

Queensland



**WORKERS'
COMPENSATION
AMENDMENT BILL (NO. 2)
1995**



WORKERS' COMPENSATION AMENDMENT BILL (NO. 2) 1995

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1995

A BILL

FOR

An Act to amend the Workers' Compensation Act 1990

Workers' Compensation Amendment (No. 2)

The Parliament of Queensland enacts—

1

Short title

2

Clause **1.** This Act may be cited as the *Workers' Compensation Amendment Act (No. 2) 1995*.

3

4

Commencement

5

Clause **2.** This Act commences on 1 January 1996.

6

Act amended

7

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

8

Amendment of s 5 (Interpretation)

9

Clause **4.(1)** Section 5(1), definitions “**accident pay**” and “**prescribed base rate**”—

10

11

omit.

12

(2) Section 5(1)—

13

insert—

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‘ **“approved form”** see section 206A.¹

15

“AWE” means average weekly earnings.

16

“certificate injury” see section 6A.

17

“household worker” means a person employed solely in and about, or in connection with, a private dwelling house or the grounds of the dwelling house.

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“impairment”, from injury for a worker, means a loss of, or loss of efficient use of, any part of the worker's body.

21

22

¹ Section 306A (Approval of forms)

Workers' Compensation Amendment (No. 2)

“permanent impairment” , from injury, means a permanent impairment from an injury that is stable and stationary and not likely to improve with further medical or surgical treatment.	1 2 3
“QUOTE” see section 6B.	4
“serious injury” see section 182A.	5
“statutory maximum compensation” , means an amount equal to the maximum amount of compensation payable under section 154(1)(c).	6 7
“student” , for part 9, division 3, ² means a person under 21 years who is receiving full-time education at a school, college, university or similar institution.	8 9 10
“table of injuries” means the table of injuries prescribed under regulation.’.	11 12

	Amendment of s 6 (Meaning of “injury”)	13
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Clause	5.(1) Section 6(3)(a)—	14
	<i>omit, insert—</i>	15
	‘(a) reasonable disciplinary action taken in a reasonable way against the worker in connection with the worker’s employment; or	16 17
	(aa) reasonable action taken in a reasonable way to transfer or redeploy the worker in connection with the worker’s employment; or’.	18 19 20
	(2) Section 6(3)(aa) and (b)—	21
	<i>renumber.</i>	22

	Insertion of new ss 6A and 6B	23
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Clause	6. After section 6—	24
	<i>insert—</i>	25

² Part 9 (Quantum of compensation), division 3 (Compensation upon death of worker)

Workers' Compensation Amendment (No. 2)

‘Meaning of “certificate injury”

‘6A.(1) A **“certificate injury”** for a worker means—

- (a) a psychiatric or psychological injury entitling the worker, in the board’s opinion, to lump sum compensation of at least 20% of statutory maximum compensation; or
- (b) another injury entitling the worker, in the board’s opinion, to lump sum compensation of at least 20% of statutory maximum compensation.

‘(2) A **“certificate injury”** does not include an injury entitling the worker, in the board’s opinion, to lump sum compensation of at least 20% of statutory maximum compensation if the entitlement arises only by combining the worker’s entitlement to lump sum compensation for both—

- (a) a psychiatric or psychological injury; and
- (b) another injury.

‘Meaning of “QOTE”

‘6B. “QOTE”, for a financial year, is the amount of Queensland full time adult persons ordinary time earnings as declared by the Australian Statistician in the statistician’s report about average weekly earnings published immediately before the start of the financial year.³.

Insertion of new s 51A

Clause 7. After section 51—

insert—

‘Premium variation

‘51A.(1) The premium payable for a policy for a period of insurance is to be assessed at the rate fixed under a regulation or, if no rate is fixed under a regulation, the rate decided by the board.

‘(2) It is declared that, if the rate is varied during a period of insurance,

³ The publication is currently entitled ‘Average Weekly Earnings States and Australia’.

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the board may reassess the premium for the policy according to the rate as varied from the day of variation or a later day prescribed under a regulation.

‘(3) An assessment or reassessment under this section must be made on the following bases—

(a) wages paid or estimated to be paid during the period of insurance are taken to have been paid in equal weekly instalments during the period;

(b) the premium for the period of insurance is payable at the rates in force from time to time during the period.

‘(4) An employer to whom a reassessed premium notice is given must pay the premium as reassessed.’.

Amendment of s 113 (Lump sum upon worker moving abroad)

Clause **8.(1)** Section 113(2)—

omit, insert—

‘(2) However, if the worker satisfies the board that the worker’s incapacity resulting from the injury for which the compensation is payable is permanent, the worker is entitled to lump sum compensation of not more than—

(156 x Q) – TWP

‘(2A) In subsection (2)—

“Q” is 60% of QOTE.

“TWP” means the total weekly payments already paid to the worker.’.

(2) Section 113(2A) to (4)—

renumber.

