

TASMANIA

**WORKERS REHABILITATION AND
COMPENSATION AMENDMENT BILL 2007**

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**WORKERS REHABILITATION AND
COMPENSATION AMENDMENT BILL 2007**

*(Brought in by the Minister for Justice and Workplace
Relations, the Honourable Steven Kons)*

A BILL FOR

**An Act to amend the *Workers Rehabilitation and
Compensation Act 1988* and the *Taxi and Luxury Hire Car
Industries Act 1995***

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:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Workers
Rehabilitation and Compensation Amendment
Act 2007*.

2. Commencement

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

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**PART 2 – WORKERS REHABILITATION AND
COMPENSATION ACT 1988 AMENDED**

3. Principal Act

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

4. Section 3 amended (Interpretation)

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

- (a) by omitting the definition of “long service leave”;
- (b) by omitting “rate” from the definition of “weekly payment”.

5. Sections 4DA and 4DB inserted

After section 4D of the Principal Act, the following sections are inserted in Part I:

4DA. Luxury hire car drivers

- (1) A person who operates a vehicle as a luxury hire car with the consent or authority of the licensee is, while driving the vehicle or performing any associated

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activity, taken to be a worker employed by the licensee.

(2) Subsection (1) does not apply where the driver of the luxury hire car is also the licensee.

(3) In this section –

“**licensee**” means the holder of a luxury hire car licence under the *Taxi and Luxury Hire Car Industries Act 1995*;

“**luxury hire car**” has the same meaning as in section 23A of the *Taxi and Luxury Hire Car Industries Act 1995*.

4DB. Taxi drivers

(1) A person who operates a vehicle as a taxi with the consent or authority of the responsible operator of the taxi is, while driving the vehicle or performing any associated activity, taken to be a worker employed by the responsible operator.

(2) Subsection (1) does not apply where the driver of the taxi is also the responsible operator.

(3) In this section –

“**responsible operator**”, in respect of a taxi, means –

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- (a) if an assignment or leasing arrangement is in force under regulation 15 of the *Taxi Industry Regulations 1996*, the person who, by virtue of that regulation, is the responsible operator; or
- (b) if no such assignment or leasing arrangement is in force, the holder of a relevant existing cab licence, within the meaning of the *Taxi and Luxury Hire Car Industries Act 1995*, or relevant perpetual taxi licence, within the meaning of that Act;

“taxi” has the same meaning as in section 23A of the *Taxi and Luxury Hire Car Industries Act 1995*.

6. Section 9 amended (Membership of Board)

Section 9 of the Principal Act is amended as follows:

- (a) by inserting in subsection (4) “referred to in subsection (1)(b), (c), (d), (e) and (f)” after “Board”;

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- (b) by inserting in subsection (5) “or the Secretary, as the case may be,” after “Minister”.

7. Section 25 amended (Liability of employers to compensate workers for injuries)

Section 25 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1)(a) “and” and substituting “or”;
- (b) by omitting from subsection (1)(b) “, arising out of and in the course of his employment”;
- (c) by inserting the following paragraph after paragraph (b) in subsection (2):
 - (ba) coronary heart disease, a diseased heart valve, an aortic aneurism or a cerebral aneurism or any prescribed injury, unless the employment contributed to the disease or injury to a substantial degree; or
- (d) by omitting subsection (5).

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8. Section 25A amended (Claims for certain diseases arising from mining operations)

Section 25A(1) of the Principal Act is amended as follows:

- (a) by omitting “the disease” first occurring and substituting “his or her employment”;
- (b) by omitting “to be taken to have arisen out of and in the course of his or her employment and that employment is”.

9. Section 26 amended (Presumption as to cause of disease)

Section 26(1) of the Principal Act is amended by omitting “that the disease arose out of and in the course of his employment and”.

10. Section 34 amended (Form of claim for compensation)

Section 34(1) of the Principal Act is amended as follows:

- (a) by omitting “A claim for compensation shall” and substituting “Subject to subsection (2A), a claim for compensation is to”;
- (b) by omitting from paragraph (b) “an accredited medical practitioner or” and

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substituting “a medical practitioner or an”.

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

Section 38 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “section 32(1)(b) or (2A)” and substituting “section 32(1)(b), section 32(2) or section 32(2A)”;
- (b) by omitting from subsection (3) “section 32(1)(b) or (2A)” and substituting “section 32(1)(b), section 32(2) or section 32(2A)”.

12. Section 40 repealed

Section 40 of the Principal Act is repealed.

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

Section 42(1) of the Principal Act is amended as follows:

- (a) by omitting from paragraph (a) “worker;” and substituting “worker; or”;

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- (b) by omitting from paragraph (b) “worker;” and substituting “worker; or”;
- (c) by omitting from paragraph (c) “employer; or” and substituting “employer.”;
- (d) by omitting paragraph (d).

