

TASMANIA

**WORKERS REHABILITATION AND
COMPENSATION AMENDMENT
(MISCELLANEOUS) BILL 2004**

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**WORKERS REHABILITATION AND
COMPENSATION AMENDMENT
(MISCELLANEOUS) BILL 2004**

*(Brought in by the Minister for Infrastructure, Energy and
Resources, the Honourable Bryan Alexander Green)*

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:

Short title

1. This Act may be cited as the *Workers Rehabilitation
and Compensation Amendment (Miscellaneous) Act 2004*.

Commencement

2. This Act commences on the day on which this Act
receives the Royal Assent.

Principal Act

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

Section 3 amended (Interpretation)

4. Section 3 of the Principal Act is amended as follows:

- (a) by omitting “(other than a medical practitioner)” from the definition of “accredited person” in subsection (1);
- (b) by omitting the definition of “Chief Executive” from subsection (1);
- (c) by inserting the following definition after the definition of “long service leave” in subsection (1):

“medical assessor” means a medical practitioner accredited by the Board for the purposes of assessing the degree of a worker’s permanent impairment in accordance with section 72 or 73;

- (d) by omitting the definition of “medical practitioner” from subsection (1) and substituting the following definition:

“medical practitioner” means a person who –

*No. 4 of 1988

- (a) is resident in a State or Territory of the Commonwealth and is entitled to practise as a medical practitioner in accordance with the laws of that State or Territory; or
 - (b) is not resident in a State or Territory of the Commonwealth but who is entitled to practise as a medical practitioner under the laws of another jurisdiction;
- (e) by inserting the following paragraph after paragraph (f) in the definition of “medical question” in subsection (1):
 - (g) a medical service provided or to be provided to a worker for an injury, including the adequacy, appropriateness or frequency of that service;
- (f) by inserting the following definition after the definition of “Nominal Insurer” in subsection (1):

“notified dispute” means a claim for liability disputed under section 77AA;
- (g) by inserting the following definition after the definition of “second injury scheme” in subsection (1):

“Secretary” means the Secretary of the Department;

- (h) by inserting the following definition after the definition of “State” in subsection (1):

“State of connection” means the State with which the employment of a worker is connected as determined under Division 2 of Part III;

- (i) by omitting from subsection (2) “For” and substituting “Subject to section 26A(1) of the *Taxi and Luxury Hire Car Industries Act 1995* and for”.

Section 4F inserted

5. After section 4D of the Principal Act, the following section is inserted in Part I:

Prescribed relationship

4F. A relationship between a certain person, or class of persons, and an organisation or class of organisations may, for the purposes of this Act, be prescribed as a relationship between a worker and an employer.

Section 23A amended (Registrar and deputy registrars of Tribunal)

6. Section 23A(1) of the Principal Act is amended by omitting “Chief Executive” and substituting “Secretary”.

Part III, Division 1: Heading inserted

7. Part III of the Principal Act is amended by inserting the following heading before section 25:

Division 1 – Entitlement to compensation

Sections 27 and 28 repealed

8. Sections 27 and 28 of the Principal Act are repealed.

Part III, Division 2 inserted

9. After section 31 of the Principal Act, the following Division is inserted in Part III:

Division 2 – Employment connection with State

Employment connection test

31A. (1) Compensation under this Act is payable only if this State is the State of connection.

(2) The fact that a worker is outside this State when injured does not prevent compensation being payable under this Act.

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

- (a) the State where the worker usually works in the employment; or
- (b) if no State, or no single State, is identified by paragraph (a), the State where the worker is usually based for the purposes of the employment; or

- (c) if no State, or no single State, is identified by paragraph (a) or (b), the State where the employer's principal place of business in Australia is located.

(4) For a worker working on a ship, if no State, or no single State, is identified by subsection (3), the worker's employment is, while working on the ship, connected with –

- (a) the State where the ship is registered; or
- (b) if the ship is registered in more than one State, the State where the ship most recently became registered.

(5) If no State is identified for a worker by subsection (3) or (4), the worker's employment is connected with this State if –

- (a) the worker is in this State when injured; and
- (b) the worker is not entitled to compensation in relation to the injury under the workers compensation law of an external Territory, or a place outside Australia.

