

Workers' Compensation and Rehabilitation Regulation 2014

Explanatory notes for SL 2014 No. 189

Made under the

Workers' Compensation and Rehabilitation Act 2003

General Outline

Short Title

Workers' Compensation and Rehabilitation Regulation 2014

Authorising law

Section 584 of the *Workers' Compensation and Rehabilitation Act 2003*

Policy objectives and the reasons for them

The *Workers' Compensation and Rehabilitation Act 2003* (the Act) establishes a workers' compensation scheme for Queensland providing benefits for workers who sustain injury in their employment, for dependants if a worker's injury results in the worker's death, and encouraging improved health and safety performance by employers. It is intended that the scheme should maintain a balance between providing fair and appropriate benefits for injured workers or dependants and ensuring reasonable cost levels for employers.

The *Workers' Compensation and Rehabilitation Regulation 2003* (2003 Regulation) is subordinate legislation made under the Act. It is a procedural regulation that provides for ways of meeting obligations created by the Act. The 2003 Regulation is due to expire on 1 September 2014 under the requirements of the *Statutory Instruments Act 1992*.

Key mechanisms and safeguards in the 2003 Regulation allow the workers' compensation scheme to run efficiently and effectively. The 2003 Regulation provides for ways of meeting obligations created by the Act, which establishes a workers' compensation scheme that provides benefits for workers who sustain a work-related injury and for the dependants of workers who are fatally injured, among other things.

The 2003 Regulation was due to expire on 1 September 2013. However, automatic expiry was extended to 1 September 2014 to allow sufficient time for the Government to consider the findings and act on the recommendations of the five year scheme review undertaken by Parliament's Finance and Administration Committee (the Committee).

In response to the Committee's report, Parliament passed the *Workers' Compensation and Rehabilitation and Other Legislation Amendment Act 2013* (2013 legislative changes), which contained amendments to the 2003 Regulation.

The 2013 legislative changes are considered to represent the appropriate balance between the benefits and costs of regulation in this area of public policy. Both the Act and 2003 Regulation were comprehensively scrutinised. The 2013 legislative changes reduced the 2003 Regulation by 27 pages.

The policy objective of the *Workers' Compensation and Rehabilitation Regulation 2014* (the 2014 Regulation) is to maintain the efficient operation and regulation of the workers' compensation scheme in a way that is consistent with an overall policy objective to reduce regulatory burden.

Achievement of policy objectives

The 2014 Regulation will achieve the policy objectives by remaking the 2003 Regulation in a form that retains current policy intent, protects injured workers' rights and entitlements, provides for efficient processes for insurers and employers, and removes any obsolete processes, requirements and unnecessary duplication.

The 2014 Regulation includes a number of minor changes to conform to current drafting practice. These changes do not change existing policy and will not affect business or the community. For example, sections 97 and 98 the 2003 Regulation prescribe the information required to be contained in an occupational therapist's report. The 2014 Regulation reduces this to one section. The 2014 Regulation streamlines these provisions in a way that does not result in any noticeable change or cost to business or the community, but will reduce the net page count and provide consistency and certainty for insurers.

Further red tape reductions have been achieved by removing sections that contain requirements that do not need the force of regulation. For example, sections 101 to 110 of the 2003 Regulation prescribed standards for rehabilitation and contained over 30 regulatory requirements (e.g. the insurer and employer must contact the injured worker as soon as practicable but no actual timeframe specified). These sections have been replaced with a general provision requiring the Workers' Compensation Regulator (the Regulator) to publish guidance material.

Consistency with policy objectives of authorising law

The 2014 Regulation is consistent with the policy objectives of the Act, which provides that a regulation may make provision for:

1. fixing and varying premiums, rates of premium, bonuses and demerit charges in relation to policies, including providing for an increase in the rate or a charge if, because of an employer's carelessness or another reason WorkCover Queensland (WorkCover) considers sufficient, the risk carried by WorkCover is greater than that usually carried in cases of accident insurance of a similar description;
2. provision for payment of additional premiums in relation to policies, and fixing the rates of additional premiums, in cases where employers fail to give to WorkCover the prescribed annual returns within the time decided and notified by WorkCover;

