

Queensland



**WORKERS'
COMPENSATION
AMENDMENT BILL 1994**



WORKERS' COMPENSATION AMENDMENT BILL 1994

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1994

A BILL

FOR

An Act to amend the Workers' Compensation Act 1990

Workers' Compensation Amendment

The Parliament of Queensland enacts—

1

Short title

2

Clause **1.** This Act may be cited as the *Workers' Compensation Amendment Act 1994*.

3

4

Commencement

5

Clause **2.(1)** Section 4(3) commences on the commencement of section 3 of the *Electricity Act 1994*.

6

7

(2) Section 8 commences on 1 July 1995.

8

(3) Sections 11 and 16 commence a day to be fixed by proclamation.

9

(4) Section 20 commences on 1 January 1995.

10

Amended Act

11

Clause **3.** This Act amends the *Workers' Compensation Act 1990*.

12

Amendment of s 2.1 (Interpretation)

13

Clause **4.(1)** Section 2.1(1), definitions “**commencement of this Act**”, “**department of government**”, “**injury**” and “**medical treatment**”—

14

15

 omit.

16

(2) Section 2.1(1)—

17

 insert—

18

 ‘ “**authorised person**” means a person who is appointed as an authorised person.¹

19

20

 “**award**” means an award within the meaning of—

21

 (a) the *Industrial Relations Act 1990*; or

22

¹ Authorised persons are appointed under section 4A.5.

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(b) the *Industrial Relations Act 1988* (Cwlth).

“industrial agreement” means an industrial agreement, certified agreement or enterprise flexibility agreement under the *Industrial Relations Act 1990*.

“injury” see section 2.1A.

“medical treatment” includes—

(a) treatment by—

(i) a registered medical practitioner; or

(ii) a registered dentist; or

(iii) a registered physiotherapist; or

(iv) a registered occupational therapist; or

(v) a registered psychologist; or

(vi) a registered chiropractor and osteopath; or

(vii) a registered podiatrist; or

(viii) a registered speech pathologist; and

(b) provision of diagnostic procedures or skiagrams; and

(c) provision of nursing, medicines, medical or surgical supplies, curative apparatus, crutches or other devices of assistance.

“State” includes Territory.’.

(3) Section 2.1(1)—

insert—

‘ **“department of government”** includes Queensland Railways.’.

(4) Section 2.1(5)—

omit.

Insertion of new s 2.1A

Clause 5. After section 2.1—

insert—

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‘Meaning of “injury”	1
‘2.1A(1) In this Act—	2
“injury” means personal injury arising out of, or in the course of,	3
employment if the employment was a significant contributing factor to	4
the injury.	5
‘(2) “Injury” includes—	6
(a) a disease contracted in the course of employment, whether at or	7
away from the place of employment, if the employment was a	8
significant contributing factor to the contracting of the disease;	9
and	10
(b) an aggravation or acceleration of a disease if the employment was	11
a significant contributing factor to the aggravation or acceleration;	12
and	13
(c) loss of hearing resulting in the condition known as industrial	14
deafness if the employment was a significant contributing factor	15
to the loss of hearing; and	16
(d) death from personal injury arising out of, or in the course of,	17
employment if the employment was a significant contributing	18
factor to the personal injury; and	19
(e) death from a disease mentioned in paragraph (a), or an	20
aggravation or acceleration of a disease mentioned in	21
paragraph (b), if the employment was a significant contributing	22
factor to the disease, aggravation or acceleration.	23
‘(3) “Injury” does not include a personal injury, disease, or aggravation	24
or acceleration of a disease, suffered by a worker because of—	25
(a) reasonable disciplinary action taken against the worker in	26
connection with the worker’s employment; or	27
(b) failure by the worker to obtain a promotion, transfer or benefit in	28
connection with the worker’s employment.’.	29
 Amendment of s 2.2 (Persons declared to be employers or workers)	 30
Clause 6.(1) Section 2.2(2A)—	31
omit.	32