Insertion of new s 123A

Clause **9.** In part 8, after section 123—

insert—

Workers' Compensation Amendment (No. 2)

‘Employer excess

‘**123A.(1)** The employer of an injured worker must pay to the worker the worker’s entitlement to weekly payment of compensation under this Act for the prescribed period.⁴

‘**(2)** If the worker is employed under concurrent contracts of service in 2 or more callings at the time of the injury, the amount the employer must pay under subsection (1) is the part of the worker’s entitlement that relates to the amount payable to the worker under the contract of service with that employer.

‘**(3)** If the employer fails to pay to the worker the amount payable to the worker under subsection (1) within 14 days after receiving notice from the board that the worker’s claim has been allowed, the board must make the payment to the worker on behalf of the employer.

‘**(4)** A payment made by the board under subsection (3) together with a penalty equal to 50% of the payment may be recovered from the employer by the board—

(a) as a debt; or

(b) as an addition to a premium payable by the employer under this Act.

‘**(5)** An employer may apply to the general manager to waive or reduce the penalty because of extenuating circumstances.

‘**(6)** The general manager must consider the application and may—

(a) waive or reduce the penalty; or

(b) refuse to waive or reduce the penalty.

‘**(7)** An employer who is dissatisfied with the general manager’s decision may object to the decision in the same way an objection to a default assessment may be made.

‘**(8)** Sections 54 to 58 apply to the objection with all necessary changes and any change prescribed under a regulation.

⁴ The time from which compensation is payable is dealt with under s 96 (Time from which compensation payable).

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‘(9) This section does not limit section 49.⁵ 1

‘(10) In this section— 2

“**employer**” means the employer in whose employ the worker was injured, 3
but does not include the employer of a household worker. 4

“**injured worker**” means a worker who suffers an injury entitling the 5
worker to compensation under this Act. 6

“**prescribed period**”, for an injured worker, means a period up to 4 of the 7
worker’s ordinary working days during which the worker’s 8
entitlement to weekly payment of compensation continues as a result 9
of the work related injury.’. 10

Replacement of pt 9, div 1, heading and ss 124–127 11

Clause **10.** Part 9, division 1, heading and sections 124 to 127— 12

omit, insert— 13

*‘Division 1—Compensation (weekly payments) for total and partial 14
incapacity 15*

‘Application of division 16

‘**124.** This division applies if a worker is incapacitated because of injury 17
in relation to which compensation under this Act is payable. 18

**‘Amounts payable under awards, industrial agreements and 19
contracts 20**

‘**124A.** In this division, an amount payable under an award, industrial 21
agreement or contract in relation to a worker is the amount to which the 22
worker is entitled for the time being under the award, industrial agreement 23
or contract. 24

⁵ Section 49 (Employer's failure to fulfil obligation to insure)

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'Total incapacity—worker whose employment is governed by award or industrial agreement

'124B.(1) Compensation payable to a totally incapacitated worker whose employment is governed by an award or industrial agreement is a weekly payment under this section.

'(2) The payment is, for each week—

(a) for the first 26 weeks of the incapacity, the greater of the following—

(i) 85% of the worker's AWE;

(ii) the amount payable under the worker's award or industrial agreement; and

(b) afterwards, the greater of the following—

(i) 65% of the worker's AWE;

(ii) 60% of QOTE.

'(3) However, the payment under subsection (2)(b) must not be more than the payment to which the worker would be entitled under subsection (2)(a) if that paragraph applied to the worker at the time of the payment under subsection (2)(b).

'Total incapacity—worker whose employment is not governed by award or industrial agreement

'124C.(1) Compensation payable to a totally incapacitated worker whose employment is not governed by an award or industrial agreement is a weekly payment under this section.

'(2) The payment is, for each week—

(a) for the first 26 weeks of the incapacity, the greater of the following—

(i) 85% of the worker's AWE;

(ii) 70% of QOTE; and

(b) afterwards, the greater of the following—

(i) 65% of the worker's AWE;

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(ii) 60% of QOTE.

‘(3) However, the payment under subsection (2) must not be more than the worker’s AWE.

‘Total incapacity—certain contract workers

‘124D.(1) Compensation payable to a totally incapacitated contract worker is a weekly payment under this section.

‘(2) The payment is, for each week—

(a) for the first 26 weeks of the incapacity, the greater of the following—

(i) 85% of the worker’s AWE;

(ii) the amount payable under the worker’s contract of service; and

(b) afterwards, the greater of the following—

(i) 65% of the worker’s AWE;

(ii) 60% of QOTE.

‘(3) However, the payment under subsection (2)(b) must not be more than the payment to which the worker would be entitled under subsection (2)(a) if that paragraph applied to the worker at the time of the payment under subsection (2)(b).

‘(4) In this section—

“contract worker” means a worker employed under a contract of service—

(a) as an officer of the public service; or

(b) by a university; or

(c) as a salaried employee in the electricity industry; or

(d) by a regional health authority established under the *Health Services Act 1991*.

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‘Total incapacity—certain waterside workers

‘124E.(1) Compensation payable to a totally incapacitated waterside worker is a weekly payment under this section.