(6) In deciding whether a worker usually works in a State –

- (a) regard must be had to the following:
 - (i) the worker's work history with the employer over the preceding 12 months;
 - (ii) the worker's proposed future working arrangements;

- (iii) the intentions of the worker and employer;
 - (iv) any period during which the worker worked in a State or was in a State for the purposes of employment, whether or not the worker is regarded as working or employed in that State under its workers compensation law; but
- (b) regard must not be had to any temporary arrangement under which the worker works in a State for a period of not longer than 6 months.

(7) Compensation under this Act is not payable in relation to the employment of a worker on a ship if the *Seafarers Rehabilitation and Compensation Act 1992* of the Commonwealth applies to the worker's employment.

(8) The application of this Act in respect of a seaman is subject to the following modifications:

- (a) the notice of injury and the claim for compensation may, except where the seaman injured is the master, be served on the master of a ship as if he or she were the employer;
- (b) in the case of the death of the seaman, the claim for compensation for the purposes of section 32(1)(b) is to be made within 6 months after news of his or her death has been received by the claimant;
- (c) in the case of a ship lost with all hands, the claim for compensation for the

purposes of section 32(1)(b) is to be made within 18 months after the date on which the ship is deemed to have been lost with all hands.

(9) In this section –

“seaman” means a worker who is employed in any capacity on board a ship by the owner or charterer of the ship;

“ship” means any kind of vessel used in navigation by water, however propelled or moved, and includes all of the following if used wholly or primarily in navigation by water:

- (a) a barge, lighter or other floating vessel;
- (b) an air-cushioned vehicle, or other similar craft;

“State”, in a geographical sense, includes a State’s relevant adjacent area as described in Schedule 11.

Determination of State of connection in workers compensation proceedings

31B. (1) If the question of whether this State is the State of connection arises in a proceeding before the Tribunal in relation to a claim for compensation under this Act, the Tribunal must determine the State of connection in accordance with section 31A.

(2) Subsection (1) does not apply if there is a determination of the State of connection that is to be recognised under section 31D.

Determination of State of connection by Tribunal

31C. (1) If a claim for compensation under this Act has been made, a party to the claim may apply to the Tribunal for a determination of the question of which State is the State of connection.

(2) On receiving an application, the Tribunal must determine the State of connection in accordance with section 31A.

(3) An application may not be made or heard if there is a determination of the State of connection that is to be recognised under section 31D.

Recognition of previous determinations of State of connection

31D. (1) This section applies if a determination of the State of connection has been made by any of the following courts or tribunals:

- (a) the Tribunal under section 31B or 31C;
- (b) a court or tribunal of a State under a provision of a law of the State corresponding to section 31B or 31C;
- (c) a court of this State or another State in the course of proceedings on a claim for damages.

(2) The State determined as mentioned in subsection (1) is to be recognised for this Act as the State of connection.

(3) This section does not prevent any appeal relating to a determination of a court or tribunal under subsection (1).

(4) If a determination is changed on appeal to a court, the changed determination is to be recognised under this section.

Person not to be compensated twice

31E. (1) Compensation under this Act is not payable in respect of anything to the extent that –

- (a) compensation has been received under the laws of a place other than this State; or
- (b) judgment has been obtained against the employer independently of this Act.

(2) If a person receives compensation under this Act and, for the same matter, subsequently –

- (a) receives compensation under the laws of a place other than this State; or
- (b) obtains judgment against the employer independently of this Act –

the person from whom compensation under this Act is received may, in a court of competent jurisdiction, sue and recover from the person the amount described in subsection (3).

(3) The amount that is recoverable under subsection (2) is the lesser of the following:

- (a) the amount of compensation paid under this Act;
- (b) the amount of compensation received under the laws of a place other than this State or for which judgment was obtained independently of this Act.