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(2) Section 2.2(3), 'contract of employment'— 1

omit, insert— 2

'contract of service'. 3

(3) Section 2.2— 4

insert— 5

'(3A) A labour hire agency that arranges, for reward, for a worker who 6
is party to a contract of service with the agency to do work for someone else 7
continues to be the worker's employer while the worker does the work for 8
the other person under an arrangement made between the agency and the 9
other person.' 10

(4) Section 2.2— 11

insert— 12

'(10) In this section— 13

"arrangement" includes agreement, promise, scheme, transaction, 14
understanding and undertaking (whether express or implied). 15

"holding company" means— 16

(a) for a waterside worker—Stevedoring Employers of Australia 17
Limited or its successor; or 18

(b) for a supervisor stevedore—the Association of Employers of 19
Waterside Labour or its successor. 20

"labour hire agency" means an entity, other than a holding company, that 21
conducts a business that includes the supply of services of workers to 22
others on a temporary basis.' 23

Amendment of s 2.3 (Persons declared not to be workers) 24

Clause 7.(1) Section 2.3, after 'is not a worker'— 25

insert— 26

'in the capacity described'. 27

(2) Section 2.3(b)— 28

omit, insert— 29

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- ‘(b) a person, other than a person mentioned in section 2.2(6),² who, 1
as a professional sportsperson— 2
- (i) participates in a sporting or athletic activity as a contestant; or 3
 - (ii) is training or preparing for participating in a sporting or 4
athletic activity as a contestant; or 5
 - (iii) performs promotional activities offered to the person 6
because of the person’s standing as a sportsperson; or 7
 - (iv) engages on any daily or other periodic journey in connection 8
with the participation, training or performance; or’. 9

**Replacement of s 4.15 (Recovery of moneys paid in respect of 10
uninsured worker) 11**

Clause **8. Section 4.15— 12**
omit, insert— 13

‘Recovery of claims costs and unpaid premium 14

‘4.15(1) This section applies if— 15

- (a) an employer contravenes section 4.9(2);³ or 16
- (b) the Board makes a payment for a worker who was injured when 17
the worker’s employer was in contravention of section 4.9(2). 18

‘(2) The Board may recover from the employer— 19

- (a) the amount of unpaid premium together with a penalty equal to 20
100% of the unpaid premium; and 21
- (b) if the Board has made a payment for the injured worker—the 22
amount of the payment made together with a penalty equal to 23
50% of the payment. 24

‘(3) An employer may apply to the General Manager to waive or reduce 25
the penalty because of extenuating circumstances. 26

² Section 2.2(6) refers to jockeys.

³ Section 4.9 deals with an employer’s legal liability and obligation to insure.

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- ‘(4) The General Manager must consider the application and may— 1
- (a) waive or reduce the penalty; or 2
- (b) refuse to waive or reduce the penalty. 3
- ‘(5) An employer who is dissatisfied with the General Manager’s 4
- decision may object to the decision in the same way an objection to a default 5
- assessment may be made. 6
- ‘(6) Sections 4.22 to 4.27 apply to the objection with all necessary 7
- changes and any change prescribed under the regulations. 8
- ‘(7) This section does not limit section 4.14.’. 9

Omission of ss 4.16–4.19 10

- Clause 9. Sections 4.16 to 4.19— 11
- omit.* 12

Insertion of new Pt 4A 13

- Clause 10. After Part 4— 14
- insert—* 15

‘PART 4A—INVESTIGATION AND ENFORCEMENT 16

Division 1—General 17

‘Functions of authorised persons 18

- ‘4A.1 Authorised persons have the following functions— 19
- (a) to conduct investigations and carry out inspections under this Act; 20
- (b) to monitor compliance with this Act. 21

‘Authorised persons subject to directions from General Manager 22

- ‘4A.2 An authorised person is subject to the General Manager’s 23
- directions in exercising powers of an authorised person. 24