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

Section 69 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1) “, in addition to any lump sum that may be payable under section 71 or 72 in respect of that injury”;
- (b) by omitting paragraph (a) from subsection (1) and substituting the following paragraph:
 - (a) in the case of the total incapacity of the worker for work, weekly payments equal to the normal weekly earnings of the worker; or
- (c) by omitting from subsection (1)(b) “rate”;
- (d) by omitting subsection (2) and substituting the following subsections:

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- (2) For the purposes of this section, if the period of employment is 14 days or less, the normal weekly earnings of the worker before the commencement of the period of incapacity are to be taken to be –
- (a) equivalent to the normal weekly earnings of another worker who is employed by the same employer and performing comparable work; or
 - (b) if there is no such other worker, the worker's expected weekly salary calculated on the hourly rate of pay for the work that he or she agreed, or was rostered, to perform in the pay period in which the incapacity occurred.
- (2A) For the purposes of subsection (2), the hourly rate of pay of a worker is –
- (a) the rate to which the worker is entitled under the worker's contract of employment or industrial instrument, for each of his or her hours of work, excluding overtime and

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shift or other allowances;
or

- (b) if a rate cannot be determined under the worker's contract of employment or industrial instrument, the rate for each of those hours as previously agreed between the worker and the employer.
- (e) by omitting from subsection (3) "time" and substituting "hourly";
- (f) by omitting from subsection (3) "rate" second occurring;
- (g) by omitting from subsection (4)(a) "rate";
- (h) by omitting from subsection (4)(a) "from his employer during the period of his" and substituting "in respect of his or her employment during the period of his or her";
- (i) by omitting subsections (8) and (9) and substituting the following subsections:
 - (8) If of the opinion that an amount of weekly payments calculated in accordance with this section is insufficient or excessive, a worker, an employer or a licensed

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insurer of the employer may refer the matter to the Tribunal.

- (9) The Tribunal, in relation to a matter referred to it under subsection (8), is to determine the amount of weekly payments which appears to it to be reasonable and appropriate in the circumstances, having regard to –
- (a) the current weekly earnings of another worker of the same grade or classification as the worker and employed by the same employer in similar work to the worker; and
 - (b) the earnings that the worker might reasonably have earned during the period of incapacity; and
 - (c) any other relevant matter.
- (j) by omitting from subsection (10) “rate” twice occurring;
- (k) by omitting from subsection (11) “rate” twice occurring;
- (l) by inserting in subsection (11) “greater or” after “a”;

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(m) by omitting from subsection (12) “rate”
twice occurring;

(n) by inserting the following subsection
after subsection (13):

(14) In this section –

“normal weekly earnings”, in
relation to a worker who
is incapacitated for work,
means the average weekly
earnings of the worker
during the relevant
period;

“relevant period” means –

(a) if the worker has
been continuously
employed by the
same employer for
12 months or
more, the 12
months
immediately
before the
commencement of
the period of
incapacity; or

(b) if the worker has
been continuously
employed by the
same employer for
less than 12
months, the period

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for which he or she was employed before the commencement of the period of incapacity.

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

Section 69B(3) of the Principal Act is amended as follows:

- (a) by inserting “, when taken together with a worker’s earnings,” after “(c)”;
- (b) by omitting “rate”.

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

Section 70(2) of the Principal Act is amended as follows:

- (a) by omitting paragraphs (b) and (c) and substituting the following paragraph:
 - (b) where, at the commencement of the period of incapacity, the worker has concurrent contracts of service with 2 or more employers, his or her normal weekly earnings are to be computed as the sum of the

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average weekly earnings in each employment as if his or her earnings under both or all of those contracts were earnings in the employment of the employer for whom he or she was working at the commencement of the period of incapacity;

(b) by omitting paragraph (e).

17. Section 71 amended (Compensation for permanent impairment)

Section 71(1) of the Principal Act is amended by omitting “The” and substituting “In addition to any other compensation payable under this Act, the”.

18. Section 72A inserted

After section 72 of the Principal Act, the following section is inserted in Division 1:

72A. Industrial deafness

- (1) A worker who has industrial deafness is a person who has suffered an injury within the meaning of this Act, notwithstanding that the worker has not become totally or partially incapacitated.
- (2) A worker is entitled to compensation under this Act in respect of industrial

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deafness which occurred after the commencement of the *Workers Rehabilitation and Compensation Reform Act 1995*.