Section 34 amended (Form of claim for compensation)

10. Section 34 of the Principal Act is amended as follows:

- (a) by inserting in subsection (2) “or subsection (2A)(b)” after “(b)”;
- (b) by inserting the following subsection after subsection (2):

(2A) A claim for compensation by a dependant under section 67 or 67A is to be –

- (a) in a form approved by the Board;
and
 - (b) accompanied by a certificate signed by a medical practitioner certifying the date of death.
- (c) by inserting in subsection (3) “or subsection (2A)(b)” after “(b)”.

Section 40 amended (Reference of disputed claims for compensation to Secretary)

11. Section 40 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Chief Executive” and substituting “Secretary”;
- (b) by omitting from subsection (2) “Chief Executive” and substituting “Secretary”;
- (c) by omitting from subsection (3) “Chief Executive” and substituting “Secretary”;
- (d) by omitting from subsection (4) “Chief Executive” and substituting “Secretary”;
- (e) by omitting from subsection (6) “Chief Executive” and substituting “Secretary”.

Section 42 amended (Reference of claims for compensation to Tribunal)

12. Section 42(1)(d) of the Principal Act is amended by omitting “Chief Executive” and substituting “Secretary”.

Section 60A amended (Power of Tribunal to make interim determinations, &c.)

13. Section 60A of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “, whether or not liability for the claim has been accepted or disputed” after “it”;

- (b) by inserting the following subsection after subsection (1):

(1A) The Tribunal may make an interim determination, ruling or direction in the following circumstances:

- (a) where a delay by one side of the proceedings substantially prejudices the other side;
 - (b) where a party fails to comply with a direction of the Tribunal or a conciliator;
 - (c) where the Tribunal is otherwise satisfied that the interests of justice require it.
- (c) by inserting the following subsections after subsection (2):

(2A) The Tribunal is not to make an order under subsection (2) in respect of the provision of a medical service under Part VI unless it is satisfied that –

- (a) the service is reasonably necessary –
 - (i) to prevent a deterioration in the worker's medical condition; or
 - (ii) to promote an early return to work; or
 - (iii) to relieve significant pain or discomfort; and

- (b) the total cost of the service will not exceed \$5 000.

(2B) It is not a requirement for the making of an interim order that the applicant might otherwise suffer serious or irreparable harm.

(2C) In determining a rate of weekly payments for the purposes of an order under this section, the Tribunal may have regard to the basic salary if a rate cannot be reasonably determined by reference to section 69.

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

14. Section 67 of the Principal Act is amended by inserting after subsection (5) the following subsection:

- (6)** A claim for a lump sum under this section is to be made in accordance with section 34.

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

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

- (a) by omitting from subsection (1)(a) “mainly” and substituting “partially”;
- (b) by omitting from subsection (2)(b) “52” and substituting “78”;
- (c) by omitting paragraph (c) from subsection (2) and substituting the following paragraph:

- (c) 80% of the weekly payment for the period exceeding 78 weeks but not exceeding 2 years from the date of death.
- (d) by omitting from subsection (3) “one year” and substituting “78 weeks”;
- (e) by omitting from subsection (3) “70%” and substituting “80%”;
- (f) by inserting the following subsection after subsection (4):

(5) A claim for weekly payments under this section is to be made in accordance with section 34.

Sections 67B, 67C, 67D, 67E, 67F and 67G inserted

16. After section 67A of the Principal Act, the following sections are inserted in Division 1:

Commencement of weekly payments to dependants

67B. (1) Where an employer receives a claim for weekly payments under section 67A(1)(a) and the deceased worker’s first pay day after receipt of that claim –

- (a) would have been not later than 14 days after receipt of that claim, the employer must –
 - (i) if it is reasonably practicable to do so, commence making weekly

payments to the worker's dependants on the first pay day; or

- (ii) in any other case, commence making weekly payments to the worker's dependants not later than 14 days after receipt of that claim; or

- (b) is later than 14 days after the receipt of that claim, the employer must commence making weekly payments of compensation to the worker's dependants on that pay day.

(2) An employer who fails to comply with subsection (1) is guilty of an offence.

Penalty: Fine not exceeding 20 penalty units and, in the case of a continuing offence, a further fine not exceeding 5 penalty units for each day during which the offence continues.