‘(2) The payment is, for each week—

(a) for the first 26 weeks of the incapacity, the greater of the following—

(i) the worker’s guaranteed weekly wage under the relevant award or industrial agreement;

(ii) the lesser of the following—

(A) 60% of QOTE;

(B) the worker’s AWE; and

(b) afterwards, 60% of QOTE.

‘(3) However, the payment under subsection (2)(b) must not be more than the payment to which the worker would be entitled under subsection (2)(a) if that paragraph applied to the worker at the time of the payment under subsection (2)(b).

‘(4) In this section—

“waterside worker” means a waterside worker employed at 1 of the following ports—

- Bowen
- Bundaberg
- Cairns
- Gladstone
- Mackay
- Townsville
- Urangan.

‘Total incapacity—casual or part-time workers

‘124F.(1) Compensation payable to a totally incapacitated worker engaged in casual or part-time employment is a weekly payment under

Workers' Compensation Amendment (No. 2)

section 124B, 124C, 124D, 124E or 125.

‘(2) However, the payment under subsection (1) must not be more than the worker’s AWE.

‘Total incapacity—worker receiving certain benefits under Commonwealth law

‘124G. Compensation payable to a totally incapacitated worker who, at the time the worker was injured, was receiving an age, disability support or class B widow pension under a Commonwealth law is the lesser of the following—

- (a) the amount the worker was earning at the time of the injury;
- (b) the amount the worker is entitled to earn before the maximum pension payable to the worker is reduced.

‘Total incapacity—worker with more than 1 employer

‘124H.(1) If, at the time injury is suffered—

- (a) a totally incapacitated worker is employed under concurrent contracts of service in 2 or more callings; and
- (b) the worker’s employment under 1 of the contracts of service is other than as a casual employee;

the board may decide that the worker’s entitlement to compensation is to be worked out under an award or industrial agreement for the calling that increases the worker’s entitlement to compensation.

‘(2) If the board makes a decision under subsection (1), the entitlement to compensation is worked out under the award or industrial agreement decided by the board.

‘Total incapacity—prescribed volunteers

‘125.(1) In this section—

“prescribed volunteer” means a person—

- (a) who is a member of a local emergency service or a body that acts under the authority of the state counter-disaster organisation or the

Workers' Compensation Amendment (No. 2)

state emergency service and is taken to be a worker under the	1
<i>State Counter-Disaster Organisation Act 1975</i> , section 36; or	2
(b) who is not a worker but a member of a rural fire brigade under	3
the <i>Fire Service Act 1990</i> who is discharging duties or	4
participating in training as a member of the rural fire brigade.	5
‘(2) Compensation payable to a totally incapacitated prescribed volunteer	6
is a weekly payment under this section.	7
‘(3) The payment for a prescribed volunteer who is not in employment	8
or self-employed is an amount not more than 60% of QOTE.	9
‘(4) The payment for a prescribed volunteer who is employed, but not	10
self-employed, is the payment under section 124B, 124C, 124D, 124E,	11
124F, 124G or 124H.	12
‘(5) The payment for a prescribed volunteer who is self-employed is, for	13
each week—	14
(a) for the first 26 weeks of the incapacity—	15
(i) if subparagraph (ii) does not apply—70% of QOTE; or	16
(ii) if the volunteer replaces the volunteer’s labour—the payment	17
under subsection (6); and	18
(b) afterwards, the lesser of the following—	19
(i) 60% of QOTE;	20
(ii) the reasonable cost of labour paid to replace the volunteer.	21
‘(6) For subsection (5)(a)(ii), the amount is—	22
(a) if paragraph (b) does not apply—85% of the reasonable cost of	23
labour paid to replace the prescribed volunteer; or	24
(b) if the reasonable cost of labour paid to replace the volunteer is less	25
than 70% of QOTE—the reasonable cost of labour paid to replace	26
the volunteer.	27
 ‘Maximum compensation under ss 124B–125	28
‘126. The entitlement of a worker, or a prescribed volunteer who is not a	29
worker, to weekly benefits under section 124B, 124C, 124D, 124E, 124F,	30
124G, 124H or 125 stops when the first of the following events happens—	31

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- (a) the incapacity as a result of the work related injury stops; 1
- (b) lump sum compensation is paid to the worker for the injury 2
under division 2; 3
- (c) compensation payable under this division reaches the maximum 4
amount prescribed under section 154(1)(a).'. 5

Replacement of heading and ss 129–130 6

Clause **11.** Part 9, division 2, heading and sections 129 and 130— 7
omit, insert— 8

‘Division 2—Compensation (lump sum) for permanent impairment 9

‘Application of division 10

‘129. This division applies if a worker sustains permanent impairment 11
because of injury in relation to which compensation under this Act is 12
payable. 13

‘Compensation for permanent impairment 14

‘130.(1) A worker who sustains permanent impairment because of 15
injury is entitled to lump sum compensation under this section for the 16
impairment. 17

‘(2) The amount of lump sum compensation is the amount worked out 18
having regard to the worker’s level of permanent impairment, the degree of 19
permanent impairment attributable to the injury and the table of injuries. 20

‘(3) Lump sum compensation is not payable in relation to the degree of 21
permanent impairment caused by any pre-existing condition or an injury the 22
worker may have sustained previously that contributed to the level of 23
permanent impairment.⁶ 24

⁶ For the maximum amount of lump sum compensation payable under section 130, see section 154(1)(b).