3. authorising WorkCover to assess premiums to be paid, as WorkCover directs, by—
 - (a) employers; or
 - (b) other persons with whom WorkCover has made contracts of insurance; or
 - (c) persons required to give returns; or
 - (d) persons whom WorkCover believes to be employers;and to increase, reduce and enforce payment of the assessments;
4. the time in which and place where a premium is to be paid to WorkCover;
5. acceptance by WorkCover of risk under contracts of insurance other than policies, the conditions or provisions to be contained or implied in the contracts, the nature and extent of risk covered by the contracts;
6. the proper conduct of WorkCover's insurance business;
7. returns to be given to WorkCover, including—
 - (a) the persons who must give the returns, whether employers or other persons; and
 - (b) the time and how the returns must be given;
8. the acceptance by WorkCover of payment of premium by instalments, including—
 - (a) payment of interest; and
 - (b) the rate and calculation of interest; and
 - (c) security to WorkCover for payment of instalments and interest;and the result of and remedies on a failure to make payment due or to honour obligations under a security given to WorkCover for payment of the premium;
9. the mode of service of process in legal proceedings, or of a notice or document, that is not provided for under chapter 14 of the Act;
10. the evidentiary value and if necessary, the admissibility into evidence, in a proceeding before a court, tribunal or person of a certificate, or copy of or extract from a document kept for anything under the Act, that is not provided for under chapter 14 of the Act;
11. the management of a claim for which there is more than one defendant;
12. costs, including costs before and after a proceeding is started, and the type and amount of costs that may be claimed by or awarded to a claimant during any stage before or after the start of a proceeding; and
13. imposing a penalty for a contravention of a regulation of not more than 20 penalty units.

Inconsistency with policy objectives of other legislation

The 2014 Regulation is not inconsistent with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

Three options were considered in terms of the expiring 2003 Regulation:

1. Allow the 2003 Regulation to expire without replacement.
2. Remake the existing 2003 Regulation (as a new regulation) without substantial changes.
3. Comprehensively revise the 2003 Regulation incorporating a public cost/benefit analysis of all provisions.

Option 1 was not preferred, as allowing the 2003 Regulation to expire without replacement would cause uncertainty, disputes, and expose many decisions of WorkCover Queensland, self-insurers and the Regulator to legal challenge. This would lead to inefficiency and increase scheme administration costs, which would be reflected in employer premiums. Consequently, the risk of taking no action in relation to the imminent expiry of the 2003 Regulation is unlikely to meet community expectations and is unacceptable.

Option 2 was most preferable, as it would provide the scheme stability required to ensure the successful implementation of the 2013 legislative changes, which are considered to strike an appropriate balance between the benefits and costs of regulation in this area of public policy.

Option 3 was not preferred, both for the reasons given under option 2 and in recognition of the fact that the Queensland workers' compensation scheme has been the subject of extensive public consultation and parliamentary scrutiny since the Committee commenced its year-long review of the scheme in June 2012. Introducing further substantial regulatory changes without a full public consultation and Regulatory Impact Statement process is not considered to be sound public policy development or in line with community expectations.

Option 2 was the government's preferred option.

Benefits and costs of implementation

There is no cost to government, business or the community in implementing the 2014 Regulation. While the benefits of implementation cannot be rationally quantified at this time, the 2014 Regulation essentially remakes the 2003 Regulation in a way that is consistent with stated government policy to reduce the overall regulatory burden. The 2014 Regulation retains overall policy intent, protections of injured workers' rights and entitlements, provides for efficient processes for insurers and employers, and removes any obsolete processes, requirements and unnecessary duplication.

Consistency with fundamental legislative principles

The 2014 Regulation is considered to be consistent with fundamental legislative principles.

Consultation

Advice was sought from the Office of Best Practice Regulation (OBPR) regarding the requirement to prepare a Regulatory Impact Statement (RIS). OBPR determined that the making of the 2014 Regulation was excluded from the requirement to prepare a RIS.

OBPR noted that it was clear that a process of detailed consideration of issues and extensive consultation had occurred during the 2013 legislative changes, and that there would appear to be limited benefit in undertaking an additional review process at this time.

In addition, OBPR noted that because section 584A of the Act requires the Minister to review the operation of the workers' compensation scheme at least once every five years, the requirements of a sunset review as per the requirements of the RIS Guidelines can be built into the next review of the scheme.

The Department of Justice and Attorney-General invited key stakeholder groups, including the Chamber of Commerce and Industry Queensland, the Queensland Council of Unions, the Association of Self-Insured Employers Queensland, and WorkCover Queensland, to meet and discuss the 2014 Regulation.

Notes on provisions

Part 1 Preliminary

1 Short title

This section sets out the short title of the 2014 Regulation.

2 Commencement

This section provides that the 2014 Regulation commences on 1 September 2014.

3 Definitions

This section provides for a dictionary of particular words to be used in the 2014 Regulation.

4 WorkCover's capital adequacy—Act, s 453(b)

This section provides that WorkCover maintains adequate capital for the purposes of the Act if its total assets are at least equal to its total liabilities.

Part 2 Employer insurance

Division 1 Policies and premium assessments

5 Application for policy

This section provides that an application for a policy must be made to WorkCover in the approved form.

6 Policies and renewals

This section prescribes the steps WorkCover must take to issue a policy to an employer upon either the receipt of the premium payable or the entering into of an instalment plan.

7 Assessment of premium

This section prescribes the steps WorkCover must take if it is satisfied that an overpayment or underpayment of premium has taken place.