- (3) A worker is entitled to compensation for permanent impairment under this Act in respect of industrial deafness which exceeds 5% binaural hearing impairment.
- (4) For the purposes of subsection (3) –
 - (a) the binaural hearing impairment is to be calculated by reference to the worker's hearing ability at the commencement of the *Workers Rehabilitation and Compensation Reform Act 1995*; and
 - (b) a worker's hearing loss is taken to have been sustained at a constant rate over the course of the worker's exposure to workplace noise in employment of a nature likely to have caused industrial deafness unless a baseline hearing test that has been conducted since 16 August 1995, in accordance with the regulations, establishes otherwise.
- (5) The amount of compensation payable under this Part to a worker who suffers permanent impairment in respect of industrial deafness is to be calculated in accordance with section 71(1).

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19. Section 73 amended (Computation of industrial deafness)

Section 73 of the Principal Act is amended by omitting subsections (6), (7), (8) and (9).

20. Section 73B amended (Determination for payment of compensation)

Section 73B of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “permanent impairment or” after “claim for”;
- (b) by inserting in subsection (2) “permanent impairment or” after “claim for”;
- (c) by omitting paragraph (b) from subsection (2) and substituting the following paragraph:
 - (b) in the case of a payment for industrial deafness, the degree of industrial deafness of the worker in respect of whom the payment is made; and
- (d) by inserting in subsection (3) “permanent impairment or” after “compensation for”.

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

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

Penalty: Fine not exceeding 20 penalty units.

22. Section 77FA inserted

After section 77F of the Principal Act, the following section is inserted in Division 2A:

77FA. Revocation of accreditation on ceasing to be registered

- (1) If an accredited medical practitioner ceases on a particular day to be entitled to practise as a medical practitioner in this State, his or her accreditation is revoked with effect from that day.
- (2) A person whose accreditation is revoked under subsection (1) may apply for accreditation if he or she subsequently becomes entitled to practise as a medical practitioner in this State.

23. Section 78 amended (Injuries contracted by gradual process)

Section 78 of the Principal Act is amended as follows:

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- (a) by omitting from subsection (2) “An” and substituting “Subject to subsection (2A), an”;
- (b) by omitting from subsection (2) “shall make to the employer referred to in that subsection” and substituting “is liable to pay compensation and must make to the relevant employer referred to in subsection (1)”;
- (c) by inserting the following subsection after subsection (2):
 - (2A) Where a worker suffers industrial deafness, an employer who, at any time during the period of 10 years preceding the date of injury, employed the worker in any employment to the nature of which the injury was due is liable to pay compensation and must make to the relevant employer referred to in subsection (1) such contribution in respect of compensation for industrial deafness as is agreed between the employers.
- (d) by inserting in subsection (3) “or subsection (2A)” after “subsection (2)”.

24. Section 79 amended (Information to be supplied)

Section 79(1) of the Principal Act is amended by inserting “or (2A)” after “subsection (2)”.

25. Section 81B amended (Payment of weekly payments)

Section 81B(1) of the Principal Act is amended as follows:

- (a) by omitting “Weekly payments payable to a” and substituting “Unless a worker and an employer agree otherwise in writing, weekly payments payable to the”;
- (b) by inserting “and in the manner” after “payable on the days on which, and at the intervals”;
- (c) by inserting “and in the manner” after “employer, on the days on which, and at the intervals”.

26. Section 82 inserted

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

82. Prisoners not entitled to weekly payment

A person serving a term of imprisonment is not entitled to weekly payments during that term of imprisonment.

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27. Section 84 amended (Paid holidays during incapacity)

Section 84 of the Principal Act is amended as follows:

- (a) by inserting in subsection (1) “or on long service leave on full or part pay” after “recreational leave on full pay”;
- (b) by inserting in subsection (1)(a) “or a similar period of leave on full or part pay in lieu of that long service leave” after “recreational leave”;
- (c) by inserting in subsection (1)(b) “or a period of long service leave” after “leave”;
- (d) by inserting in subsection (2) “or a period of long service leave” after “takes annual recreational leave”;
- (e) by inserting in subsection (2) “or long service leave” after “that annual recreational leave”;
- (f) by inserting in subsection (3) “or long service leave” after “leave”.

28. Section 84B amended (Re-crediting of annual recreation leave and long service leave)

Section 84B of the Principal Act is amended as follows:

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- (a) by inserting “or a period of long service leave” after “takes annual recreation leave”;
- (b) by inserting in paragraph (b) “or long service leave, as the case may be,” after “leave”.

29. Section 96A amended (Interpretation of Division 1)

Section 96A of the Principal Act is amended by inserting after paragraph (e) in the definition of “wages” the following paragraph:

- (ea) a distribution to a worker as a beneficiary of a trust to the extent that the distribution is in lieu of wages for work done for the trust by the worker;

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

Section 97 of the Principal Act is amended as follows:

- (a) by omitting from subsection (1A) “rate”;
- (b) by omitting subsection (1B) and substituting the following subsection:
 - (1B) For the purposes of subsection (1A), an employer may increase up to a maximum of 4 the number

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of weekly payments in respect of which the employer is not to insure against liability arising from claims for compensation under this Act.