(3) Weekly payments payable under section 67A(1)(a) are payable –

- (a) from the date of death of the worker; or
- (b) 28 days prior to the date on which the claim was given to the employer –

whichever is the later.

(4) Where an employer receives more than one claim for weekly payments under section 67A(1)(a), the amount of the weekly payment is to be divided equally among those claims unless the Tribunal determines otherwise.

(5) In this section –

“**pay day**” means the day on which the deceased worker would have normally received salary or wages from his or her employer.

Timing of weekly payments

67C. (1) Weekly payments payable to a dependent spouse or dependent caring partner of a deceased worker under this Act are payable on the days on which, and at the intervals at which, the worker would normally have been paid salary or wages if the worker had continued in his or her employment.

(2) Weekly payments payable to a dependent child under this Act are payable fortnightly, monthly or quarterly as may be agreed between the employer, the employer’s insurer and the person to whom the payment is to be made.

(3) An employer required to make weekly payments must do so in accordance with subsections (1) and (2).

Penalty: Fine not exceeding 10 penalty units.

Payments in respect of dependent child

67D. Where a child under the age of 18 is entitled to a weekly payment under section 67A(1)(b), that payment is payable to –

- (a) the parent of the child who has custody of him or her; or
- (b) if there is no such parent, the child’s guardian; or

- (c) if there is no such parent or guardian, the person who has day-to-day care and control of the child and with whom the child is ordinarily resident.

Payment not admission of liability in respect of death of worker

67E. (1) Where an employer who has received a claim for compensation (whether the employer has accepted liability or not) makes weekly payments under section 67B, those payments –

- (a) are not, in any subsequent proceedings under this Act, to be construed as an admission of liability; and
- (b) are to be taken to be in reduction of the amount of any liability of the employer in respect of the death of the worker; and
- (c) subject to subsection (2), are not recoverable from a dependant of the worker by the employer; and
- (d) are recoverable from the employer's insurer including any amount payable by the employer under section 97(1A) or (1B).

(2) The Tribunal may order that an employer be entitled to recover from a dependant any weekly payments made by the employer to him or her if the Tribunal is satisfied that the dependant's claim for compensation was fraudulent.

Dispute of liability in respect of death of worker

67F. (1) If an employer or its licensed insurer disputes liability to pay compensation by way of weekly payments under section 67A, the employer or licensed insurer must, within 28 days of receiving the claim for compensation in respect of the death of the worker –

- (a) serve the dependant or dependants of the deceased worker with written notice that the employer disputes liability to pay weekly payments under section 67A; and
- (b) inform the dependants of the matters related to the claim that are disputed and the reasons for disputing liability; and
- (c) refer the matter to the Tribunal.

(2) Where a claim for compensation is referred to the Tribunal under subsection (1), the Tribunal is to determine whether a reasonably arguable case exists concerning the liability of the employer to pay weekly payments under section 67A.

(3) In determining whether there is a reasonably arguable case concerning a claim for compensation under this Division, the Tribunal is to identify each of the matters relating to that claim that are in dispute, and in relation to each of those matters determine whether a reasonably arguable case exists.

(4) Subject to subsection (7), in any proceedings in the Tribunal, the employer or the

employer's insurer is prohibited from raising any issue that it did not raise in a dispute under this section.

(5) The Tribunal must –

- (a) if the Tribunal considers that weekly payments should be made, order the employer to make weekly payments from such date as the Tribunal determines; or
- (b) if the Tribunal considers that a reasonably arguable case exists concerning the liability of the employer to pay compensation by way of weekly payments to a dependant of the deceased worker, determine that compensation is not to be paid by the employer to that dependant.

(6) The fact that the Tribunal has determined under subsection (5) that weekly payments should be made is not to be taken into account by the Tribunal in any other proceedings under this Act.

(7) Notwithstanding that liability has not been disputed under subsection (1), an employer who wishes to dispute liability to continue to pay compensation by way of weekly payments under section 67A may, at any time after the period referred to in subsection (1), refer the matter to the Tribunal.