*Workers' Compensation Amendment (No. 2)***'Assessment of degree of permanent impairment**

'130A.(1) The board or a worker may ask that the degree of permanent impairment resulting from the worker's injury be assessed—

- (a) for hearing loss—under section 95(9);⁷ or
- (b) for a psychiatric or psychological injury—by a medical assessment tribunal; or
- (c) for another injury—by a registered medical practitioner.

'(2) The degree of permanent impairment must be assessed in the way prescribed under a regulation and a report must be provided to the board stating—

- (a) the matters taken into account, and the weight given to those matters, in deciding the degree of impairment; and
- (b) any other information prescribed under a regulation.

'(3) For an injury, other than a psychiatric or psychological injury, the board or worker may accept or reject the assessment of the degree of permanent impairment.

'(4) If the board and worker cannot agree about the degree of permanent impairment—

- (a) the degree of impairment may be decided only by a medical assessment tribunal; and
- (b) the board must refer the question of degree of impairment to a tribunal for decision.

'Additional compensation for certain injuries

'130B.(1) This section applies if a worker suffers spinal cord injury or chronic organic brain syndrome resulting in the worker sustaining permanent impairment that, in the board's opinion, entitles the worker to lump sum compensation of at least 50% of statutory maximum compensation.

⁷ Section 95 (Special provision concerning compensation for loss of hearing). See also section 131(4).

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‘(2) The worker is entitled to additional lump sum compensation for the injury, up to \$100 000, payable according to a graduated scale prescribed under a regulation.’.

Amendment of s 131 (Application of s 129 in particular cases)

Clause **12.(1)** Section 131(3)—

omit, insert—

‘(3) If—

(a) a worker has previously received lump sum compensation for injury (other than hearing loss) to a part of the worker’s body; and

(b) the worker sustains a further injury to that part (the “**later injury**”);

lump sum compensation under section 130 for the later injury must be reduced by the amount of lump sum compensation previously paid under this Act or the repealed Act.

Example—

A worker loses the distal joint of the right forefinger in a work related incident and receives lump sum compensation for the impairment. The worker loses the entire right forefinger in a subsequent work related incident. The lump sum compensation payable for the second impairment must be reduced by the lump sum compensation paid for the first impairment.’.

(2) Section 131(4), ‘, or under a previous enactment that corresponds to this Act’—

omit, insert—

‘or the repealed Act’.

(3) Section 131—

insert—

‘(5) In this section—

“**repealed Act**” means the *Workers’ Compensation Act 1916*.’.

Workers' Compensation Amendment (No. 2)

Replacement of ss 132 and 133

Clause **13. Sections 132 and 133—**

omit, insert—

‘Offer and payment of compensation after assessment

‘132. The board may make an offer of lump sum compensation to or on account of a worker who has suffered an injury prescribed under the table of injuries that has resulted in the worker sustaining a permanent impairment.

‘(2) An offer may be made only if—

- (a) the board and the worker both accept the worker’s degree of permanent impairment is the degree assessed by a registered medical practitioner or under section 95(9);⁸ or
- (b) a medical assessment tribunal has decided on a reference under part 10 that the worker has sustained a degree of permanent impairment.

‘(3) The degree of the worker’s permanent impairment and the percentage of maximum lump sum compensation payable under section 130⁹ to which the impairment entitles the worker must be stated on the offer.

‘(4) If the degree of permanent impairment from a certificate injury entitles the worker to lump sum compensation under section 130 of less than 20% of the statutory maximum compensation, the board must—

- (a) advise the worker about the choice the worker must make under section 182B;¹⁰ and

⁸ Section 95 (Special provision concerning compensation for loss of hearing)

⁹ Section 130 (Compensation for permanent impairment)

¹⁰ Section 182B (Worker must make choice about damages at law in certain cases)

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(b) give the worker a copy of sections 182A, 182B and 182C.¹¹

‘(5) An offer may be accepted or rejected, or a decision about the offer may be deferred, within 28 days after a written offer is made by the board (the “**decision period**”).

‘(6) If, within the decision period, the worker does not advise the board that the offer is accepted or rejected or that the worker wishes to defer the decision, the worker is taken to have deferred the decision.

‘(7) If the offer is accepted, the board must pay the lump sum compensation entitlement to or on account of the worker.’.

Replacement of s 135 (No further compensation after settlement under s 129)

Clause 14. Section 135—

omit, insert—

‘No further compensation after offer

‘**135.(1)** This section applies if an offer of lump sum compensation under section 132 is made.

‘(2) A worker to or for whom an offer of lump sum compensation is made is not entitled, after the acceptance, rejection or deferral of the offer—

(a) to further compensation, other than the lump sum compensation offered, in relation to the injury; or

(b) to payment of expenses of any description in relation to the injury.’.