8 Declaration of wages

This section prescribes the obligations of employers to lodge an annual wages declaration with WorkCover for the purposes of premium calculation. Penalties for non-compliance are at schedule 1.

9 Value of board and lodging

This section provides that the value of board and lodging provided to a worker is taken to be wages paid, or to be paid, by the employer to the worker. Minimum amounts are specified.

10 Payment of premium by instalments

This section provides that WorkCover may accept payment of premium by instalments if WorkCover is satisfied that payment of premium by the due date would impose financial hardship on the employer. Interest may apply to the amount owed on the terms provided for under the section.

11 Additional premium for late payment of premium—Act, ss 61 and 62

This section prescribes the additional amount payable by an employer for late or non-payment of premium to WorkCover.

12 Premium for appeals—Act, s 569(2)(a)

This section prescribes the formula used to determine the court that has jurisdiction for appeals by an employer or self-insurer in relation to:

- the Regulator's decision regarding the issue of a self-insurer's licence;
- the Regulator's decision regarding the renewal of a self-insurer's licence;
- the Regulator's decision regarding the amount of levy payable by a self-insurer;
- the amount of a self-insurer's outstanding liability under section 87(2) of the Act; and
- the Regulator's decision regarding the cancellation of a self-insurer's licence.

13 Former employer may apply to cancel policy

This section prescribes the steps an employer must take to cancel a policy because the person has stopped employing workers.

14 Cancellation of policy if workers no longer employed

This section prescribes the steps WorkCover must take to cancel a policy because the person has stopped employing workers.

Division 2 Employer excess

15 Excess period—Act, s 65(2)

This section prescribes the employer excess period as the lesser of Queensland Ordinary Time Earnings (QOTE) or the amount of weekly compensation to which the injured worker is entitled.

Division 3 Self-insurance

16 Application fees—Act, s 70(c)

This section prescribes the application fees for self-insurance licences.

17 Annual levy—Act, s 81(2)

This section prescribes the formula to be used to calculate the annual levy payable by self-insurers.

18 Provisional annual levy—not agreed or decided

This section provides for the calculation of a provisional annual levy payable by self-insurers in circumstances in which a self-insurer has provided an estimate of outstanding claims liability but where the Regulator has not yet agreed with the amount. The Regulator may use the self-insurer's estimate to calculate the annual levy payable.

19 Adjusted annual levy—agreed

This section provides for the provision of a notice of an adjusted annual levy payable by a self-insurer where the estimate of outstanding claims liability has been agreed to between the Regulator and the self-insurer.

20 Adjusted annual levy—not agreed but decided

This section provides for the provision of a notice of an adjusted annual levy payable by a self-insurer where the estimate of outstanding claims liability has been decided by the actuarial arbiter.

21 Additional amount for late payment of levy—Act, s 82(1)

This section prescribes the additional amount payable by a self-insurer for late or non-payment of levy to the Regulator.

22 Conditions of licence—Act, s 83

This section places an obligation on self-insurers to submit wages declarations and specifies that bank guarantees must not be issued by a bank that is a related body corporate of the self-insurer.

23 Premium payable after cancellation of self-insurer's licence—Act, s 98

This section prescribes the calculation method and rate for the premium payable by a former self-insurer for the first two years after cancellation of the self-insurance licence.

24 Deemed levy for appeals—Act, s 569(2)(a)

This section prescribes the formula to be used to calculate deemed levy. The amount of the deemed levy determines the court that has jurisdiction to hear an appeal concerning certain decisions of the Regulator regarding self-insurance matters.

Part 3 Calculation of self-insurer's liability

Division 1 Outstanding liability

Subdivision 1 Preliminary

25 Calculation of outstanding liability—Act, s 87(2)

This section provides that the amount of a self-insurer's outstanding liability must be calculated under this division.

Subdivision 2 Actuarial calculations and reports

26 Appointment of actuary

This section provides that WorkCover and the employer must each appoint an actuary to calculate an outstanding liability amount.

27 Regulator to give actuary information

This section provides that the Regulator must give each appointed actuary the information necessary to enable the actuaries to calculate an employer's outstanding liability within the timeframe.

28 Actuarial calculation

This section prescribes the matters that must be included or taken into account for the actuarial calculation of outstanding liability.

29 Actuarial report

This section prescribes the matters that must be included or taken into account in each actuary's report on outstanding liability. The report must be completed within 35 days after the self-insurance application is lodged.

30 Summary report

This section provides that a joint summary report must be prepared by the appointed actuaries which includes an explanation of any points of difference. The report must be completed within two months after the self-insurance application is lodged.

31 Agreement on amount

This section provides that WorkCover and the employer may agree on the amount of the employer's outstanding liability having regard to the summary report.

32 Reference to arbiter if no agreement on amount

This section provides that if there is no agreement over the amount of outstanding liability, the Regulator must refer the summary report to an arbiter to decide the amount.

