be complied with

(1) The Board may, by notice, issue guidelines specifying –

(a) matters that must be included in an injury management program; and

(b) matters that the Board recommends be included, but that are not required to be included, in an injury management program.

(2) An employer's insurer must, as far as reasonably practicable –

(a) ensure that there is an injury management program in respect of each employer; and

(b) comply with each injury management program –

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(i) that is submitted by the insurer to the Board and approved by the Board under section 143(7); or

(ii) that is submitted to the insurer under section 143(4) and approved by the insurer.

Penalty: Fine not exceeding 100 penalty units.

(3) An employer who is not a Minister or the Crown must –

(a) ensure that there is an injury management program in respect of the employer; and

(b) comply with each injury management program in respect of the employer.

Penalty: Fine not exceeding 100 penalty units.

(4) An employer who is a Minister or the Crown must –

(a) ensure that there is an injury management program that is in force in relation to each Agency; and

(b) comply with each such program.

- (5) If an injury management program that is in force was submitted to the Board under section 143, the person who submitted the program –
 - (a) must review the program after every 12 months commencing on the day on which the program is approved under section 143(7); and
 - (b) must, if the person is notified by the Board under subsection (7) –
 - (i) review the program; and
 - (ii) submit to the Board a report in relation to the program within the period specified in the notice.
- (6) If an injury management program that is in force was submitted by an employer to the employer's insurer under section 143(4), the employer –
 - (a) must review the program after every 12 months commencing on the day on which the program is approved under section 143(7); and
 - (b) must, if the employer is notified by the Board under subsection (7) –
 - (i) review the program; and

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- (ii) submit to the Board a report in relation to the program within the period specified in the notice.
- (7) The Board may, by notice in writing to an employer, a Head of an Agency or an employer's insurer, require the employer, Head of an Agency or insurer to submit to the Board, within the period specified in the notice, a report in relation to the injury management program referred to in the notice.

143. Approval of injury management programs

- (1) An employer's insurer may submit to the Board an injury management program in respect of an employer, or a group of employers, or all employers, in respect of whom the insurer is a licensed insurer.
- (2) An injury management program that is submitted by an insurer to the Board and approved by the Board under subsection (7) may apply to one or more employers, if the insurer has notified the employers under subsection (3).
- (3) An employer's insurer may notify the employer in writing that an injury management program approved by the Board under subsection (7) applies to the employer.

- (4) An employer may submit to the employer's insurer –
 - (a) an injury management program;
or
 - (b) an amendment to an injury management program submitted to the insurer under paragraph (a).
- (5) An employer who is a self-insurer may submit to the Board an injury management program.
- (6) If a worker is employed by a Minister or the Crown, the Head of an Agency may submit to the Board, on behalf of the employer of the worker, an injury management program that is to apply to the Agency.
- (7) The Board or an employer's insurer may approve, or refuse to approve, an injury management program, or an amendment to an injury management program, submitted to the Board or the insurer, respectively, under this section.
- (8) The Board or an employer's insurer must not approve an injury management program unless it contains all matters that are specified in guidelines issued under section 142(1) to be matters that must be included in injury management programs.

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- (9) An injury management program that has been approved under subsection (7) –
 - (a) comes in force on the date on which it is approved under that subsection or another date agreed to by the Board, or the insurer, to whom the plan is submitted; and
 - (b) remains in force for the period, of not more than 3 years, specified in the approval; and
 - (c) may contain the amendments, submitted to the Board or an insurer under subsection (10), that have not been disallowed under subsection (11) by the Board or the employer's insurer, as the case may be.
- (10) A person who may under this section –
 - (a) submit an injury management program to the Board may submit to the Board an amendment to an injury management program approved by the Board; and
 - (b) submit an injury management program to an employer's insurer may submit to the insurer an amendment to an injury management program approved by the insurer.

- (11) If an amendment to an injury management program is submitted to the Board or an insurer by a person under subsection (10), the Board or the insurer, as the case may be, may, within 60 days, disallow the amendment by notice in writing to the person.

Division 3 – Injury management and return-to-work co-ordinators and plans

143A. Employer to notify insurer of workplace injury

- (1) An employer must notify the employer's insurer, if any, within 48 hours of becoming aware that one of the employer's workers has suffered a workplace injury that –
- (a) results in, or is likely to result in, the worker being partially or totally incapacitated for work; or
 - (b) is required to be reported to the insurer under the worker's approved injury management program.