Amendment of s 136 (Benefits for total or partial dependants)

Clause 15.(1) Section 136(1), table, paragraph (a), column 2, ‘\$120 000’—

omit, insert—

‘\$160 000’.

¹¹ Sections 182A (Application of ss 182B–182E), 182B (Worker must make choice about damages at law in certain cases) and 182C (Consequences of choosing to seek damages at law)

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(2) Section 136(1), table, paragraph (b), column 1, ‘, or is of or over that age’ to ‘similar institution’—

omit, insert—

‘or a student’.

(3) Section 136(1), table, paragraph (b), column 2—

omit, insert—

‘a weekly payment of 7% of QOTE for each child, stepchild, brother or sister starting at the time of the worker’s death and ending when the child, stepchild, brother or sister turns 16 or stops being a student.’.

(4) Section 136(1), table, paragraph (c), column 2—

omit, insert—

‘the amount of \$6 000 for each child, stepchild, brother or sister left by the worker who is under 16 or a student.’.

(5) Section 136(1), table, paragraph (e), column 2—

omit, insert—

‘a weekly payment of 7% of QOTE for each child, stepchild, brother or sister starting at the time of the worker’s death and ending when the child, stepchild, brother or sister turns 16 or stops being a student.’.

(6) Section 136(1), table, paragraph (f), column 2, ‘\$10 000’—

omit, insert—

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'\$11 050'.

1

Amendment of s 138 (Reduced benefit to dependant who dies before payment of compensation)

2

3

Clause **16.(1)** Section 138(2), table, paragraphs (a) and (b), column 2, '20% of the prescribed base rate'—

4

5

omit, insert—

6

'14% of QOTE'.

7

(2) Section 138(2), table, paragraph (b)(i), column 1, ', or who is' to 'similar institution'—

8

9

omit, insert—

10

'or a student'.

11

(3) Section 138(2), table, paragraph (b)(ii), column 1—

12

omit, insert—

13

'(ii) is a member of the family of the worker who is 16 or over and not a student and is caring for persons who at the time of the worker's death were totally or mainly dependent on the worker's earnings.'

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(4) Section 138(2), table, paragraph (c), column 1, ', or is' to 'similar institution'—

23

24

omit, insert—

25

'or a student'.

26

(5) Section 138(2), table, paragraph (c), column 2, '10% of the prescribed base rate'—

27

28

omit, insert—

29

'7% of QOTE'.

30

Workers' Compensation Amendment (No. 2)

Amendment of s 140 (Entitlement to additional compensation)

Clause 17. Section 140(3) to (6)—

omit, insert—

‘(3) Compensation under this Act for prescribed disfigurement is payable as lump sum compensation in an amount worked out having regard to the severity of the worker’s prescribed disfigurement and the table of injuries.’.

Amendment of s 141 (Assessment of additional compensation)

Clause 18.(1) Section 141—

insert—

‘(2A) The tribunal must assess the severity of prescribed disfigurement in the way prescribed under a regulation.’.

(2) Section 141(2A) to (3)—

renumber.

Amendment of s 154 (Maximum entitlement for 1 incident)

Clause 19.(1) Section 154(1), ‘\$67 000’—

omit, insert—

‘\$100 000’.

(2) Section 154(1)(b), ‘section 129 or 140’—

omit, insert—

‘section 130¹²’.

(3) Section 154—

insert—

¹² Section 130 (Compensation for permanent impairment)

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‘(3) However, subsections (1) and (2) do not limit the power to make additional payment of compensation under section 130B.¹³’.

Replacement of s 155 (Variation of payments for mining diseases)

Clause 20. Section 155—

omit, insert—

‘Variation of payments for mining diseases

‘155. A regulation may vary a payment or amount to which a person is entitled under the *Workers' Compensation Act 1916* in relation to the disease silicosis or anthraco-silicosis if—

(a) QOTE is varied; or

(b) the amount of age, disability support or class B widow pension payable under the *Social Security Act 1991* (Cwlth) is varied.’.

Amendment of s 156 (Variation of payments for other injuries)

Clause 21.(1) Section 156(1)—

omit, insert—

‘156.(1) If QOTE varies, each payment or amount under division 1, 2, 3, 4 or 7 that is not expressed as a percentage of QOTE, is to be varied proportionately.

‘(1A) A weekly payment or another amount varied under subsection (1) is to be rounded up—

(a) for a weekly payment—to the nearest 5¢; and

(b) for another amount—to the nearest \$5.’.

(2) Section 156(1A) and (2)—

renumber.

¹³ Section 130B (Additional compensation for certain injuries) provides for additional lump sum compensation in certain cases involving serious spinal cord injury or chronic organic brain syndrome.