Failure to dispute liability in respect of death of worker

67G. Where an employer has received a claim for compensation in relation to the death of a worker

employed by the employer and the employer does not, in accordance with section 67F(1), dispute liability to pay compensation to a dependant of the deceased worker, the employer is taken to have accepted liability in respect of that claim including –

- (a) entitlement to compensation under section 25; and
- (b) dependency or a degree of dependency; and
- (c) entitlement to weekly payments of compensation or lump sum compensation.

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

17. Section 69(1) of the Principal Act is amended by omitting “an accredited” and substituting “a”.

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

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

- (a) by omitting from subsection (1)(a) “incapacity in aggregate” and substituting “the period of incapacity”;
- (b) by omitting from subsection (1)(b) “in aggregate”;
- (c) by omitting from subsection (1)(c) “in aggregate”;

- (d) by inserting in subsection (3) “or the weekly rate payment determined under section 69, whichever is the lesser” after “salary”;
- (e) by inserting the following subsection after subsection (5):

(6) In this section –

“period of incapacity” means –

- (a) a period of incapacity for work, whether partial incapacity, total incapacity or a combination of partial incapacity and total incapacity, starting on the date of the initial incapacity; and
- (b) in the case of separate periods of incapacity for work resulting from the same injury, the aggregate of those periods.

Section 72 amended (Assessment of degree of impairment)

19. Section 72(1) of the Principal Act is amended by omitting “made” and substituting “undertaken by a medical assessor”.

Section 77 amended (Certain questions to be determined by Tribunal)

20. Section 77 of the Principal Act is amended by omitting “, if not settled by agreement,”.

Section 77AA substituted

21. Section 77AA of the Principal Act is repealed and the following section is substituted:

Employer to pay claim or refer it to Tribunal

77AA. (1) Within 28 days after receiving a claim for payment of an expense under Division 2 of Part VI, an employer –

- (a) must pay the expense; or
- (b) must –
 - (i) serve the worker with notice in writing disputing the claim; and
 - (ii) notify in writing the service provider who rendered the account that liability for the expense is disputed and outline the reasons why the employer disputes liability to pay the expense.

(2) A notice disputing a claim is to –

- (a) state that the employer disputes liability to pay the expense; and
- (b) give the reasons why the employer disputes liability to pay the expense; and
- (c) attach or identify with particularity such medical or other evidence as the employer relies on for disputing liability to pay the expense; and
- (d) inform the worker of his right, within 60 days from the date of service of the

notice, to refer the matter to the Tribunal; and

- (e) state whether the employer disputes –
 - (i) only the expense to which the claim relates; or
 - (ii) all expenses of a specified kind or incurred with an identified provider of medical, hospital, nursing, constant attendance, rehabilitation or ambulance services, or travelling and maintenance expenses related to the provision of such services; or
 - (iii) liability to pay expenses of any kind whatsoever claimed by the worker under Division 2 of Part VI.

(3) Where an employer gives notice disputing expenses of a kind referred to in subsection (2)(e)(ii), the employer need not comply with this section in respect of any claim subsequently received from the worker for payment of an expense of the same kind, or incurred with the same provider, as identified in the notice, until the Tribunal has determined a matter referred to it by the worker in respect of the notified dispute.

(4) Where an employer gives notice disputing expenses of a kind referred to in subsection (2)(e)(iii), the employer need not comply with this section in respect of any claim subsequently received from the worker for payment of any expense under Division 2 of Part VI until the

Tribunal has determined a matter referred to it by the worker in respect of the notified dispute.

(5) A worker who is served with notice of dispute may, within 60 days after the date of service, refer the matter to the Tribunal.

(6) An employer who fails to give notice disputing a claim as required by this section is deemed to have accepted liability to pay the expense claimed by the worker.

(7) In proceedings before the Tribunal, the onus of proving that the worker is not entitled to the payment of the disputed expense lies on the employer.

Section 81 amended (Commencement of weekly payments)

22. Section 81 of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

(3) Weekly payments payable under this section are payable from –

- (a) the date of the incapacity; or
- (b) 14 days before the date on which the claim for compensation was given to the employer under section 34 –

whichever is the later.