33 Payment of amount

This section provides that WorkCover must pay the agreed or arbitrated outstanding liability amount to the employer, subject to adjustments in claims experience.

34 Transfer of claims information

This section provides that WorkCover must give the employer claims information (e.g. data, files) in relation to the employer's outstanding liability before the licence commences.

Division 2 Total liability

Subdivision 1 Preliminary

35 Calculation of total liability after change in self-insurer's membership—Act s 90(9)

This section provides that the amount of total liability after a change in the self-insurer's membership must be calculated under this division.

Subdivision 2 Actuarial calculations and reports

36 Appointment of actuary

This section provides that the relevant parties must each appoint an actuary to calculate the total liability amount.

37 Relevant parties to give actuaries information

This section provides that relevant parties must give each appointed actuary the information necessary to enable the actuaries to complete the calculation within the timeframe.

38 Actuarial calculation

This section prescribes the matters that must be included or taken into account for the actuarial calculation of total liability.

39 Actuarial report

This section prescribes the matters that must be included or taken into account in each actuary's report on total liability. The report must be completed within 35 days after the Regulator approves the change in the self-insurer's membership.

40 Summary report

This section provides that a joint summary report must be prepared by the appointed actuaries which includes any points of difference. The report must be completed within two months after the day the Regulator approves the change in the self-insurer's membership.

41 Agreement on amount

This section provides that the relevant parties may agree on the total liability amount having regard to the summary report.

42 Reference to arbiter if no agreement on amount

This section provides that if there is no agreement over the amount of total liability, the Regulator must refer the summary report to an arbiter to decide the amount.

43 Payment of amount

This section provides that the old insurer must pay the agreed or arbitrated total liability amount to the new insurer, subject to adjustments in claims experience. The old insurer must also advise the Regulator of the details of the transition.

44 Transfer of claims information

This section provides that the old insurer must give the new insurer claims information (e.g. data, files) in relation to the liability by the day the total liability amount is paid.

Division 3 Liability after cancellation of self-insurer's licence

Subdivision 1 Preliminary

45 Calculation of liability after cancellation—Act, s102(3)

This section provides that the amount for a former self-insurer's liability must be calculated under this division.

Subdivision 2 Actuarial calculations and reports

46 Appointment of actuary

This section provides that WorkCover and the former self-insurer must each appoint an actuary to calculate a former self-insurer's liability amount.

47 Former self-insurer to give actuaries information

This section provides that a former self-insurer must give each appointed actuary the information necessary to enable the actuaries to complete the calculation within the timeframe.

48 Actuarial calculation

This section prescribes the matters that must be included or taken into account for the actuarial calculation of the former self-insurer's liability.

49 Actuarial report

This section prescribes the matters that must be included or taken into account in each actuary's report on a former self-insurer's liability. The report must be completed within 35 days after the day the former self-insurer's licence is cancelled.

50 Summary report

This section provides that a joint summary report must be prepared by the appointed actuaries which includes any points of difference. The report must be completed within two months after the day the former self-insurer's licence is cancelled.

51 Agreement on amount

This section provides that WorkCover and the former self-insurer may agree on the former self-insurer's liability amount having regard to the summary report.

52 Reference to arbiter if no agreement on amount

This section provides that if WorkCover and the former self-insurer cannot agree on the former self-insurer's liability amount, the Regulator must refer the summary report to the arbiter.

53 Payment of amount

This section provides that the former self-insurer must pay the agreed or arbitrated liability amount to WorkCover, subject to adjustments in claims experience.

Division 4 Estimated claims liability

Subdivision 1 Preliminary

54 Calculation of estimated claims liability—Act, s 84(3)(b)

This section provides that an amount of the estimated claims liability must be calculated under this division.

Subdivision 2 Actuarial calculations and reports

55 Approved actuary

This section provides that an actuary approved by the Regulator must calculate the estimated claims liability amount.

56 Self-insurer to give Regulator and approved actuary information

This section provides that the self-insurer must give the Regulator, and the approved actuary, data that will enable the actuary to calculate the self-insurer's estimated claims liability.

57 Actuarial calculation

This section prescribes the matters that must be included or taken into account for the actuarial calculation of the self-insurer's estimated claims liability.

58 Actuarial report

This section prescribes the matters that must be included or taken into account in the actuary's report on a self-insurer's estimated claims liability.

59 Copy of actuarial report to Regulator and self-insurer

This section provides that the approved actuary must give a copy of the actuarial report to the Regulator and the self-insurer by the day fixed by the Regulator or a later day agreed between the Regulator and the actuary.

60 Regulator to advise self-insurer whether agreement on amount

This section provides that within 35 days after the approved actuary gives the Regulator a copy of the actuarial report, the Regulator must advise the self-insurer whether the Regulator agrees or does not agree with the approved actuary's assessment of the estimated claims liability.