Workers' Compensation Amendment (No. 2)

Amendment of s 171 (Reference to tribunals)

Clause	22.(1) Section 171(3)(a)(iii), 'a permanent partial disability resulting from the injury'—	1 2 3
	<i>omit, insert—</i>	4
	'an injury under the table of injuries resulting in permanent impairment'.	5
	(2) Section 171(3)(b)(ii), 'a permanent partial disability resulting from the injury'—	6 7
	<i>omit, insert—</i>	8
	'an injury under the table of injuries resulting in permanent impairment'.	9
	(3) Section 171(4)(c), 'a permanent partial disability resulting from the injury'—	10 11
	<i>omit, insert—</i>	12
	'an injury under the table of injuries resulting in permanent impairment'.	13
	(4) Section 171—	14
	<i>insert—</i>	15
	' (4A) A tribunal must assess the nature and extent of permanent impairment in the way prescribed under a regulation.'	16 17
	(5) Section 171(4A) and (5)—	18
	<i>renumber.</i>	19

Insertion of new ss 182A–182E

Clause	23. Before section 183, part 11—	20 21
	<i>insert—</i>	22
	'Application of ss 182B–182E	23
	'182A.(1) Sections 182B to 182E apply to a worker who suffers an injury, other than a serious injury, in circumstances creating, independently of this Act, a legal liability in the worker's employer in relation to which the worker's employer is—	24 25 26 27
	(a) indemnified by the board under a policy in relation to the injury;	28
	or	29

Workers' Compensation Amendment (No. 2)

(b) required by this Act to be so indemnified.	1
‘(2) In subsection (1)—	2
“injury” does not include an injury in relation to which the employer is required to provide against the employer’s legal liability by—	3
(a) another Act; or	4
(b) a law of another State, the Commonwealth or another country.	5
“serious injury” of a worker means an injury—	6
(a) entitling the worker, in the board’s opinion, to lump sum compensation of at least 20% of statutory maximum compensation for a certificate injury; or	7
(b) resulting in the worker’s death.	8
‘Worker must make choice about damages at law in certain cases	9
‘182B.(1) A worker to whom lump sum compensation is payable under part 9, division 2 ¹⁴ for an injury is not entitled to both—	10
(a) lump sum compensation for the injury; and	11
(b) damages at law for the injury.	12
‘(2) The worker must choose between accepting lump sum compensation offered under this Act and seeking damages at law.	13
‘(3) The worker must give the board notice of the worker’s choice in the approved form.	14
‘(4) If the worker fails to give the board notice of the worker’s choice before the worker seeks damages at law, the worker is taken to have made a choice to reject lump sum compensation for the injury.	15
‘(5) The worker’s choice may not be changed after it is—	16
(a) given to the board; or	17
(b) taken to have been made under subsection (4).	18
‘(6) The worker is taken to seek damages at law for the injury when the	19

¹⁴ Part 9 (Quantum of compensation), division 2 (Compensation (lump sum) for permanent impairment)

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worker—	1
(a) seeks to negotiate a damages settlement with the board; or	2
(b) starts proceedings at law for damages.	3
‘Consequences of choosing to seek damages at law	4
‘182C.(1) This section applies if the worker is not entitled to, or rejects,	5
lump sum compensation under this Act for an injury and seeks damages at	6
law for the injury.	7
‘(2) The worker’s entitlement to compensation under this Act stops and	8
the following rules in relation to costs in the worker’s proceeding for	9
damages apply.	10
‘(3) No order as to costs, other than costs for interlocutory applications,	11
is to be made by the court in the proceeding even if the action is successful.	12
‘(4) However, if a party to the proceeding makes an offer of settlement	13
that is refused and the court later awards damages to the worker, the court	14
must, in the following circumstances, make the order about costs provided	15
for—	16
(a) if the amount of damages awarded is equal to or more than the	17
worker’s final offer—an order that the defendant pay the	18
worker’s party and party costs from the day of the final offer;	19
(b) if the amount of damages awarded is equal to or less than the	20
defendant’s final offer—an order that the worker pay the	21
defendant’s party and party costs from the day of the final offer.	22
‘(5) If the award of damages is less than the worker’s final offer but	23
above the defendant’s final offer, subsection (3) applies.	24
‘(6) An order as to costs for an interlocutory application may be made	25
only if the court is satisfied that the application has been brought because of	26
unreasonable delay on the part of 1 of the parties.	27
‘(7) If an entity other than the board is joined as a defendant in the	28
proceeding, the court may make an order as to costs in favour of, or against,	29
the entity according to the proportion of liability of the defendants and the	30
justice of the case.	31

Workers' Compensation Amendment (No. 2)

‘(8) Subsection (7) does not empower the court to make an order for costs against the worker’s employer or the board.

‘Access to common law damages if no offer of lump sum compensation made

‘182D.(1) A worker who has not received an offer of lump sum compensation under section 132¹⁵ may seek damages at law for an injury suffered after the commencement only if the board gives to the worker a certificate under this section.

‘(2) The worker must apply in the approved form to the board for a certificate.