Section 81AA amended (Payments not admission of liability)

23. Section 81AA of the Principal Act is amended by omitting subsection (3) and substituting the following subsection:

(3) If –

- (a) pursuant to section 81, an employer pays compensation to a worker by way of weekly payments; and
- (b) a determination is made under section 81A(3)(c); and
- (c) the employer's liability under section 25 is subsequently determined not to exist –

the employer may deduct from the worker's sick leave entitlements existing at the time of the determination referred to in paragraph (c), an amount up to the amount of those weekly payments.

Section 81A amended (Disputes of liability for weekly payments and other benefits)

24. Section 81A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) "28" and substituting "84";
- (b) by omitting subsection (2) and substituting the following subsections:

(2) The referral of a matter to the Tribunal 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.

(2AA) If an employer fails to lodge evidentiary material under subsection (2)(b), the employer may not rely on that material unless the Tribunal otherwise allows.

- (c) by omitting from subsection (2A) “genuine dispute” and substituting “reasonably arguable case”;
- (d) by omitting from subsection (3)(c) “genuine dispute” and substituting “reasonably arguable case”;
- (e) by omitting from subsection (3)(d) “genuine dispute” and substituting “reasonably arguable case”.

Sections 84A and 84B inserted

25. After section 84 of the Principal Act, the following sections are inserted in Division 1:

Re-crediting of sick leave during incapacity

84A. Notwithstanding section 69(4)(a), if a worker takes sick leave for a period and his or her employer is subsequently found to be liable to pay weekly payments for that period –

- (a) the period is taken to be a period during which the worker was receiving weekly payments; and
- (b) the worker's accrued entitlement to sick leave is to be amended to take that period into account.

Re-crediting of annual recreation leave

84B. Notwithstanding section 84, where a worker takes annual recreation leave during any period in which his or her entitlement to weekly payments is pending, including where liability is in dispute, and his or her employer is subsequently found to be liable to pay weekly payments for that period –

- (a) the period is taken to be a period during which the worker was receiving weekly payments; and
- (b) the worker's accrued entitlement to annual recreation leave is to be amended to take that period into account.

Section 91 amended (Payment of compensation money to person entitled and to Public Trustee)

26. Section 91(1) of the Principal Act is amended by inserting “and in section 67D” after “this section”.

Part VIII repealed

27. Part VIII of the Principal Act is repealed.

Section 97 amended (Obligation of employers to insure)

28. Section 97 of the Principal Act is amended as follows:

- (a) by omitting subsection (1A) and substituting the following subsection:

(1A) Subject to subsection (1C), an employer is not to insure against liability arising from claims for compensation under this Act for weekly payments in respect of the first weekly rate payment payable under section 69(1) and the first \$200 of any other benefits payable under this Act in respect of an injury suffered by a worker.

- (b) by omitting from subsection (11) “section 130(1)” and substituting “section 130(3)”.

Section 125A inserted

29. After section 125 of the Principal Act, the following section is inserted in Division 5:

Nominal Insurer may assign liabilities

125A. (1) The Nominal Insurer may assign to a person approved by the Minister any of the Nominal Insurer’s liabilities under this Act –

- (a) absolutely; or
- (b) on such terms and conditions as may be approved by the Minister.

(2) If a liability is assigned absolutely, the Nominal Insurer's responsibility for the discharge of the liability ceases and that responsibility becomes the responsibility of the person to whom the liability is assigned.

Section 138AA amended (Application of Division)

30. Section 138AA of the Principal Act is amended as follows:

- (a) by inserting in subsection (1)(a) "or statutory duty" after "contract";
- (b) by inserting in subsection (2) "or statutory duty" after "contract";
- (c) by inserting the following subsections after subsection (3):

(4) This Division extends to an employer's liability for a breach of statutory duty by a worker where the employer would have been liable for damages if the employer had committed the breach.

(5) This Division does not apply to an action by a worker for damages for trespass, or any other cause of action for which the employer is not vicariously liable, committed against the worker by a person –

- (a) employed by the employer under a contract of service at the time the injury was suffered; or

- (b) otherwise deemed to be a worker employed by the employer at that time.