61 Reference to Regulator's actuary if no agreement on amount

This section provides that if the Regulator does not agree with the amount, it may ask an actuary to calculate the amount of the self-insurer's estimated claims liability and provide an actuarial report.

62 Agreement on amount

This section provides that the estimated claims liability is the amount agreed to by the Regulator and the self-insurer, having regard to the approved actuary's actuarial report or any Regulator's actuary's actuarial report.

63 Reference to arbiter

This section provides that if the Regulator and the self-insurer cannot agree on the calculation, the Regulator must refer the approved actuary's report, the self-insurer's data and any Regulator's actuary's actuarial report to the arbiter for decision.

Division 5 Self-insurers who become non-scheme employers

Subdivision 1 Preliminary

64 Calculation of non-scheme employer's liability—Act, s 105I(2)

This section provides that the amount for a non-scheme employer's liability must be calculated under this division.

Subdivision 2 Actuarial calculations and reports

65 Appointment of actuary

This section provides that WorkCover and the non-scheme employer must each appoint an actuary to calculate the non-scheme employer's liability amount.

66 Non-scheme employer to give actuaries information

This section provides that the non-scheme employer must give the actuaries the information necessary to enable the actuaries to complete the calculation within the timeframe.

67 Actuarial calculation

This section prescribes the matters that must be included or taken into account for the actuarial calculation of a non-scheme employer's liability amount.

68 Actuarial report

This section prescribes the matters that must be included or taken into account in the actuary's report on a non-scheme employer's liability.

69 Summary report

This section provides that a joint summary report must be prepared by the appointed actuaries which includes any points of difference. The report must be completed within two months after the cancellation day.

70 Agreement on amount

This section provides that WorkCover and the non-scheme employer may agree on the non-scheme employer's liability amount having regard to the summary report.

71 Reference to arbiter if no agreement on amount

This section provides that if WorkCover and the non-scheme employer cannot agree on the non-scheme employer's liability amount, the Regulator must refer the summary report to the arbiter.

72 Payment of amount

This section provides that the non-scheme employer must pay the agreed or arbitrated liability amount to WorkCover, subject to adjustments in claims experience.

Subdivision 3 Calculation—finalised non-scheme employer's liability

73 Calculation of finalised non-scheme employer's liability amount—Act, s 105I(2)

This section provides that the amount for finalisation of a non-scheme employer's liability must be calculated under this subdivision. The non-scheme employer is liable for compensation and damages for the total of the accrued, continuing, future and contingent liabilities for all injuries sustained by a worker employed by the non-scheme employer that arise from an event happening or ending during the period the non-scheme employer was licensed as a self-insurer but before the exit date.

74 Appointment of actuary

This section provides that at the end of four years after cancellation of a self-insurance licence, WorkCover and the non-scheme employer must each appoint an actuary to calculate the finalised non-scheme employer's liability amount.

75 WorkCover to give actuaries information

This section provides that WorkCover must give the appointed actuaries the information necessary to enable the actuaries to complete the calculation within the timeframe.

76 Actuarial calculation

This section prescribes the matters that must be included or taken into account for the actuarial calculation of a finalised non-scheme employer's liability.

77 Actuarial report

This section prescribes the matters that must be included or taken into account in the actuary's report on the calculation of a finalised non-scheme employer's liability

78 Summary report

This section provides that a joint summary report must be prepared by the appointed actuaries which includes any points of difference. The report must be completed within two months after the end of four years after the day WorkCover became liable for compensation and damages for the non-scheme employer's liability.

79 Agreement on amount

This section provides that WorkCover and the non-scheme employer may agree on the amount of the finalised non-scheme employer's liability, having regard to the summary report.

80 Reference to arbiter if no agreement on amount

This section provides that if WorkCover and the non-scheme employer cannot agree on the finalised non-scheme employer liability amount, the Regulator must refer the summary report to the arbiter.

81 Payment of amount

This section provides that if the agreed or arbitrated finalised non-scheme employer's liability amount is more than the non-scheme employer's liability amount, the non-

scheme employer must pay WorkCover the agreed or arbitrated amount as well as the difference between that amount and the non-scheme employer's estimate, plus interest. If the agreed or arbitrated amount is less than the non-scheme employer's estimate, the non-scheme employer must pay WorkCover the agreed or arbitrated amount, and WorkCover must pay the non-scheme employer the difference between that amount and the non-scheme employer's estimate, plus interest. On payment of the amount, the non-scheme employer's liability is finalised for section 105I(5) of the Act and no further amount is payable for the liability.

Division 6 Total liability—member of a group who becomes non-scheme employer

Subdivision 1 Preliminary

82 Calculation of non-scheme members' total liability—Act, s 105O(3)(a)

This section provides that the amount of total liability after a change in the self-insurer's membership must be calculated under this division.