‘(3) The board may give the certificate only if—

- (a) in the board’s opinion, the proceedings are in relation to an injury within the meaning of this Act; and
- (b) the injury has been sustained after the commencement; and
- (c) the procedures for assessment of the degree of the worker’s permanent impairment under section 130A¹⁶ have been complied with; and
- (d) if the board could make an offer of lump sum compensation under section 132—the board has made the offer.

‘(4) However, the board may issue the worker with a conditional certificate if—

- (a) the degree of the worker’s permanent impairment is not agreed or has not been decided by a tribunal; or
- (b) there is an urgent need to bring proceedings for damages.

‘(5) If a conditional certificate is given, the worker may bring court proceedings for damages at law for the injury, but the proceedings are stayed until the board makes the certificate unconditional.

‘(6) The board must make the certificate unconditional when—

¹⁵ Section 132 (Offer and payment of compensation after assessment)

¹⁶ Section 130A (Assessment of degree of permanent impairment)

Workers' Compensation Amendment (No. 2)

- (a) the procedures for assessment of the degree of the worker's permanent impairment under section 130A¹⁷ have been complied with; and 1
2
3
- (b) if the board could make an offer of lump sum compensation under section 132¹⁸—the board has made the offer and the offer has been rejected or deferred. 4
5
6

‘Decision not to seek damages at law reviewable in certain circumstances 7
8

‘182E.(1) A worker who chooses, under section 182B,¹⁹ to accept lump sum compensation may ask the board to review fresh medical evidence about the worker's injury. 9
10
11

‘(2) The board may review the medical evidence only if the worker satisfies the board that the medical evidence— 12
13

- (a) was not available at the time the worker made the choice; and 14
- (b) shows that the worker's injury has caused a further material deterioration in the worker's medical condition; and 15
16
- (c) tends to establish that the degree of permanent impairment sustained by the worker has reached the prescribed level. 17
18

‘(3) A request must be made within 1 year of the degree of permanent impairment sustained by the worker being agreed on, decided or assessed. 19
20

‘(4) The board must consider the additional medical evidence produced by the worker and may accept or reject the evidence. 21
22

‘(5) If the board rejects the evidence, the worker may require the board to refer the evidence to a review panel for review. 23
24

‘(6) The review panel must consider the additional medical evidence produced by the worker and may accept or reject the evidence. 25
26

¹⁷ Section 130A (Assessment of degree of permanent impairment)

¹⁸ Section 132 (Offer and payment of compensation after assessment)

¹⁹ Section 182B (Worker must make choice about damages at law in certain cases)

Workers' Compensation Amendment (No. 2)

‘(7) A decision of the review panel is final and may not be appealed against. 1
2

‘(8) If the board accepts, or the review panel decides, that the medical evidence tends to establish that the degree of permanent impairment sustained by the worker has reached the prescribed level— 3
4
5

(a) the board and worker may agree about the degree of the worker’s permanent impairment; or 6
7

(b) if the board and worker cannot agree, the board must refer the question of degree of permanent impairment to an appropriate medical assessment tribunal for decision. 8
9
10

‘(9) For this section, a worker reaches the “**prescribed level**” if, for a certificate injury, the degree of permanent impairment sustained by the worker— 11
12
13

(a) provides the worker with a further lump sum compensation entitlement of at least 10% of statutory maximum compensation; and 14
15
16

(b) brings the worker’s entitlement to lump sum compensation for the injury to at least 20% of statutory maximum compensation. 17
18

‘(10) In this section— 19

“**review panel**” means a panel consisting of the chairperson or deputy chairperson of the general medical assessment tribunal and another member of an appropriate medical assessment tribunal.’. 20
21
22

Amendment of s 200 (Evidentiary value of certificates) 23

Clause 24. Section 200(3)— 24

insert— 25

‘(e) that a worker has a degree of permanent impairment entitling the worker to a stated percentage of statutory maximum compensation;’. 26
27
28

Workers' Compensation Amendment (No. 2)

Amendment of s 207 (Regulations)

Clause	25.(1) Section 207, words before paragraph (a)—	1
	<i>omit, insert—</i>	2
	‘ (1) The Governor in Council may make regulations under this Act.	3
	‘ (2) A regulation may make provision about the following—’.	4
	(2) Section 207(a)(i) and (ii)—	5
	<i>omit, insert—</i>	6
	‘(i) premiums and rates of premium; and	7
	(ii) surcharges; and	8
	(iii) demerit charges;’.	9
	(3) Section 207(w)—	10
	<i>omit.</i>	11
		12

Amendment of s 208 (Board’s power to fix premiums and charges when regulations silent)

Clause	26.(1) Section 208, ‘any class of policy’—	13
	<i>omit, insert—</i>	14
	‘a policy’.	15
	(2) Section 208, ‘in the case of a policy of that class’—	16
	<i>omit, insert—</i>	17
	‘for the policy’.	18
	(3) Section 208—	19
	<i>insert—</i>	20
	‘ (2) To remove any doubt, it is declared that subsection (1) applies, and	21
	is always taken to have applied, whether or not a regulation provides, or	22
	ever provided, for any of the things mentioned in subsection (1).’.	23
		24
		25