Section 138AB amended (Election to claim damages)

31. Section 138AB(5) of the Principal Act is amended by omitting “weekly payments first became payable under this Act” and substituting “the claim for compensation is given to the employer of the worker, or person designated by the employer, under section 34”.

Part X, Division 3 inserted

32. After section 138AD of the Principal Act, the following Division is inserted in Part X:

Division 3 – Choice of law**Applicable substantive law for work injury claims**

138AE. (1) If there is an entitlement to compensation under the statutory workers compensation scheme of a State in respect of an injury to a worker (whether or not compensation has been paid) the substantive law of that State is the substantive law that governs –

- (a) whether or not a claim for damages in respect of the injury can be made; and
- (b) if it can be made, the determination of the claim.

(2) This Division does not apply if compensation is payable in respect of the injury under the statutory workers compensation scheme of more than one State.

(3) For the purposes of this section, compensation is considered to be payable under a statutory workers compensation scheme of a State in respect of an injury if compensation in respect of it –

- (a) would have been payable but for a provision of the scheme that excludes the worker's right to compensation because the injury is attributable to any conduct or failure of the worker that is specified in that provision; or
- (b) would have been payable if a claim for that compensation had been duly made, and (where applicable) an election to claim that compensation (instead of damages) had been duly made.

(4) A reference in this section to compensation payable in respect of an injury does not include a reference to compensation payable on the basis of the provisional acceptance of liability.

Claim to which Division applies

138AF. (1) This Division applies only to a claim for damages or recovery of contribution brought against a worker's employer in respect of an injury that was caused by –

- (a) the negligence or other tort (including breach of statutory duty) of the worker's employer; or

- (b) a breach of contract by the worker's employer.

(2) This Division also applies to a claim for damages or recovery of contribution brought against a person other than a worker's employer in respect of an injury if –

- (a) the worker's employment is connected with this State; and
- (b) the negligence or other tort or the breach of contract on which the claim is founded occurred in this State.

(3) Subsections (1)(a) and (2) apply even if damages resulting from the negligence or other tort are claimed in an action for breach of contract or other action.

(4) A reference in this Division to a worker's employer includes a reference to –

- (a) a person who is vicariously liable for the acts of the employer; and
- (b) a person for whose acts the employer is vicariously liable.

What constitutes injury and employment and who is employer

138AG. For the purposes of this Division –

- (a) **“injury”** and **“employer”** include anything that is within the scope of a corresponding term in the statutory

workers compensation scheme of another State; and

- (b) the determination of what constitutes employment or whether or not a person is the worker's employer is to be made on the basis that those concepts include anything that is within the scope of a corresponding concept in the statutory workers compensation scheme of another State.

Claim in respect of death included

138AH. For the purposes of this Division, a claim for damages in respect of death resulting from an injury is to be considered as a claim for damages in respect of the injury.

Meaning of substantive law

138AI. In this Division –

“a State's legislation about damages for a work-related injury” means –

- (a) for this State, this Part and any other provision of this Act providing for the interpretation of anything in this Part; and
- (b) for any other State, any provisions of a law of that State that is declared by the regulations to be the State's legislation about damages for a work-related injury;

“substantive law” includes –

- (a) a law that establishes, modifies or extinguishes a cause of action or a defence to a cause of action; and
- (b) a law prescribing the time within which an action must be brought (including a law providing for the extension or abridgment of that time); and
- (c) a law that provides for the limitation or exclusion of liability or the barring of a right of action if a proceeding on, or arbitration of, a claim is not commenced within a particular time limit; and
- (d) a law that limits the kinds of injury, loss or damage for which damages or compensation may be recovered; and
- (e) a law that precludes the recovery of damages or compensation or limits the amount of damages or compensation that can be recovered; and
- (f) a law expressed as a presumption, or rule of evidence, that affects substantive rights; and
- (g) a provision of a State’s legislation about damages for a work-related injury, whether or not it would be otherwise regarded as procedural in nature –

but does not include a law prescribing rules for choice of law.

Availability of action in another State not relevant

138AJ. (1) It makes no difference for the purpose of this Division that, under the substantive law of another State –

- (a) the nature of the circumstances is such that they would not have given rise to a cause of action had they occurred in that State; or
- (b) the circumstances on which the claim is based do not give rise to a cause of action.