‘Powers of authorised persons	1
‘4A.3 An authorised person has the powers given under this Act.	2
‘Limitation on powers of authorised person	3
‘4A.4 The powers of an authorised person may be limited—	4
(a) under the regulations; or	5
(b) under a condition of appointment; or	6
(c) by written notice given by the General Manager to the authorised person.	7
	8
<i>‘Division 2—Appointment of authorised persons and other matters</i>	9
‘Appointment of authorised persons	10
‘4A.5(1) The General Manager may appoint an officer of the Board as an authorised person.	11
	12
‘(2) The General Manager may appoint an officer to be an authorised person only if—	13
	14
(a) the General Manager considers the officer has the necessary expertise or experience to be an authorised person; or	15
	16
(b) the officer has satisfactorily finished training approved by the General Manager.	17
	18
‘Authorised person’s appointment conditions	19
‘4A.6(1) An authorised person holds office on the conditions stated in the instrument of appointment.	20
	21
‘(2) An authorised person—	22
(a) if the appointment provides for a term of appointment—ceases holding office at the end of the term; and	23
	24
(b) may resign by signed notice given to the General Manager; and	25
(c) if the conditions of appointment provide—ceases holding office	26

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as an authorised person on ceasing to hold another office stated in the appointment conditions (the “**main office**”).

‘(3) However, an authorised person may not resign from the office of authorised person (the “**secondary office**”) if a term of the authorised person’s employment to the main office requires the authorised person to hold the secondary office.

‘Authorised person’s identity card

‘4A.7(1) The General Manager must give an identity card to each authorised person.

‘(2) The identity card must—

- (a) contain a recent photograph of the authorised person; and
- (b) be signed by the authorised person; and
- (c) identify the person as an authorised person for the Board; and
- (d) include an expiry date.

‘(3) A person who ceases to be an authorised person for the Board must return the person’s identity card to the General Manager within 21 days after the person ceases to be an authorised person, unless the person has a reasonable excuse.

Maximum penalty—10 penalty units.

‘Display of authorised person’s identity card

‘4A.8(1) An authorised person may exercise a power in relation to someone else only if the authorised person—

- (a) first produces his or her identity card for the person’s inspection;
or
- (b) has the identity card displayed so it is clearly visible to the person.

‘(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must produce the identity card for inspection by the person at the first reasonable opportunity.

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‘Protection from liability	1
‘4A.9(1) An authorised person does not incur civil liability for an act done, or omission made, honestly and without negligence under this Act.	2 3
‘(2) If subsection (1) prevents a civil liability attaching to an authorised person, the liability attaches instead to the Board.	4 5
 <i>‘Division 3—Powers of authorised persons</i>	 6
‘Definition	7
‘4A.10 In this Division—	8
“contractor” means a person who has contracted with someone else for performance of work.	9 10
 ‘Entry to workplaces	 11
‘4A.11 An authorised person may, at any reasonable time, enter a workplace (within the meaning of the <i>Workplace Health and Safety Act 1989</i>) to inspect—	12 13 14
(a) the workplace; and	15
(b) documents required to be kept under this Act.	16
 ‘Power to require information from certain persons	 17
‘4A.12(1) This section applies if an authorised person believes, on reasonable grounds, that a person has information relevant to making a decision about whether the person or someone else is, or at any time was, an employer or contractor for this Act.	18 19 20 21
‘(2) The authorised person may require the person to give the authorised person the stated information relevant to making the decision.	22 23
‘(3) When making the requirement, the authorised person must warn the person it is an offence to fail to give the information, unless the person has a reasonable excuse.	24 25 26
‘(4) The person must comply with the requirement, unless the person	27

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has a reasonable excuse for not complying with it. 1

Maximum penalty—50 penalty units. 2

‘(5) It is a reasonable excuse for the person to fail to give information if giving the information might tend to incriminate the person. 3 4

‘(6) The person does not commit an offence against this section if the information sought by the authorised person is not in fact relevant to the offence. 5 6 7

‘Keeping, and inspection, of documents 8

‘4A.13(1) An employer or contractor must keep the documents about employees, and contracts for the performance of work, prescribed under the regulations. 9 10 11

Maximum penalty—20 penalty units. 12

‘(2) A regulation may prescribe the particulars the documents must contain. 13 14

‘(3) The employer or contractor must— 15

(a) keep each document for at least 3 financial years after the last entry is made in it; and 16 17

(b) make available for inspection by an authorised person, or produce to the authorised person for inspection, the documents at a reasonable time and place nominated by an authorised person; and 18 19 20 21

(c) permit the authorised person to make a copy of a document. 22

Maximum penalty—50 penalty units. 23

‘(4) The authorised person may keep the document to make a copy of it. 24

‘(5) The authorised person must return the document to the person as soon as practicable after making the copy. 25 26

‘Warrants for entry 27

‘4A.14(1) An authorised person may apply to a Magistrate for a warrant for a place. 28 29

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‘(2) The application must be sworn and state the grounds on which the warrant is sought.