Workers' Compensation Amendment (No. 2)

Amendment of s 213 (Claims relating to injury)

Clause	27.(1) Section 213(2)—	1
	<i>omit, insert—</i>	2
	‘ (2) An entitlement to compensation under this Act is to be decided, and paid, in accordance with the Act as in force at the time the injury was suffered.	3
	‘ (2A) However, if the injury was one suffered after the commencement of this Act and before the commencement of this section, a person entitled to lump sum compensation, weekly payments or dependant allowances under this Act is entitled to the benefit of every increase in the prescribed base rate.’.	4
	(2) Section 213(4), definition “commencement”, paragraph (b)—	5
	<i>omit, insert—</i>	6
	‘(b) for another injury—1 January 1996.’.	7
	(3) Section 213(4)—	8
	<i>insert—</i>	9
	‘ “prescribed base rate” means a weekly rate of compensation under this Act that is 65% of the weekly minimum rate of wages for the time being provided by the Engineering Award—State, made by the Industrial Relations Commission, in relation to employees of the class ‘Wage Group C10’ in the Southern Division.’.	10
		11
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SCHEDULE	1
MINOR AMENDMENTS	2
section 3	3
1. Sections 49(1)(a) and 102(1), 'prescribed form'—	4
<i>omit, insert—</i>	5
'approved form'.	6
2. Section 75(1), 'employees'—	7
<i>omit, insert—</i>	8
'workers'.	9
3. Section 90—	10
<i>insert—</i>	11
'(2) Subsection (1) does not limit sections 182B and 182D. ²⁰ '.	12
4. Section 92(1)(b), 'permanent disability'—	13
<i>omit, insert—</i>	14
'permanent impairment'.	15

²⁰ Section 182B (Worker must make choice about damages at law in certain cases)
Section 182D (Access to common law damages if no offer of lump sum compensation made)

5. Section 95(4)(b), ‘in accordance with the table in section 129’—	1
<i>omit, insert—</i>	2
‘under section 130 ²¹ ’.	3
 6. Section 109(2)(b)—	4
<i>omit, insert—</i>	5
‘(b) the worker’s AWE.’.	6
 7.(1) Section 112(1), (3), (4) and (5), ‘a lump sum’—	7
<i>omit, insert—</i>	8
‘lump sum compensation’.	9
 8. Section 112(2), ‘lump sum’—	10
<i>omit, insert—</i>	11
‘lump sum compensation’.	12
 9. Sections 112(5) and 113(4), ‘the lump sum’—	13
<i>omit, insert—</i>	14
‘lump sum compensation’.	15
 10. Section 113(4), ‘a lump sum payment is made’—	16
<i>omit, insert—</i>	17
‘lump sum compensation is paid’.	18

²¹ Section 130 (Compensation for permanent impairment)

11. Sections 131, heading and (1), (2) and (4), 134, heading, '129'—	1
<i>omit, insert—</i>	2
'130'.	3
12. Section 131(2), 'lump sum payment'	4
<i>omit, insert—</i>	5
'lump sum compensation'.	6
13. Section 134, 'loss or condition' to 'under that section'—	7
<i>omit, insert—</i>	8
'injury prescribed under the table of injuries, the worker is not entitled'.	9
14. Section 137(b), 'a lump sum'—	10
<i>omit, insert—</i>	11
'lump sum compensation'.	12
15. Section 137(c), 'payment of a lump sum of compensation'—	13
<i>omit, insert—</i>	14
'another payment of lump sum compensation'.	15
16. Section 139, 140(5), 'section 129'—	16
<i>omit, insert—</i>	17
'section 130'.	18
17. Section 154(1)(a), 'a lump sum'—	19
<i>omit, insert—</i>	20
'lump sum compensation'.	21

18. Section 158—	1
<i>omit.</i>	2
19. Sections 171(3)(a)(iii) and (b)(ii) and (4)(c), ‘the disability’—	3
<i>omit, insert—</i>	4
‘the impairment’.	5
20. In part 12—	6
<i>insert—</i>	7
‘Approval of forms	8
‘206A. The board may approve forms for use under this Act.’.	9
21. Section 207(l)(ii)—	10
<i>omit.</i>	11
22. Section 210—	12
<i>insert—</i>	13
‘(2) In an Act or document, a reference to the State Accident Insurance	14
Fund may, if the context permits, be taken to be a reference to the Workers’	15
Compensation Fund.’.	16
23. Section 212(5), ‘a lump sum’—	17
<i>omit, insert—</i>	18
‘lump sum compensation’.	19
24. After section 214—	20
<i>insert—</i>	21

‘Transitional provision about forms	1
‘215.(1) This section applies if—	2
(a) immediately before its commencement, there was a prescribed form for a matter; and	3 4
(b) on the commencement, there is to be an approved form for the matter or a form may be approved for the matter.	5 6
‘(2) Until there is an approved form for the matter, the form that was the prescribed form for the matter immediately before the commencement is taken to be the approved for the matter.	7 8 9
‘(3) This section expires 6 months after it commences.’.	10
	11