Penalty: Fine not exceeding 10 penalty units.

- (2) An employer is not to be taken to have given notice under subsection (1) in relation to a worker unless the notice is in accordance with the requirements of

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the worker's approved injury
management program.

143B. Injury management co-ordinator to be appointed

- (1) The licensed insurer of an employer of a worker must appoint an injury management co-ordinator in respect of the employer.
- (2) The licensed insurer of an employer of a worker, as soon as practicable after becoming aware that the worker has suffered a significant injury, must assign the worker to the injury management co-ordinator in respect of the employer.
- (3) If a worker's approved injury management program was submitted by the worker's employer to the employer's insurer under section 143(4) –
 - (a) subsections (1) and (2) do not apply to the employer's insurer; and
 - (b) the employer must –
 - (i) appoint an injury management co-ordinator in respect of the employer; and
 - (ii) assign a worker to the injury management co-

ordinator, as soon as practicable after becoming aware that the worker has suffered a significant injury.

- (4) If a worker's approved injury management program was submitted by the worker's employer to the Board under section 143(5) or (6), the employer must –
- (a) appoint an injury management co-ordinator in respect of the employer; and
 - (b) assign a worker to the injury management co-ordinator, as soon as practicable after becoming aware that the worker has suffered a significant injury.
- (5) A person may only be appointed to be an injury management co-ordinator if, where the Board approves a course of training –
- (a) the person has successfully completed the course of training; or
 - (b) the Board is satisfied that the person has obtained a qualification or completed a course of training that is at least equivalent to the course of training approved by the Board.

- (6) The employer or insurer who appointed a person to be an injury management co-ordinator may appoint another person to be the injury management co-ordinator in the place of the person first appointed.

143C. Responsibilities of injury management co-ordinators

- (1) An injury management co-ordinator is responsible for co-ordinating and overseeing the injury management in respect of the worker assigned to the co-ordinator under section 143B(2) or (3).
- (2) An injury management co-ordinator, so far as is reasonably practicable, is to ensure that –
 - (a) contact is made with the worker, the employer and the worker's primary treating medical practitioner, as soon as practicable after the worker is assigned to the co-ordinator under section 143B(2) or (3); and
 - (b) injury management plans and return-to-work plans in relation to the worker are developed, reviewed, modified, and implemented, as agreed with the worker or determined by the Tribunal; and

- (c) the work capacity of the worker is regularly reviewed and options for the worker's retraining or redeployment are investigated and arranged; and
- (d) arrangements are made for the rehabilitation of the worker so that the worker returns to work as soon as is possible and appropriate; and
- (e) if required, workplace rehabilitation providers are appointed; and
- (f) the following persons are involved in the management of the worker's injury and return to work:
 - (i) the worker, the worker's employer and the employer's insurer;
 - (ii) the primary treating medical practitioner and other treating medical practitioners; and
- (g) the following persons are, if necessary or desirable, involved in the injury management of the worker's injury:
 - (i) workplace rehabilitation providers;

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- (ii) the return-to-work co-ordinator;
 - (iii) supervisors and line managers;
 - (iv) allied health professionals; and
- (h) medical information is collated; and
- (i) relevant documentation is maintained; and
- (j) attempts are made to resolve disputes in relation to injury management in respect of the worker, including, if the co-ordinator thinks fit, by arranging or providing informal mediation; and
- (k) information on injury management is provided to the worker and the worker's employer; and
- (l) any other duties that are prescribed for the purposes of this paragraph are carried out.

143D. Return-to-work co-ordinator may be required to be appointed

- (1) An employer who employs more than 50 workers must appoint a return-to-work co-ordinator.

Penalty: Fine not exceeding 50 penalty units.

- (2) A person may only be appointed under subsection (1) to be a return-to-work co-ordinator if, where the Board approves a course of training –

(a) the person has successfully completed the training; or

(b) the Board is satisfied that the person has obtained a qualification or completed a course of training that is at least equivalent to the course of training approved by the Board.

- (3) A worker's employer who employs more than 50 workers, as soon as practicable after becoming aware that a worker has suffered a significant injury, must assign the worker to the return-to-work co-ordinator appointed under subsection (1) in respect of the employer.