‘(3) The Magistrate may refuse to consider the application until the authorised person gives the Magistrate all the information the Magistrate requires about the application in the way the Magistrate requires.

Example—

The Magistrate may require additional information supporting the application to be given by statutory declaration.

‘(4) The Magistrate may issue a warrant only if satisfied there are reasonable grounds for suspecting—

(a) there is a particular thing or activity (the “**evidence**”) that may provide evidence of an offence against this Act; and

(b) the evidence is, or may be within the next 7 days, at the place.

‘(5) The warrant must state—

(a) that the authorised person may, with necessary and reasonable help and force, enter the place and exercise the authorised person’s powers under this Act; and

(b) the evidence for which the warrant is issued; and

(c) the hours when entry may be made; and

(d) the day, within 14 days after the warrant’s issue, the warrant ends.

‘(6) The Magistrate must record the reasons for issuing the warrant.

‘Warrants—applications made other than in person

‘4A.15(1) An authorised person may apply for a warrant by phone, fax, radio or another form of communication if the authorised person considers it necessary because of urgent circumstances or other special circumstances, including, for example, the authorised person’s remote location.

‘(2) Before applying for the warrant, the authorised person must prepare an application stating the grounds on which the warrant is sought.

‘(3) The authorised person may apply for the warrant before the application is sworn.

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-
- ‘(4) After issuing the warrant, the Magistrate must immediately fax a copy to the authorised person if it is reasonably practicable to fax the copy. 1
2
- ‘(5) If it is not reasonably practicable to fax a copy of the warrant to the authorised person— 3
4
- (a) the Magistrate must— 5
- (i) record on the warrant the reasons for issuing the warrant; 6
and 7
- (ii) tell the authorised person the date and time the warrant was signed; and 8
9
- (iii) tell the authorised person the warrant’s terms; and 10
- (b) the authorised person must write on a form of warrant (the “warrant form”)— 11
12
- (i) the Magistrate’s name; and 13
- (ii) the date and time the Magistrate signed the warrant; and 14
- (iii) the warrant’s terms. 15
- ‘(6) The facsimile warrant, or the warrant form properly completed by the authorised person, authorises the entry and the exercise of the other powers mentioned in the warrant issued by the Magistrate. 16
17
18
- ‘(7) The authorised person must, at the first reasonable opportunity, send to the Magistrate— 19
20
- (a) the sworn application; and 21
- (b) if a warrant form was required to be completed by the authorised person—the completed warrant form. 22
23
- ‘(8) On receiving the documents, the Magistrate must attach them to the warrant. 24
25
- ‘(9) Unless the contrary is proven, a court must presume that a power exercised by an authorised person was not authorised by a warrant issued under this section if— 26
27
28
- (a) a question arises, in a proceeding before the court, whether the exercise of power was authorised by a warrant; and 29
30
- (b) the warrant is not produced in evidence. 31

'Power to seize evidence'

1

'4A.16(1) An authorised officer who enters a place under this Part with a warrant may seize the evidence for which the warrant was issued.

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'(2) An authorised officer may also seize another thing if the authorised officer believes on reasonable grounds—

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5

(a) the thing is evidence of an offence against this Act; and

6

(b) the seizure is necessary to prevent the thing being concealed, lost or destroyed.

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8

'Receipt for seized things'

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'4A.17(1) As soon as practicable after a thing is seized by an authorised person under this Part, the authorised person must give a receipt for it to the person from whom it was seized.

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'(2) However, if for any reason it is not practicable to comply with subsection (1), the authorised person must leave the receipt at the place of seizure in a reasonably secure way and in a conspicuous position.