Subdivision 2 Actuarial calculations and reports

83 Appointment of actuary

This section provides that WorkCover and the old insurer must each appoint an actuary to calculate the total liability amount.

84 Parties to give actuaries information

This section provides that the old insurer and WorkCover must give the appointed actuaries the information necessary to enable the actuaries to complete the calculation within the timeframe.

85 Actuarial calculation

This section prescribes the matters that must be included or taken into account for the actuarial calculation of the old insurer's total liability amount.

86 Actuarial report

This section prescribes the matters that must be included or taken into account in the actuary's report on the old insurer's total liability amount.

87 Summary report

This section provides that a joint summary report must be prepared by the appointed actuaries which includes any points of difference. The report must be completed within two months after the final day.

88 Agreement on amount

This section provides that the old insurer and WorkCover may agree on the liability amount having regard to the summary report.

89 Reference to arbiter if no agreement on amount

This section provides that if the old insurer and WorkCover cannot agree on the liability amount, the Regulator must refer the summary report to the arbiter.

90 Payment of amount

This section provides that the old insurer must pay the agreed or arbitrated total liability amount to WorkCover, subject to adjustments in claims experience.

91 Transfer of claims information

This section provides that the old insurer must give WorkCover claims information (e.g. data, files) in relation to the liability no later than the day the agreed or decided amount is paid.

Division 7 Actuarial arbiter

92 Function of actuarial arbiter

This section prescribes the functions of the actuarial arbiter.

93 Selection and appointment of actuarial arbiter

This section prescribes the process for selecting and appointing the actuarial arbiter.

94 Arbiter must decide amount

This section prescribes the things required to be included in the arbiter's decision.

95 Arbiter's decision is final

This section provides that the arbiter's decision is final and cannot be appealed.

96 Arbiter's costs

This section provides the way that the arbiter's costs are to be apportioned among relevant parties to the arbiter's decision.

Part 4 Compensation

Division 1 Calculation of NWE

97 Calculation of NWE—Act, s 106(3)

This section provides that the way to calculate normal weekly earnings (NWE) is prescribed under this division.

98 What amounts may be taken into account

This section lists the types of amounts that may be taken into account for the purposes of calculating NWE.

99 NWE if impracticable to calculate rate of worker's remuneration

This section provides for ways of determining NWE if it is impracticable to calculate the worker's rate of remuneration because of the period of time the worker has been employed or the terms of the worker's employment.

100 NWE if worker worked for 2 or more employers

This section provides for the way of calculating NWE where a worker has concurrent contracts of service. Earnings under all contracts at the time of injury are to be used for the purposes of NWE.

101 NWE if insurer considers calculation unfair

This section provides that if an insurer considers that the calculation of NWE is unfair to the worker, the NWE may be calculated in a way the insurer considers to be fair.

Division 2 Compensation application and other procedures

102 Application for compensation to include evidence or particulars—Act, s 132(3)(b)

This section specifies the additional evidence or particulars which must accompany an application for compensation.

103 If dentist, doctor or nurse practitioner not available

This section provides that if a claimant does not lodge a medical or similar certificate with an application for compensation because the issuing person is unavailable, a declaration is able to be completed. The declaration is only acceptable proof of incapacity for a maximum of three days.

104 Certificate given by dentist, doctor or nurse practitioner

This section provides that if a worker sustains an injury in another State or country and does not lodge a medical or similar certificate with an application for compensation, the insurer must accept a written certificate that is substantially to the effect of the approved certificate from the dentist, doctor or nurse practitioner who attended the worker.

105 Application for compensation for assessment of DPI—Act, s 132A(3)(c)(ii)

This section specifies the additional evidence or particulars which must accompany an application for compensation for assessment of the degree of permanent impairment (DPI).

106 Request for examination of claimant or worker—Act, ss 135 and 510

This section provides that a request for a personal examination of a claimant or worker must be made in writing and specifies the details required to be included in the request.

Division 3 Entitlement to compensation for permanent impairment

107 Additional lump sum compensation—workers with latent onset injuries that are terminal—Act, s 128B(2)(c)

This section specifies that the amounts of additional lump sum compensation for workers with latent onset injuries that are terminal are detailed in schedule 2.

108 Calculating lump sum compensation—Act, s 180(1)

This section provides that lump sum compensation for a worker's DPI is calculated by multiplying the maximum statutory compensation by the worker's DPI.

109 Additional lump sum compensation for certain workers—Act, s 192(2)

This section specifies that the amounts of additional lump sum compensation for workers who sustain an injury that results in a DPI of 30% or more are detailed in schedule 3.