Penalty: Fine not exceeding 50 penalty units.

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- (4) A worker's employer may only assign a worker to a return-to-work co-ordinator if the co-ordinator is familiar with the workplace, and the management and staff of the workplace, in which the worker is employed.
- (5) A return-to-work co-ordinator in respect of a worker is to –
 - (a) assist with return-to-work planning and the implementation of the worker's approved return-to-work plan or approved injury management plan; and
 - (b) monitor the worker's progress towards returning to work; and
 - (c) assist the worker to perform the worker's designated work duties in a safe and appropriate manner; and
 - (d) provide the worker with reassurance and encouragement in respect of the treatment of the worker's injury and the worker's return to work; and
 - (e) encourage and foster a good relationship, and effective communication, between the worker, the worker's employer and the employer's insurer.

143E. Return-to-work and injury management plans

- (1) If a worker suffers a significant injury, the worker's injury management co-ordinator must –
 - (a) if the worker is, or is likely to be, totally or partially incapacitated for work for more than a period of 5 working days but less than 28 working days, ensure that a return-to-work plan is prepared before the expiry of 5 days after the worker becomes totally or partially incapacitated for work for more than 5 days; or
 - (b) if the worker is, or is likely to be, totally or partially incapacitated for work for 28 working days or more, ensure that an injury management plan is prepared before the expiry of 5 days after the worker becomes totally or partially incapacitated for work for 28 working days.
- (2) A worker's return-to-work plan or injury management plan, and any amendment to such a plan, is to be prepared, as far as is reasonably practicable, in consultation with –
 - (a) the worker; and
 - (b) the worker's employer; and

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- (c) the worker's primary treating medical practitioner; and
 - (d) the employer's insurer, if any; and
 - (e) the worker's workplace rehabilitation provider, if any; and
 - (f) the worker's injury management co-ordinator.
- (3) A worker's approved return-to-work plan or approved injury management plan, and any amendment to such a plan, takes effect from the day on which the worker and the worker's employer consent to the plan or amendment.
- (4) If either a worker or a worker's employer refuses to give consent to an injury management plan or a return-to-work plan, or an amendment to such a plan, the injury management co-ordinator may notify the Tribunal under section 143Q about the matter.
- (5) A worker's injury management co-ordinator must ensure that the worker's approved return-to-work plan or approved injury management plan is regularly reviewed in consultation with the persons consulted under subsection (2).

- (6) If the Tribunal makes orders under section 81A(3)(c) or (d) in relation to a worker, subsection (1) does not apply in relation to the worker, until (if at all) the worker's employer is found by the Tribunal to be liable for the worker's workplace injury.
- (7) If a worker or the worker's employer does not take all reasonable steps to comply with any requirements of the worker's approved return-to-work plan or approved injury management plan, the worker or the worker's employer may notify the Tribunal under section 143Q about the matter.
- (8) The –
 - (a) preparation of or giving of consent to a return-to-work plan, or an injury management plan, in relation to an injured worker; or
 - (b) implementation of an approved return-to-work plan or an approved injury management plan in relation to an injured worker –

is not an admission of liability in respect of any claim that may be made by the worker under this Act.

143F. Work capacity of injured workers to be regularly reviewed

- (1) If an injured worker is incapacitated for work for more than 6 months continuously, the injury management co-ordinator must, as soon as practicable after the end of that period and each successive 6-month period until the claim is finalised –
 - (a) co-ordinate the assessment of the worker's capacity to work; and
 - (b) consider whether the worker's approved injury management plan should be modified; and
 - (c) consider options for retraining or redeploying the worker.
- (2) If medical evidence in relation to an injured worker indicates that it is highly unlikely that the worker will be able to engage in the employment in which the worker was engaged before he or she was injured, the injury management co-ordinator must ensure that appropriate options for –
 - (a) retraining the worker; and
 - (b) redeploying the worker, including to another workplace or employer –

are reviewed, assessed, considered and implemented.