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'Access to seized things'

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'4A.18 Until a seized thing is returned or otherwise finally dealt with, an authorised person must allow its owner—

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18

(a) to inspect it; or

19

(b) if it is a document—to make copies of it.

20

'Return of seized things'

21

'4A.19(1) The authorised person must return a seized thing to its owner at the end of—

22

23

(a) 6 months; or

24

(b) if a prosecution for an offence involving it is started within 6 months—the prosecution and any appeal from the prosecution.

25

26

'(2) Despite subsection (2), the authorised person must return the seized

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thing to its owner immediately the authorised person stops being satisfied
its retention as evidence is necessary.

1
2

Division 4—Other enforcement matters

3

‘Authorised person to give notice of damage

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‘4A.20(1) This section applies if an authorised person damages anything
in the exercise of a power under this Part.

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‘(2) The authorised person must promptly give written notice of the
particulars of the damage.

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‘(3) The notice must be given to the person who appears to the
authorised person to be the thing’s owner.

9
10

‘(4) If the authorised person believes the damage was caused by a latent
defect in the thing or other circumstances beyond the officer’s control, the
officer may state this in the notice.

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12
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‘(5) If, for any reason, it is not practicable to comply with subsection (3),
the authorised person must—

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15

(a) leave the notice at the place where the damage happened; and

16

(b) ensure the notice is left in a reasonably secured way in a
conspicuous position.

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‘(6) This section does not apply to damage the authorised person
believes, on reasonable grounds, is trivial.

19
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‘Compensation

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‘4A.21(1) A person may claim compensation if the person incurs loss or
expense because of the exercise or purported exercise of a power under this
Part, including, for example, in complying with a requirement made of the
person under this Part.

22
23
24
25

‘(2) The compensation may be claimed from the Board.

26

‘(3) Payment of compensation may be claimed and ordered—

27

(a) in a proceeding brought in a court with jurisdiction for the
recovery of compensation; or

28
29

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- (b) in a proceeding for an offence against this Act brought against the person making the claim for compensation.

‘(4) A court may order the payment of compensation for the loss or expense only if it is satisfied it is just to make the order in the circumstances of the particular case.

‘(5) The regulations may prescribe matters that may, or must, be taken into account by the court when considering whether it is just to make the order.

‘Division 5—Offences

‘Obstruction of authorised persons

‘4A.22(1) A person must not obstruct an authorised person in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

‘(2) In this section—

“obstruct” includes hinder, resist or attempt to obstruct.

‘Impersonation of authorised persons

‘4A.23 A person must not pretend to be an authorised person.

Maximum penalty—20 penalty units.

‘False or misleading information

‘4A.24(1) A person must not—

- (a) state anything to the General Manager or an authorised person the person knows is false or misleading in a material particular; or
- (b) omit from a statement made to the General Manager or an authorised person anything without which the statement is, to the person’s knowledge, misleading in a material particular.

Maximum penalty—50 penalty units.

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‘(2) It is enough for a complaint against a person for an offence against subsection (1)(a) or (b) to state the statement made was false or misleading to the person’s knowledge.

‘False, misleading or incomplete documents

‘4A.25(1) A person must not give the General Manager or an authorised person a document containing information the person knows is false, misleading or incomplete in a material particular.

Maximum penalty—50 penalty units.

‘(2) Subsection (1) does not apply to a person who, when giving the document—

- (a) informs the General Manager or authorised person, to the best of the person’s ability, how it is false, misleading or incomplete; and
- (b) gives the correct information to the General Manager or authorised person if the person has, or can reasonably obtain, the correct information.

‘(3) It is enough for a complaint against a person for an offence against subsection (1) to state the document was false, misleading or incomplete to the person’s knowledge.’.

Insertion of new s 5.2A

Clause **11.** After section 5.2—

insert—

‘Interstate arrangements

‘5.2A(1) If—

- (a) an injury is suffered by a worker in another State in circumstances that, had the injury happened in Queensland, would have entitled the worker, or the worker’s dependants, to compensation under this Act; and
- (b) at the time of the injury, the worker’s principal place of employment was in Queensland;

compensation under this Act is payable in relation to the worker as if the

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injury happened in Queensland.