110 Additional lump sum compensation for gratuitous care (occupational therapist's assessment)—Act, ss 193(4) and 224(3)

This section prescribes the modified barthel index as the way of assessing a worker's level of dependency. The modified barthel index is the guidelines and modified scoring of the barthel index stated in the article 'Improving the Sensitivity of the Barthel Index for Stroke Rehabilitation' by S Shah, F Vanclay and B Cooper published in the *Journal of Clinical Epidemiology*, 1989, vol 42 no 8, pp 703-709.

111 Additional lump sum compensation for gratuitous care (occupational therapist's report)—Act, ss 193(5)(b) and 224(4)(b)

This section prescribes the information required in the occupational therapist's report regarding the level of day to day care provided by a person at a worker's home for the purposes of determining additional lump sum compensation for gratuitous care.

112 Additional lump sum compensation for gratuitous care—Act, s 193(6)

This section specifies that the amounts of additional lump sum compensation for gratuitous care are detailed in schedule 4, and prescribes the additional information to which an insurer must have regard when deciding the amount of additional compensation.

Division 4 Liability for Caring allowance

113 Payment of caring allowance—Act, s 225(a)

This section prescribes the way in which a payment of caring allowance is calculated.

Part 5 Rehabilitation

Division 1 Rehabilitation and return to work coordinators

114 Functions of rehabilitation and return to work coordinator—Act, s 41(b)

This section prescribes the functions of a rehabilitation and return to work coordinator.

115 Criteria for employer to appoint rehabilitation and return to work coordinator—Act, s 226(1)

This section prescribes the criteria under which an employer must appoint a rehabilitation and return to work coordinator. An employer who employs workers at a workplace in a high risk industry (specified by the Regulator by gazette notice) meets the criteria if the wages of the employer in Queensland for the preceding financial year were more than 2,600 times QOTE. An employer not in a high risk industry meets the criteria if the wages of the employer in Queensland for the preceding financial year were more than 5,200 times QOTE.

Division 2 Guidelines for standard for rehabilitation

116 Standard for rehabilitation—Act, s 228(2)

This section provides that the standard for the rehabilitation that the employer must provide is contained in the guidelines made by the Regulator for the purpose of this section.

117 Availability of guidelines

This section provides that the Regulator must keep a copy of each guideline available for inspection free of charge, and publish each guideline on the department's website.

Part 6 Damages

Division 1 Particulars in notice of claim

118 Notice of claim for damages—Act, s 275

This section provides that this division prescribes the particulars that must be included in the notice of claim for damages.

119 Particulars of claimant and worker

This section prescribes the particulars of claimants and workers that must be included in the notice of claim for damages.

120 Particulars of event

This section prescribes the particulars of the event that must be included in the notice of claim for damages.

121 Injury particulars

This section prescribes the particulars of the injury or injuries subject of the claim that must be included in the notice of claim for damages.

122 Particulars of hospital, treatment and rehabilitation

This section prescribes the particulars of hospital, treatment and rehabilitation that must be included in the notice of claim for damages.

123 Particulars if claim for diminished income earning capacity

This section prescribes the particulars of diminished income earning capacity that must be included in the notice of claim for damages if the claimant claims damages for diminished income earning capacity.

124 Particulars if injury causes death

This section prescribes the particulars that must be included in the notice of claim for damages if the claim relates to an injury causing death.

125 Particulars of mitigation

This section provides that a notice of claim must include particulars of all steps taken by the worker or claimant to mitigate their loss.

Division 2 General provisions

126 Time for adding another person as contributor—Act, s 278A(1)

This section prescribes the time limit for adding another person as contributor. The time limit is the later of 30 business days after the insurer receives the notice of claim or 5 business days after the insurer identifies someone else as a contributor.

127 Contribution notice to contain particular information—Act, s 278B(1)(a)

This section prescribes the particulars that must be included in a contribution notice.

Part 7 Assessment of damages

128 Prescribed amount of damages for loss of consortium or loss of servitium—Act, s 306M

This section prescribes the amount of damages for loss of consortium (between spouses, the entitlement to companionship, love, affection, comfort, and support of the other) and loss of servitium (loss or impairment of the services, duty, or labour to be rendered by one person to another).

129 Rules for assessing injury scale value—Act, s 306O(1)(c)(i)

This section provides that a court must have regard to the ranges of injury scale values mentioned in schedule 9. The matters to which a court is to have regard in the application of schedule 9 are contained in schedule 8.

130 General damages calculation provisions—Act, s 306P(2)

This section provides that schedule 12 prescribes the way in which general damages are to be calculated.

131 Prescribed amount of award for future loss—Act, s 306R(2)

This section prescribes the amount of award for future loss.