Division 4 – Medical treatment

143G. Primary treating medical practitioners

- (1) An injured worker must, as soon as practicable after suffering a workplace injury, notify the worker's employer of the name of the person that the worker has chosen to be the worker's primary treating medical practitioner.
- (2) An injured worker must not be required to choose a primary treating medical practitioner nominated by the employer or the insurer.
- (3) If an injured worker chooses a primary treating medical practitioner to replace another primary treating medical practitioner, the worker must –
 - (a) notify the worker's employer of the name of the new primary treating medical practitioner; and
 - (b) authorise the previous primary treating medical practitioner to release to the newly chosen medical practitioner records, in relation to the worker's workplace injury, that are held by the previous practitioner.

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- (4) A primary treating medical practitioner in relation to an injured worker has the following functions:
- (a) to provide certificates for the purposes of this Act;
 - (b) to diagnose the nature of the worker's workplace injury;
 - (c) to provide primary medical care in relation to the worker's workplace injury;
 - (d) to co-ordinate medical treatment in relation to the worker's workplace injury, including by referring the worker to persons who may deliver specialist medical care and by co-ordinating the delivery of any specialist medical care;
 - (e) to monitor, review and advise on the worker's condition and treatment;
 - (f) to advise on the suitability of, and to specify restrictions on, the work that the worker may be expected to perform;
 - (g) to take part in the development of return-to-work plans and injury management plans.

- (5) If an injured worker fails to comply with subsection (1) or (3), the employer or insurer may notify the Tribunal about the matter.

143H. Issue of certificates

- (1) A medical practitioner may not issue a medical certificate under this Act certifying that a worker is totally incapacitated for work for a period of more than 14 days, unless the certificate specifies –
 - (a) the medical practitioner's reasons why the period is longer than 14 days; and
 - (b) a date on which the medical practitioner will review whether the worker remains totally incapacitated for work.
- (2) If a medical practitioner is of the opinion that a worker is unlikely, for a period (whether limited or indefinite), to be able to resume –
 - (a) work for the number of hours in a week for which the worker was generally engaged by the employer before the worker suffered the workplace injury; or

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- (b) some or all of the duties for which the worker was generally engaged by the employer before the worker suffered the workplace injury –

the medical practitioner must, in a medical certificate issued under this Act, specify the opinion, the reasons for it, and the period.

- (3) A failure to comply with subsection (1) or (2) in relation to a medical certificate does not affect the validity of a claim to which the certificate relates.

143I. Employer to be notified of certified incapacity and given medical certificate

If a medical certificate issued under this Act specifies that an injury has resulted in the worker being totally or partially incapacitated for work, the worker must, as soon as reasonably practicable –

- (a) notify the worker's employer of the incapacity and the period for which the incapacity is likely to continue; and
- (b) provide a copy of the medical certificate to the employer.

143J. Worker's obligation of full disclosure to medical practitioners chosen by worker

A worker must not wilfully fail to fully disclose to any treating medical practitioner any information that the worker knows, or ought reasonably be expected to know, is relevant to the diagnosis or treatment of the worker's workplace injury.

Penalty: Fine not exceeding 10 penalty units.

143K. Medical advisory and mentoring service

- (1) The Board may establish a medical advisory and mentoring service for the purposes of this Act.
- (2) The Board may nominate persons to comprise the medical advisory and mentoring service.
- (3) A medical practitioner nominated under subsection (2) is to receive the remuneration the Board thinks fit, which remuneration is to be paid out of the Fund.
- (4) The medical advisory and mentoring service is to provide to medical practitioners advice in respect of –
 - (a) applying evidence-based medical treatment guidelines; and

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- (b) identifying appropriate treatment options; and
- (c) identifying the work capacity of an injured worker, including assessing whether the worker will be able to perform suitable alternative duties within the meaning of section 143M; and
- (d) issuing under this Act certificates and medical reports in relation to injured workers; and
- (e) obtaining second opinions on the diagnosis or treatment of injured workers; and
- (f) the compensation scheme established under this Act.

Division 5 – Obligations relating to return to work of injured worker

143L. Injured worker's position to be held open for worker

- (1) An employer of a worker must, for a period of 12 months commencing on the day on which the worker becomes totally or partially incapacitated by a workplace injury, make available to the worker the employment in respect of which the worker was engaged immediately before becoming incapacitated.

Penalty: Fine not exceeding 100 penalty units.