- (c) by omitting from subsection (1C) “during all or part of the period referred to in subsection (1A)” and substituting “in respect of the first weekly payment payable under section 69(1) or the first \$200 of any other benefits payable under this Act in respect of an injury suffered by a worker”;
- (d) by omitting from subsection (10) “5” and substituting “7”.

31. Section 97A amended (Disputes between insurers, &c.)

Section 97A of the Principal Act is amended by omitting subsection (2) and substituting the following subsections:

- (2) Where a worker is entitled to compensation for an injury from an employer but there is a dispute between insurers as to liability to indemnify that employer, the insurer of the employer of the worker at the time of the latest injury is liable to indemnify the employer until the Tribunal has otherwise determined.

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- (3) The Tribunal is to determine which insurer is liable to indemnify the employer or how liability is to be apportioned and may make such order as it thinks proper for the reimbursement of one insurer by another and for the indemnity of the employer in respect of the employer's liability under this Act.
- (4) An employer or insurer may refer a dispute between insurers for conciliation under Division 2 of Part V, notwithstanding any term or condition of any policy of insurance providing for some other means of settling disputes.

32. Section 97B inserted

After section 97A of the Principal Act, the following section is inserted in Division 1:

97B. Worker entitled during dispute between employers

- (1) Where there is a dispute between employers as to liability but no dispute that a worker is entitled to compensation from some employer for an injury, the employer of the worker at the time of the latest injury is liable to pay compensation under this Act until the question of which employer is liable or how liability is to be apportioned between employers has been resolved.

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- (2) The worker or his or her dependants, if so required by the employer first liable to pay compensation, is to furnish to the employer the name and address of any employer in whose employment the worker was when any similar injury previously occurred.
- (3) If the worker has filed an application for compensation, the respondent employer is to join as a party any other employer who the respondent employer alleges is wholly or partially liable to pay the compensation.
- (4) If the worker has not filed an application for compensation, the employer first liable to pay compensation may refer for conciliation under Division 2 of Part V the question of whether some other employer is wholly or partially liable to pay compensation.
- (5) If the Tribunal finds that the liability to pay compensation arose as a result of one or more injuries, it may order another employer to pay to the employer first liable to pay compensation the whole or a part of the amount of compensation paid to the worker and to pay any further compensation to which the worker is entitled.

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Part 2 – Workers Rehabilitation and Compensation Act 1988 Amended

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33. Section 134 amended (Right of employer to contribution or indemnity from third parties)

Section 134(1) of the Principal Act is amended by omitting “creating” and substituting “which, but for section 138AB, would create”.

34. Section 151 amended (Powers of authorized officers)

Section 151 of the Principal Act is amended by inserting after subsection (7) the following subsection:

- (8) The court by which a person is convicted of an offence against subsection (7) may order that person to forward to an authorized officer a true copy of the record, or, as the case may be, provide the information to the authorized officer, that the person failed to produce or provide in response to an authorized officer’s request or question.

35. Section 152 amended (Summary of Act, &c., to be available)

Section 152(1) of the Principal Act is amended by omitting “shall keep, or cause to be kept, readily available” and substituting “must display in a prominent place”.

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Part 2 – Workers Rehabilitation and Compensation Act 1988 Amended

36. Section 153A inserted

After section 153 of the Principal Act, the following section is inserted in Part XIII:

153A. Employer to keep records

- (1) An employer must make and maintain true records of the following matters:
 - (a) the names of all workers employed by the employer;
 - (b) the wages paid to those workers;
 - (c) the trade or occupation of each of those workers;
 - (d) any notice of injury or claim for compensation received;
 - (e) such other matters as may be prescribed.

Penalty: Fine not exceeding 20 penalty units.

- (2) An employer must retain the records referred to in subsection (1) for –
 - (a) in the case of records referred to in subsection (1)(a), (b) or (c), a period of 7 years from the date on which the worker ceases to be employed by the employer; and
 - (b) in the case of a notice of injury or claim for compensation, a period

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of 7 years from the date of receipt
of the notice or claim; and

- (c) in the case of a matter prescribed
under subsection (1)(e), such
period as may be prescribed.

Penalty: Fine not exceeding 20 penalty
units.

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Part 3 – Taxi and Luxury Hire Car Industries Act 1995 Amended

**PART 3 – TAXI AND LUXURY HIRE CAR
INDUSTRIES ACT 1995 AMENDED**

37. Principal Act

In this Part, the *Taxi and Luxury Hire Car Industries Act 1995** is referred to as the Principal Act.

38. Section 26A repealed

Section 26A of the Principal Act is repealed.

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