Part 8 Costs

Division 1 Proceeding before industrial magistrate or industrial commission

132 Costs—proceeding before industrial magistrate or industrial commission

This section provides that a decision to award costs of a proceeding before an industrial magistrate or the Queensland Industrial Relations Commission is at the discretion of the magistrate or commission. Costs are to be awarded in accordance with the *Uniform Civil Procedure Rules 1999*, unless the magistrate or commission is satisfied the amounts are inadequate having regard to the work involved or the importance, difficulty or complexity of the matter to which the proceedings relate. In these instances, the magistrate or commission may allow costs up to 1.5 times the amounts provided for under the *Uniform Civil Procedure Rules 1999*.

133 Payment of additional amount for costs

This section provides for additional costs to be paid by the Regulator or insurer in relation to expert witnesses.

Division 2 Claim for damages

134 Who this division applies to

This section provides that this division applies to a claimant who is seriously injured, has a terminal condition, or is a dependant of a deceased worker.

135 Costs before proceeding started

This section prescribes the legal professional costs of a claim before a proceeding is started.

136 Costs after proceeding started

This section prescribes the legal professional costs of a claim after a proceeding is started.

137 Outlays

This section provides for certain allowable outlays incurred by the claimant, in addition to legal costs.

Part 9 Medical assessment tribunals

138 Medical assessment tribunals—Act, s 492

This section prescribes the medical assessment tribunals to be maintained.

139 Constitution of General Medical Assessment Tribunal

This section provides for the constitution of the General Medical Assessment Tribunal.

140 Chairperson and deputy chairperson of General Medical Assessment Tribunal

This section provides that the chairperson must preside over meetings of the General Medical Assessment Tribunal except under certain circumstances.

141 Constitution of a specialty medical tribunal

This section provides for the constitution of a specialty medical tribunal.

142 Chairperson and deputy chairperson of a specialty medical tribunal

This section provides that the chairperson must preside over meetings of a specialty medical tribunal except under certain circumstances.

143 Constitution of Composite Medical Tribunal

This section provides for the constitution of a Composite Medical Tribunal.

144 Chairperson and deputy chairperson of Composite Medical Tribunal

This section provides that the chairperson must preside over meetings of a Composite Medical Tribunal except under certain circumstances.

Part 10 Miscellaneous

145 Declaration of designated courts—Act, s 114(4), definition *designated court*

This section provides that schedule 7 prescribes a list of designated courts which are competent to determine disputes over the State with which a worker's employment is connected for the purposes of a corresponding workers' compensation law.

146 Declaration of provisions—Act, s 322(2), definition *a State's legislation about damages for a work related injury*

This section provides that schedule 7 prescribes a list of interstate legislative provisions that are that State's legislation about damages for work related injury.

147 Documents and particulars to be kept—Act, s 532D(1) and (2)

This section prescribes the documents and particulars about workers required to be kept by employers and contractors.

148 Reasons for decisions must address certain matters—Act, ss 540(4) and 546(3AA)

This section prescribes the certain matters that reasons for decisions must address.

Schedule 1 Additional premium

This schedule prescribes the penalties for non-compliance with the obligations of employers to lodge an annual wages declaration with WorkCover for the purposes of premium calculation.

Schedule 2 Graduated scale for additional compensation for workers with terminal latent onset injuries

This schedule prescribes the amounts of additional lump sum compensation for workers with latent onset injuries that are terminal.

Schedule 3 Graduated scale of additional compensation for certain workers

This schedule prescribes the amounts of additional lump sum compensation for workers who sustain an injury that results in a DPI of 30% or more.

Schedule 4 Graduated scale for additional compensation for gratuitous care

This schedule prescribes the amounts of additional lump sum compensation for gratuitous care.

Schedule 5 Graduated scale of care required for payment of caring allowance

This schedule contains the graduated scale for the purposes of calculating a payment of caring allowance.

Schedule 6 Legal professional costs

This schedule prescribes the legal professional costs of a claim before a proceeding is started.

Schedule 7 Designated courts and provisions that are a State's legislation about damages for work related injury

This schedule prescribes a list of designated courts which are competent to determine disputes over the State with which a worker's employment is connected for the purposes of a corresponding workers' compensation law. The schedule also prescribes a list of interstate legislative provisions that are that State's legislation about damages for work related injury.

Schedule 8 Matters to which court is to have regard in the application of schedule 9

This schedule prescribes matters to which a court is to have regard in the application of the ranges of injury scale values.

Schedule 9 Ranges of injury scale values

This schedule contains the ranges of injury scale values, which are modelled on provisions of the *Civil Liability Regulation 2014*.

Schedule 10 Matters relevant to PIRS assessment by medical expert

This schedule prescribes matters relevant to assessments under the psychiatric impairment rating scale (PIRS) by medical experts.

Schedule 11 Psychiatric impairment rating scale

This schedule contains the psychiatric impairment rating scale which is modelled on provisions of the *Civil Liability Regulation 2014*.

Schedule 12 General damages calculation provisions

This schedule prescribes the way in which general damages are to be calculated.

Schedule 13 Dictionary

This schedule contains a dictionary of particular words used in the Regulation.