- (2) Subsection (1) does not apply if –
- (a) there is medical evidence indicating that it is highly improbable that the worker will be able to perform the employment in respect of which the worker was engaged immediately before becoming incapacitated; or
 - (b) the work for which the worker was employed is no longer required to be performed.
- (3) If subsection (2) applies in relation to a worker, the worker's employer, as soon as practicable, must notify the worker, and the employer's insurer, if any, of the reason for the application of the subsection in relation to the worker.

Penalty: Fine not exceeding 20 penalty units.

143M. Employer to provide suitable duties after injury

- (1) If a worker who suffers from a workplace injury is unable to perform duties for which the worker was engaged immediately before becoming totally or

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partially incapacitated by the injury, the worker's employer must ensure that the worker is given suitable alternative duties to perform.

Penalty: Fine not exceeding 100 penalty units.

- (2) When providing suitable alternative duties to a worker, the worker's employer must ensure that –
 - (a) the worker has been consulted for the purpose of identifying and choosing the duties; and
 - (b) the duties are suitable, having regard to the worker's incapacity and any restrictions imposed, or advice given, by a medical practitioner, as to the type of work that the worker may perform; and
 - (c) the duties comply with the worker's approved injury management plan or approved return-to-work plan, if any.
- (3) Subsection (1) does not apply if it is unreasonable or impracticable to give the worker suitable alternative duties to perform.
- (4) An employer who is of the opinion that it is unreasonable or impracticable to give an injured worker suitable alternative

duties to perform, must, as soon as practicable, provide the worker with reasons in writing for the employer's opinion.

Penalty: Fine not exceeding 20 penalty units.

(5) For the purposes of this Part, suitable alternative duties in relation to a worker are those duties for which the worker is suited, having regard to the following:

- (a) the nature of the worker's incapacity and pre-injury employment;
- (b) the worker's age, education, skills and work experience;
- (c) the worker's place of residence;
- (d) any suitable duties for which the worker has received rehabilitation training;
- (e) any other relevant circumstances –

but do not include –

- (f) duties that are merely of a token nature or do not involve useful work, having regard to the employer's trade or business; or
- (g) duties that are demeaning in nature, having regard to

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paragraphs (a) and (b) and to the worker's other employment prospects.

143N. Workers to participate in return-to-work process

- (1) An injured worker is to perform any actions that the worker is required to perform under the worker's approved injury management plan or approved return-to-work plan.
- (2) Subsection (1) does not apply in relation to an action that the worker is not able to perform because of the worker's workplace injuries or for any other reasonable cause.
- (3) A worker who is unable to perform an action that the worker is required to perform under the worker's approved injury management plan or approved return-to-work plan, is to, as soon as practicable –
 - (a) seek medical advice and, if appropriate, undergo treatment that may enable the worker to perform that action; and
 - (b) advise the employer and the worker's injury management co-ordinator of the worker's inability and of any medical advice or

treatment that has been sought or undergone.

- (4) A worker who is assigned reduced hours in accordance with the worker's approved injury management plan or approved return-to-work plan must take all reasonable steps to ensure that attending a medical practitioner does not interfere with the worker's employment during those hours.
- (5) If a worker fails to comply with a provision of this section, the worker's employer may notify the Tribunal about the matter.

143O. Workplace rehabilitation providers

- (1) The Board may issue guidelines relating to the referral of injured workers to workplace rehabilitation providers.
- (2) If there is a dispute between a worker and an injury management co-ordinator in relation to the referral of the worker to a workplace rehabilitation provider, any party to the dispute may notify the Tribunal about the matter.

Division 6 – Miscellaneous

143P. Disputes about injury management

- (1) An employer or insurer, as soon as practicable after making a significant decision in relation to the injury management in respect of a worker, is to notify the worker of –
 - (a) the decision; and
 - (b) the reasons why the decision was made.
- (2) A worker's employer is to inform the worker's injury management co-ordinator as soon as practicable after a dispute arises in relation to injury management in respect of the worker.
- (3) An injury management co-ordinator is to attempt to resolve any dispute of which the co-ordinator is informed under subsection (2) by, as soon as practicable –
 - (a) informally mediating between the parties to the dispute; or
 - (b) discussing the matter individually with each party to the dispute.
- (4) A party to a dispute of which an injury management co-ordinator is informed under subsection (2) may notify the

Tribunal about the dispute, if the dispute is not resolved to the party's satisfaction.