‘(2) If—

(a) an injury is suffered by a worker in Queensland; and

(b) at the time of the injury, the worker’s principal place of employment was in another State;

compensation under this Act is not payable in relation to the worker for the injury.

‘(3) For this section, a worker’s principal place of employment is in a State if—

(a) the worker usually carries out his or her work in that State; or

(b) for a worker who usually carries out his or her work in more than 1 State—the employer’s principal place of business is in that State.

‘(4) In deciding whether a worker usually carries out his or her work in a State, regard must be had to the worker’s work history with the employer and the intention of the worker and employer.

‘(5) However, regard must not be had to any temporary arrangement under which the worker works in a State for a continuous period of not longer than 6 months.’.

Amendment of s 5.4 (Injuries that arise out of or in the course of employment)

Clause 12.(1) Section 5.4(2)(a)(ii)—

omit, insert—

‘(ii) while the worker is temporarily absent from that place during an ordinary recess if the injury is not due to the worker voluntarily being subjected to an abnormal risk of injury during the recess; or’.

(2) Section 5.4—

insert—

‘(2A) For subsection (2) (other than subsection (2)(a)(i) and (iii) and

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(b)(iii)), employment need not be a significant contributing factor to the injury.’.

Amendment of s 5.5 (Compensation not payable in certain cases)

Clause **13.(1)** Section 5.5(1)—

omit, insert—

‘**5.5(1)** Compensation under this Act is not payable in relation to an injury to a worker—

(a) that is intentionally self-inflicted; or

(b) if not intentionally self-inflicted—that is caused by the serious and wilful misconduct of the worker, unless the injury results in death or serious permanent disability.’.

(2) Section 5.5—

insert—

‘**(4)** In this section—

“**serious and wilful misconduct**” of a worker does not include conduct engaged in at the express or implied direction of the worker’s employer.’.

Amendment of s 7.8 (Lump sum upon worker moving abroad)

Clause **14.** Section 7.8—

insert—

‘**(4)** A worker in relation to whom a lump sum payment is made under an agreement or determination under this section or another provision of this Act in relation to an injury is not entitled to payment, under this Act, of compensation, or expenses of any description, in relation to the injury for any period after the lump sum is agreed or determined.’.

Insertion of new s 7.15A

Clause **15.** After section 7.15—

insert—

Workers' Compensation Amendment

‘Worker must notify Board of return to work

‘7.15A(1) A worker receiving compensation under this Act for an injury must give the Board written notice of the worker’s return to work.

‘(2) The notice may be a medical certificate stating the worker’s fitness for work.

‘(3) The notice must be given within 14 days of the worker’s return to work.’.

Amendment of s 8.1 (Total incapacity)

Clause **16.(1)** Section 8.1(1), table, item (f), column 2, ‘an amount not exceeding \$40’—

omit, insert—

‘an amount worked out under subsection (4)’.

(2) Section 8.1—

insert—

‘(4) For subsection (1), table, item (f), column 2, the amount payable to the worker is the lesser of—

(a) the amount the worker was earning in the calling in which the worker was engaged at the time of the injury; and

(b) the amount the worker is entitled to earn before a person’s maximum pension is reduced.

‘(5) A regulation may prescribe how the amount a worker is entitled to earn before the pension is reduced may be worked out.’.

Amendment of s 8.13 (Benefits for total or partial dependants)

Clause **17.** Section 8.13(1), table, item (a), column 2, ‘\$89 000’—

omit, insert—

‘\$120 000’.

Workers' Compensation Amendment

Amendment of s 8.17 (Entitlement to additional compensation)

Clause	18.(1) Section 8.17(2)—	2
	<i>omit, insert—</i>	3
	‘(2) Compensation under this Act payable for prescribed disfigurement must not be more than the amount allowable.	4
		5
	‘(2A) Compensation may vary as a percentage of the amount allowable according to the severity of the disfigurement or scarring.’.	6
		7
	(2) Section 8.17—	8
	<i>insert—</i>	9
	‘(4) In this section—	10
	“ amount allowable ” means 50% of the maximum amount prescribed by section 8.31(1)(b).’.	11
		12

Amendment of s 8.21 (Extent of liability for medical treatment)