(2) In this section –

“another State” means a State other than the State with which the worker’s employment is connected.

Section 148AA inserted

33. Before section 148A of the Principal Act, the following section is inserted in Part 12A:

Interpretation of Part 12A

148AA. In this Part –

“Director” means the Director of Industry Safety appointed under section 33 of the *Workplace Health and Safety Act 1995*.

Section 150A amended (Authorized officers)

34. Section 150A of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “Chief Executive” and substituting “Secretary”;
- (b) by omitting from subsection (2) “Chief Executive” and substituting “Secretary”;
- (c) by omitting from subsection (3) “Chief Executive” and substituting “Secretary”;
- (d) by omitting from subsection (4) “Chief Executive” and substituting “Secretary”.

Schedule 2 amended (Provisions with respect to meetings of Board)

35. Clause 3 of Schedule 2 to the Principal Act is amended by omitting “and the chairperson or the person acting in the office of chairperson, as the case may be, has a deliberative vote and, in the event of an equality of votes, also has a casting vote”.

Schedule 9 amended (Savings and transitional provisions in relation to the *Workers Rehabilitation and Compensation Reform Act 1995*)

36. Clause 9 of Schedule 9 to the Principal Act is amended by omitting “Chief Executive” and substituting “Secretary”.

Schedule 10 amended (Savings and transitional provisions in relation to *Workers Rehabilitation and Compensation Amendment Act 2000*)

37. Clause 9 of Schedule 10 to the Principal Act is amended by omitting “Chief Executive” and substituting “Secretary”.

Schedule 11 inserted

38. After Schedule 10 to the Principal Act, the following Schedule is inserted:

SCHEDULE 11 – ADJACENT AREAS

Section 31A(9)

Interpretation

1. In this Schedule –

“continental shelf” has the same meaning as in section 3(1) of the Seas and Submerged Lands Act;

“Petroleum (Submerged Lands) Act” means the *Petroleum (Submerged Lands) Act 1967* of the Commonwealth;

“Seas and Submerged Lands Act” means the *Seas and Submerged Lands Act 1973* of the Commonwealth;

“territorial sea” has the same meaning as in section 3(1) of the Seas and Submerged Lands Act.

Adjacent areas for States and the Northern Territory

2. (1) The adjacent area for New South Wales, Victoria, South Australia or Tasmania is –

- (a) the part of the area described in Schedule 2 to the Petroleum (Submerged Lands) Act for the relevant State that is within the outer limits of the continental shelf; and
- (b) the space above and below that area.

(2) The adjacent area for Queensland is –

- (a) the part of the area described in Schedule 2 to the Petroleum (Submerged Lands) Act for Queensland that is within the outer limits of the continental shelf; and
- (b) the Coral Sea area, within the meaning of section 5A(7) of the Petroleum (Submerged Lands) Act, other than the territorial area within the Coral Sea area; and
- (c) the areas within the outer limits of the territorial sea adjacent to certain islands of Queensland as determined by proclamation on 9 February 1983 under section 7 of the Seas and Submerged Lands Act; and
- (d) the space above and below the areas described in paragraphs (a), (b) and (c).

(3) The adjacent area for Western Australia is the part of the area described in Schedule 2 to the

Petroleum (Submerged Lands) Act for Western Australia that –

- (a) is within the outer limits of the continental shelf, including the space above and below the area; and
- (b) is not within Area A of the Zone of Cooperation.

(4) The adjacent area for the Northern Territory is –

- (a) the part of the area described in Schedule 2 to the Petroleum (Submerged Lands) Act for the Northern Territory that –
 - (i) is within the outer limits of the continental shelf; and
 - (ii) is not within Area A of the Zone of Cooperation; and
- (b) the adjacent area for the Territory of Ashmore and Cartier Islands, within the meaning of section 5A(3) of the Petroleum Submerged Lands Act, other than the territorial sea within that area; and
- (c) the space above and below the areas described in paragraphs (a) and (b).

(5) The adjacent area for a State or the Northern Territory does not include any area inside the limits of a State or Territory.