143Q. Powers of Tribunal in respect of matters under this Part

- (1) A worker, employer, insurer or injury management co-ordinator may notify the Tribunal about any matter to which this Part relates.
- (2) A notification under this Part is to be –
 - (a) in a form approved by the Chief Commissioner; and
 - (b) filed with the Registrar.
- (3) If the Tribunal is notified under this Part about a matter, the Chief Commissioner is to refer the matter to a State Service employee nominated by the Chief Commissioner.
- (4) The person nominated under subsection (3) is to attempt to assist the parties, with as little formality as possible, to resolve the matter referred to the person.
- (5) All discussions held before a person nominated under subsection (3) are confidential and without prejudice and any notes or other documents forming part of the person's record of the matter are not to be disclosed to the Tribunal.

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- (6) If a person nominated under subsection (3) notifies the Tribunal that the person is of the opinion that the matter referred to the person cannot be resolved between the parties, the matter is taken to have been referred to the Tribunal under section 42 on the day the notice is given.
- (7) If a matter is to be taken under subsection (6) to have been referred to the Tribunal under section 42, the Tribunal may resolve the matter by making any of the following orders:
 - (a) an order requiring the worker to attend work in accordance with the worker's approved return-to-work plan or approved injury management plan;
 - (b) an order requiring an employer to make suitable alternative duties available to the worker;
 - (c) an order suspending weekly payments for a period specified in the order;
 - (d) an order increasing weekly payments for a period specified in the order;
 - (e) an order requiring the worker to undergo the treatment specified in the order or, if the worker does not undergo the treatment, to

forego part or all of weekly payments or amounts for services for which the worker would otherwise be able to claim under this Act;

- (f) an order requiring the worker to submit to an independent medical review or an examination specified in the order, or, if the worker does not submit to the review or examination, to forego part or all of weekly payments or amounts for services for which the worker would otherwise be able to claim under this Act;
- (g) an order requiring the worker to undertake certain retraining or rehabilitation specified in the order or, if the worker fails to do so, to forego part or all of weekly payments or amounts for services for which the worker would otherwise be able to claim under this Act;
- (h) an order that an approved return-to-work plan or approved injury management plan be varied as specified in the order;
- (i) any other order the Tribunal thinks fit.

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48. Section 145 amended (Establishment of Workers Rehabilitation and Compensation Fund)

Section 145(3) of the Principal Act is amended by omitting paragraph (e) and substituting the following paragraph:

- (e) all money required for other purposes that are determined by the Minister to be purposes associated with workers compensation, occupational health and safety or rehabilitation.

49. Section 158 amended (Maintenance of secrecy)

Section 158 of the Principal Act is amended by omitting subsection (1) and substituting the following subsections:

- (1) A person must not disclose any information obtained by the person in the exercise of any powers conferred on the person by this Act, or by virtue of the person's office under this Act, unless the disclosure –
 - (a) is authorised by each person to whom the information relates; or
 - (b) occurs in the exercise or performance of the powers or functions of the person; or
 - (c) occurs in the exercise or performance of the powers or functions that have been

delegated to the person, or which the person is authorised to perform, under this Act; or

(d) is authorised under this Act; or

(e) is for the purposes of, or is authorised under, another Act or a law; or

(f) occurs in pursuance of a requirement imposed by or under another Act or a law.

(1A) Without limiting the circumstances in which a disclosure is authorised under this Act, information may be disclosed by a person who is authorised by or under this Act to obtain the information, if the disclosure is to a person –

(a) for the purpose of enabling the person to conduct study or research that is approved by the Board; or

(b) for the purpose of the collection and analysis of statistical information; or

(c) acting on behalf of a body performing functions similar in whole or in part to the functions of the Board, if the disclosure is authorised by the Board; or

(d) for law enforcement purposes.

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50. Section 164A inserted

After section 164 of the Principal Act, the following section is inserted in Part XIII:

164A. Application of *Workers Rehabilitation and Compensation Amendment Act 2009*

Except for –

- (a) this section; and
- (b) sections 143L and 143M –

as inserted in this Act by the *Workers Rehabilitation and Compensation Amendment Act 2009*, the amendments made to this Act by that Act do not apply in relation to a worker in respect of an injury suffered by the worker before the day on which this section comes into effect.

51. Repeal of Act

This Act is repealed on the ninetieth day from the day on which all of its provisions commence.