Clause	19. Section 8.21(2)—	14
	<i>omit, insert—</i>	15
	‘(2) The Board’s liability for the cost of treatment by a registered chiropractor and osteopath extends only to the cost of treatment involving the manipulation, mobilisation and management of the neuromusculoskeletal system of the human body.’.	16
		17
		18
		19

Amendment of s 8.25 (Extent of Board’s liability for hospital treatment)

Clause	20.(1) Section 8.25(1) and (2)—	22
	<i>omit, insert—</i>	23
	‘ 8.25(1) The Board’s liability for the cost of hospitalisation of an injured worker extends only to the cost of treatment provided to the worker—	24
		25
	(a) as an in-patient in a public ward of a public hospital; or	26
	(b) as an in-patient at a private hospital—	27
	(i) for non-elective hospitalisation—for not more than 4 days;	28

Workers' Compensation Amendment

or

(ii) for non-elective hospitalisation for more than 4 days—to the extent agreed to by the Board under earlier arrangements entered into between the Board and the worker or someone for the worker; or

(iii) for elective hospitalisation—to the extent agreed to by the Board under earlier arrangements entered into between the Board and the worker or someone for the worker.

‘(2) Before agreeing to arrangements under subsection (1)(b)(ii) or (iii), the Board must be satisfied that—

(a) a public hospital is not reasonably available to the injured worker or a public hospital that is reasonably available cannot admit the injured worker as an in-patient to a public ward within a reasonable time; or

(b) admission of the injured worker to a private hospital—

(i) would relieve prolonged pain and suffering to the worker; or

(ii) would result in material saving of costs to the Fund.’.

(2) Section 8.25—

insert—

‘(5) In this section—

“**elective**” hospitalisation means hospitalisation involving a treatment or procedure decided on by a worker or the worker’s medical practitioner that is of advantage to the worker, but is not fundamental in the therapy of the worker’s case.

“**private hospital**” includes a ward or room of a public hospital that is not a public ward.’.

Amendment of Pt 8, Div 7 (Maximum compensation not otherwise prescribed)

Clause 21. Part 8, Division 7, heading—

omit, insert—

‘Division 7—Maximum entitlement for 1 incident’.

Workers' Compensation Amendment

Amendment of s 8.31 (Maximum entitlement for 1 incident)

Clause	22.(1) Section 8.31, 'Except where it is otherwise prescribed, the maximum amount'—	1 2 3
	<i>omit, insert—</i>	4
	'The maximum amount'.	5
	(2) Section 8.31—	6
	<i>insert—</i>	7
	'(2) A worker in relation to whom the maximum amount of compensation is paid under subsection (1) is not entitled to further compensation for the incident under another provision of this Part for any period after the payment is made.'	8 9 10 11

Amendment of s 9.1 (Assessment tribunals to be maintained)

Clause	23. Section 9.1(1)(e)—	12 13
	<i>omit, insert—</i>	14
	'(e) Neurology/Neurosurgical Assessment Tribunal;'	15

Amendment of s 9.6 (Specialty medical assessment tribunal)

Clause	24. Section 9.6(4), 'not more than 25'—	16 17
	<i>omit.</i>	18

Amendment of s 9.12 (Reference to tribunals)

Clause	25. Section 9.12(2)(a)—	19 20
	<i>insert—</i>	21
	'(iii) if the tribunal determines that the worker has suffered a permanent partial disability resulting from the injury and the General Manager asks—the nature and extent of the disability; and'.	22 23 24 25

Workers' Compensation Amendment

Amendment of s 9.20 (Further reference on fresh evidence)

Clause **26.(1)** Section 9.20(2), ‘the chairperson of the General Medical Assessment Tribunal or, if the chairperson is unavailable, a deputy chairperson of that tribunal’—

omit, insert—

‘the chairperson or a deputy chairperson of the General Medical Assessment Tribunal’.

(2) Section 9.20(2)(a), (b) and (c)—

omit, insert—

‘(a) the chairperson of the specialty medical assessment tribunal that determined the claim or matter in question (the “**original tribunal**”) or, if the chairperson is unavailable, a member of the original tribunal;

(b) the chairperson of the prescribed disfigurement assessment tribunal that determined the claim or matter in question (the “**original tribunal**”) or, if the chairperson is unavailable, a member of the original tribunal;

(c) the deputy chairperson of the General Medical Assessment Tribunal that determined the claim or matter in question (the “**original tribunal**”) or, if the deputy chairperson is unavailable, a member of the original tribunal.’.

Amendment of s 11.2 (Offences involving fraud)

Clause **27.(1)** Section 11.2(1)(c)—

omit, insert—

‘(c) obtains, or attempts to obtain, compensation, or a benefit, under this Act by misrepresenting the person’s capacity for work; or’.

(2) Section 11.2(1), ‘and is liable to a penalty of 50 penalty units or 2 months imprisonment’—

omit.

(3) Section 11.2(1)—

insert—

Workers' Compensation Amendment

'Maximum penalty—200 penalty units or imprisonment for 1 year.' 1

(4) Section 11.2— 2

insert— 3

'(2A) A person who makes an application for compensation under this 4
Act because of total incapacity for work and, after making the application, 5
engages in any calling without first informing the Board of the person's 6
intention to return to work, is taken to have attempted to defraud the 7
Board.' 8

Amendment of s 12.1 (Regulations) 9

Clause 28. Section 12.1— 10

insert— 11

'(ea) amounts that may, or may not, be taken into account when 12
deciding the weekly rate of salary or wages; or'. 13

Insertion of new Pt 13 14

Clause 29. After Part 12— 15

insert— 16

**'PART 13—TRANSITIONAL AND SAVING 17
PROVISIONS 18**

'Claims relating to injury 19

'13.5(1) If a worker suffers injury before the commencement, an 20
application for compensation under this Act in relation to the injury, 21
whether made before or after the commencement, must be decided under 22
the Act as in force at the time the injury was suffered. 23

'(2) Also, if the injury suffered by the worker was death, the amount of 24
compensation payable in relation to the injury is the amount payable under 25
the Act as in force at the time the injury was suffered. 26

'(3) Despite subsection (1), if the application is for compensation for the 27
cost of hospitalisation under section 8.25, the application is to be decided, 28

Workers' Compensation Amendment

and compensation paid, under the Act as in force on 1 January 1995 or from time to time after that day.

‘(4) In this section—

“commencement” means—

- (a) for an injury in relation to which compensation is sought under section 5.2A—the day the section comes into force; or
- (b) for another injury—the commencement of this section.

‘Numbering and renumbering of Act

‘13.6 Section 43 (Numbering and renumbering of provisions) of the *Reprints Act 1992* must be used in the next reprint of the Act produced under that Act.’.

Renumbering and relocation of transitional and saving provisions

Clause 30. Sections 1.6 to 1.9—

relocate in Part 13 and *renumber* as 13.1 to 13.4 respectively.

SCHEDULE	1
MINOR AMENDMENTS	2
section 3	3
1. Sections 2.1(1), definition “accident pay”, 2.3(e), 5.4(4), definition “place of pick-up”, paragraph (c), 8.1, 8.3(1)(a), (4) and (6)(b) and 8.5(1), ‘industrial award or registered industrial agreement’—	4
<i>omit, insert—</i>	5
‘award or industrial agreement’.	6
2. Sections 2.1(1), definition “accident pay”, 8.1(1), table, paragraph (c)(a)(ii), 8.2(1), table, paragraph (c)(a) and 8.3(4), ‘weekly rate of wages’—	7
<i>omit, insert—</i>	8
‘weekly rate of salary or wages’.	9
3. Section 2.1(1), definition “policy”, ‘section 1.6’—	10
<i>omit, insert—</i>	11
‘section 13.1’.	12
4. Section 5.8(2)(b), ‘section 1.9’—	13
<i>omit, insert—</i>	14
‘section 13.4’.	15
5. Section 8.1(2) and (3), ‘award or agreement’—	16
<i>omit, insert—</i>	17
‘award or industrial agreement’.	18
	19
	20
	21
	22

SCHEDULE (continued)

6. Section 8.5(1), definition “WR”, ‘industrial award’—
omit, insert—
‘award’.

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